

## EXECUTION COPY

### AGREEMENT FOR ROAD USE, REPAIR AND IMPROVEMENTS

This AGREEMENT FOR ROAD USE, REPAIR AND IMPROVEMENTS (this "Agreement") is made and entered into this 24<sup>th</sup> day of March, 2005 by and among the TOWN OF LOWVILLE, a municipal corporation with offices at 553 Bostwick Street, Lowville, New York ("Lowville"), the TOWN OF HARRISBURG, with an office at 7886 Cobb Creek Road, Copenhagen, New York ("Harrisburg"), the TOWN OF WATSON, a municipal corporation with offices at 6630 River road, Lowville, New York ("Watson"), the TOWN OF MARTINSBURG, a municipal corporation with offices at Route 26, Martinsburg, New York ("Martinsburg" and together with Lowville, Harrisburg and Watson, the "Towns"), the COUNTY OF LEWIS, a body corporate and politic under the laws of the State of New York with an office at 7668 State Street, Lowville, New York (the "County") and FLAT ROCK WINDPOWER LLC, a Delaware limited liability company with offices at 7612 State Street, Suite #7, Lowville, New York 13367 ("Flat Rock"). Lowville, Harrisburg, Watson, Martinsburg, the County and Flat Rock are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

#### RECITALS

1. Flat Rock has been developing a wind-powered electric generating facility located in the towns of Martinsburg, Harrisburg, Watson and Lowville in Lewis County, New York (the "Flat Rock Wind Project").
2. The first phase of the Flat Rock Wind Project has a planned nameplate capacity of up to approximately 230 MW (the "Phase I Project") and is owned by Flat Rock, a special purpose company currently owned by Atlantic Renewable Projects, LLC, a Delaware limited liability company ("Atlantic"), and Zilkha Renewable Energy, LLC, a Delaware limited liability company ("Zilkha").
3. The second phase of the Flat Rock Wind Project has a planned nameplate capacity of up to approximately 70 MW ("Phase II") and is owned by Flat Rock Windpower II LLC ("Flat Rock II"), a Delaware limited liability company and special purpose entity currently owned by Atlantic and Zilkha.
4. The Flat Rock Wind Project advances the County's and Towns' desire for environmentally sound production of electrical power.
5. The Towns and the County are responsible for the maintenance of certain roads and highways within Lewis County.
6. In connection with the development, construction, operation and maintenance of the Phase I Project, it will be necessary for Flat Rock and its contractors and subcontractors or designees to: (i) transport heavy equipment and materials over the certain roads and highways located in each of the Towns and County (the "Designated Roads"), which may in certain cases be in excess of the design limits

of the Designated Roads; (ii) transport certain locally sourced materials, such as concrete and gravel, on such Designated Roads; (iii) widen certain Designated Roads and make certain modifications and improvements (both temporary and permanent) to such Designated Roads (including to certain culverts, bridges, road shoulders and other related fixtures) to permit such equipment and materials to pass; and (iv) place certain electrical cables for the Phase I Project adjacent to, under or across certain roads identified on Appendix D for the purposes of carrying electrical current from the Phase I Project to the Flat Rock Wind Project substation on Rector Road.

7. The Towns, the County and Flat Rock wish to enter into an agreement for the use, repair and improvement of the Designated Roads by Flat Rock, all in accordance with the terms and conditions set forth herein.
8. This Agreement is a condition to the Towns and the County issuing special use permits pursuant to the authority granted to the Towns and the County under New York law.

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## **ARTICLE I USE OF DESIGNATED ROADS BY FLAT ROCK**

Section 1.1 Use of Designated Roads by Flat Rock. In connection with the development, construction, operation and maintenance of the Phase I Project, each of the Towns and the County hereby acknowledge and agree that Flat Rock, its contractors and subcontractors and each of their respective agents, employees, representatives, and permitted assigns (collectively, the "Flat Rock Parties") shall use the roads and highways located in the Towns and the County identified on Appendix A hereto (the "Designated Roads") between the hours of 6:00am and 10:00pm, seven days a week ("Period of Use"). The Designated Roads may be used by Flat Rock and the Flat Rock Parties only in connection with the development, construction, operation, and maintenance of the Phase I Project, including the transportation of heavy equipment and materials to and from the Phase I Project. The Parties understand that deviations from the Phase I Project schedule may cause monetary and other harm to Flat Rock. Accordingly, the Towns and the County agree to use best efforts to accommodate the use of the Designated Roads by Flat Rock and the Flat Rock Parties outside the Period of Use during the period of construction. In addition to identifying the Designated Roads that will be used by Flat Rock, Appendix A identifies the routes over the Designated Roads that will be used for: (i) transportation and delivery of wind turbine equipment and components and other materials and equipment to be used in connection with the Phase I Project; (ii) truck transportation leaving the Phase I Project site following delivery of equipment and materials; (iii) movement of the assembled cranes, the route for which is set forth on Appendix A-1; and (iv) transportation and delivery of locally sources materials, including concrete and gravel.

Section 1.2 Construction Period Meetings. Beginning with commencement of construction of the Phase I Project, Flat Rock and a representative from each of the Towns and the County (each, a "Designee" and collectively, the "Designees") shall meet on a weekly basis to discuss the expected use of the Designated Roads in the next succeeding week, including the construction schedule and the haul routes to be used. Each of the Designees shall have authority to act on behalf of its respective Town or County, including the right to allow use of the Designated Roads outside the Period of Use. To the extent necessary, the Designees and Flat Rock may invite certain landowners to attend the weekly meetings if their property is near or adjacent to the areas of use. Within ten (10) days after the execution of this Agreement by the Parties, each of the Towns and County shall provide the names and contact information for each of their respective Designees.

Section 1.3 Additional Conditions of Use. The acknowledgement of use by Flat Rock and the Flat Rock Parties set forth in Section 1.1 shall be contained in special use permits issued by the Towns and the County simultaneously herewith and is subject to the following conditions:

(a) In the event Flat Rock and the Flat Rock Parties determine it is necessary for the Phase I Project to use the Designated Roads outside the Period of Use, then Flat Rock or, if applicable, the Flat Rock Parties shall seek approval of the appropriate Designee, describing in detail such use and the reasons therefor. Such Designee will take into account weather conditions and the conditions of the roads in making his or her determination to grant permission for use of the Designated Roads outside of the Period of Use under this Section 1.3, which permission shall not be unreasonably withheld. In the event that the appropriate Designee fails to respond within three (3) business days, such designee shall be deemed to have withheld consent to such use.

(b) In the event Flat Rock and the Flat Rock Parties determine it is necessary for the Phase I Project to use roads and highways of the Town and County not identified on Appendix A as Designated Roads, then Flat Rock or, if applicable, the Flat Rock Parties shall notify of the appropriate Designee, describing in detail such use and the reasons therefor.

(c) Once construction begins on the Phase I Project, each of the Designees shall be entitled, at any time, to notify Flat Rock and the Flat Rock Parties that use of the Designated Roads may result in excessive damage to the Designated Roads due to weather conditions. Flat Rock shall work with such Designee to develop a plan to mitigate or prevent the effect of such weather conditions. If the Parties are able to develop a plan to mitigate or prevent such damage, then Flat Rock and the Flat Rock Parties may continue to use such roads provided such mitigation is implemented. If the Parties are unable to develop such a plan, Flat Rock and the Flat Rock Parties may propose an alternate route to the Phase I Project site for approval by the Designees of the Towns and Counties (such approval not to be unreasonably withheld).

Section 1.4 Surveys of Designated Roads. As soon as practicable after the execution of this Agreement, but in any event prior to the commencement of construction at the Phase I Project site, the Towns, the County and Flat Rock shall select a third party to survey the Designated Roads to document the conditions of such roads prior to their use ("Initial Survey"). The Initial Survey shall also include a survey of the roads and highways within the boundaries of the Towns and County anticipated to be used by Flat Rock and the Flat Rock Parties as alternate routes from time to time (the "Non-Project Roads"). The third party surveyor shall take photographs of or videotape the Designated Roads and Non-Project Roads, which photographs or video shall be accompanied by a written summary of findings regarding the condition of the Designated Roads and Non-Project Roads (the "Road Report"). Such Initial Survey, Road Report and any subsequent surveys or road reports shall be completed to the reasonable satisfaction of the Designees. Copies of the photographs or video and the Road Report shall be provided to each of the Designees and Flat Rock. The costs of the Initial Survey and Road Report will be borne by Flat Rock. Following the Initial Survey, Flat Rock shall request the third party surveyor to conduct an additional survey following completion of construction of the Phase I Project to determine the then current condition of the Designated Roads and Non-Project Roads. Additional surveys shall only be conducted in the event the Parties mutually agree and the additional survey costs are borne by Flat Rock.

Section 1.5 Trash Removal; Unnecessary Materials and Equipment. Throughout the term of this Agreement, Flat Rock shall be responsible for keeping, at its cost, the Designated Roads and Non-Project Roads clean and free from rubbish and debris resulting from Flat Rock's use of the Designated Roads and Non-Project Roads. Materials and equipment of Flat Rock or the Flat Rock Parties, if any, shall be removed from the Designated Roads and Non-Project Roads as soon as they are no longer necessary.

Section 1.6 Reimbursement of Certain Costs. Immediately upon execution of this Agreement and in consideration of the covenants herein contained, Flat Rock agrees to reimburse the Towns and County for all reasonable, documented out-of-pocket costs, including attorney's fee, incurred by them in connection with the preparation of this Agreement and all related documentation.

## ARTICLE II REPAIR OF DESIGNATED ROADS AND NON-PROJECT ROADS

Section 2.1 Obligation to Repair Town and County Roads. In the event that any of the (i) Designated Roads or related appurtenances, including bridges, culverts and other road fixtures, (ii) modifications and improvements made pursuant to Section 3.1 and described on Appendix B, or (iii) Non-Project Roads are damaged as a result of the use by Flat Rock or the Flat Rock Parties, Flat Rock agrees to repair (or cause to be repaired) such damage and to restore such road or related appurtenance to the condition they were in prior to the use (as near as is reasonably practicable having due regard for normal wear and tear) under this Agreement, except for repairs to modifications and improvements pursuant to Section 3.1 which shall be repaired in accordance with the specifications set forth on Appendix C. The Parties shall rely upon the Initial Survey conducted pursuant to Section 1.4 for purposes of determining whether the repair

has been performed in accordance with the standard set forth in this Section 2.1. Any repair and restoration shall be promptly performed at such times as Flat Rock and the Designees determine, having due regard for safety, the presence of emergency conditions and the costs of such repairs. Following completion of such repair, the appropriate Designee and Flat Rock shall jointly inspect the repair to determine that it has been satisfactorily completed.

Section 2.2 Repairs of Designated Roads at the Request of a Designee; Failure to Repair. Each Designee may request in writing that Flat Rock repair damage shown to be caused by Flat Rock and the Flat Rock Parties to the Designated Roads and related appurtenances and return such roads and appurtenances to the condition such roads and appurtenances were in prior to such damage (as near as is reasonably practicable having due regard for normal wear and tear). Prior to commencement of such repair, such Designee and Flat Rock shall meet to review the damage in relation to the Initial Survey or most recent subsequent survey, as applicable. Flat Rock shall repair (or cause to be repaired) such damage and restore the road to the standard set forth in Section 2.1, unless Flat Rock or the Flat Rock Parties demonstrate to the reasonable satisfaction of the Designees that the damage was not caused by Flat Rock or the Flat Rock Parties. Any repair and restoration shall be promptly performed at such times as Flat Rock and the Designees determine, having due regard for safety, the presence of emergency conditions and the costs of such repairs. In the event that Flat Rock fails to repair such roads and appurtenances within the agreed period, then, unless the Parties mutually agree otherwise, the applicable Town or County may make such repairs and shall invoice Flat Rock for the costs incurred by such Town or County in connection with the repair. Flat Rock shall pay such invoiced amounts within ten (10) days following receipt of the invoice.

Section 2.3 Repairs of Non-Project Roads at the Request of a Designee; Failure to Repair. Each Designee may, from time to time, request in writing that Flat Rock repair damage caused by Flat Rock and the Flat Rock Parties to the Non-Project Roads, and return such roads to the condition such roads were in prior to such damage (as near as is reasonably practicable having due regard for normal wear and tear). Prior to commencement of such repair, such Designee and Flat Rock shall meet to review the damage in relation to the Initial Survey or most recent subsequent survey, as applicable. Flat Rock shall repair (or cause to be repaired) such damage and restore the road to the standard set forth in Section 2.1, unless Flat Rock or the Flat Rock Parties demonstrate to the reasonable satisfaction of the Designees that the damage was not caused by Flat Rock or the Flat Rock Parties. Any repair and restoration shall be promptly performed at such times as Flat Rock and the Designees determine, having due regard for safety, the presence of emergency conditions and the costs of such repairs. In the event that Flat Rock fails to repair such roads within the agreed period, then, unless the Parties mutually agree otherwise, the applicable Town or County may make such repairs and shall invoice Flat Rock for the costs incurred by such Town or County in connection with the repair. Flat Rock shall pay such invoiced amounts within ten (10) days following receipt of the invoice.

Section 2.4 Term of Obligation to Repair. Notwithstanding anything herein to the contrary, the obligations of Flat Rock and the Flat Rock Parties to repair certain roads in accordance with Sections 2.1, 2.2 and 2.3 shall terminate on the later to occur of the following: (i) the date that is sixty (60) days following the completion of construction of the Phase I Project and (ii) the date on which the warranty coverage described in Article IV expires. Flat Rock shall

notify the Towns and the County in writing sixty (60) days prior to the date on which completion of construction is anticipated to occur.

### **ARTICLE III IMPROVEMENT AND MODIFICATIONS TO DESIGNATED ROADS**

Section 3.1 Improvements and Modifications to Designated Roads. The Parties acknowledge and agree that certain modifications and improvements to the Designated Roads and related appurtenant structures are necessary to accommodate the use of the Designated Roads by Flat Rock and the Flat Rock Parties contemplated hereby, including the widening of certain roads and modifications and improvements necessary to accommodate the heavy equipment and materials to be transported on the Designated Roads. The modifications and improvements that shall be made by Flat Rock are described in detail on Appendix B hereto. The Towns, the County and Flat Rock agree that such improvements and modifications shall be made in accordance with the specifications set forth on Appendix C. Notwithstanding anything herein to the contrary, upon the reasonable request of Flat Rock the Designees of the Towns and County are authorized from time to time to grant consent to deviations from the specifications set forth on Appendix C.

Section 3.2 List of Materials and Construction Techniques. Ten (10) days prior to the commencement of any modification or improvement pursuant to this Article III, Flat Rock shall deliver to the Designees of the Towns and County a list of all materials to be used and construction techniques to be employed in connection therewith, subject to the approval of the Designees of the Towns and County (not to be unreasonably withheld).

Section 3.3 Subsequent Modifications or Improvements. If modifications or improvements are necessary to the Designated Roads and related appurtenant structures that were not contemplated when this Agreement was executed, the Parties agree to negotiate in good faith and mutually agree to such modification or improvement, together with the materials to be used, the construction techniques to be employed, and the specifications applicable to such work.

Section 3.4 Compliance with Law. Flat Rock agrees that all modifications and improvements shall comply with all applicable laws, subject to the obligations of the Towns and the County set forth in Section 3.5.

Section 3.5 Collection System Cabling. The Parties acknowledge that Flat Rock may desire to route certain wires, cables, conduits and/or lines (and their associated equipment) related to the transmission of electricity at a voltage of up to 34.5 kV from the Phase I Project below ground at a location adjacent to, under or across certain Designated Roads, as identified on Appendix D (the "34.5 kV Installation"). In connection with the 34.5 kV Installation, the Parties further agree that Flat Rock shall be responsible for obtaining all private land rights as are necessary to permit Flat Rock to complete the 34.5 kV Installation and make the modifications and improvements to the Designated Roads contemplated by this Agreement, including obtaining

all necessary land rights from private landowners adjacent to the Designated Roads. In connection with the 34.5kV Installation, the Towns hereby grant to Flat Rock all such authorizations and approvals from the Towns as are necessary to complete the 34.5kV Installation, subject only to Flat Rock's obtaining all private land rights as are required in connection therewith.

Section 3.6 Permits. Except for those permits identified in the last sentence of this Section 3.6 as the responsibility of Martinsburg, Flat Rock shall obtain all necessary governmental permits and approvals that are necessary to permit Flat Rock to make the modifications and improvements to the Designated Roads contemplated herein, including obtaining all necessary private land rights that may be required in connection with Section 3.5. Harrisburg, Lowville, Watson, and the County shall not be responsible for obtaining any such permits or approvals. Notwithstanding anything herein to the contrary, Martinsburg shall be responsible for obtaining all required permits and approvals from the Army Corps of Engineers and New York Department of Environmental Conservation as are necessary to permit Flat Rock to perform the modifications and improvements contemplated by this Agreement to French Road, Graves Road, Maple Ridge Road, Borkowski Road and Centerville Road.

#### **ARTICLE IV WARRANTIES BY FLAT ROCK**

##### **Section 4.1 Workmanship and Material Warranties**

(a) Flat Rock's engineering responsibility, including the selection of material and equipment suitable for the repair of, and modifications and improvements to, the Designated Roads and Non-Project Roads shall be carried out in accordance with generally accepted engineering practices, and Flat Rock's construction responsibility shall be carried out in accordance with sound construction practices, subject to the provisions of Section 3.2. Flat Rock shall require from its construction contractors and subcontractors the same standards of engineering and construction practice. Flat Rock warrants that it shall perform and complete all repairs, modifications and improvements hereunder in a good and workmanlike manner.

(b) Flat Rock warrants that all repairs, modifications and improvements hereunder shall be free from defects in material and workmanship. Flat Rock shall remedy any defects in the repairs, modifications and improvements performed hereunder, workmanship, materials and equipment, including repairs, modifications and improvements, workmanship, materials and equipment provided by subcontractors, in accordance with Section 4.2 which appear during the "Applicable Warranty Period". A "defect" means any and all design, engineering, construction, manufacturing, installation, materials, equipment, repairs, modifications or improvements which (i) does not conform to the terms of this Agreement, (ii) fails to comply with the standards set forth in Section 4.1 (a), (iii) is not of specified quality, (iv) is of improper or inferior workmanship, or (v) is not suitable for use under the applicable climatic and range of operating conditions. As used herein, "Applicable Warranty Period" means, with respect to any repair,

modification, or improvement by Flat Rock hereunder, the time period that begins on the date repairs, modifications or improvements to Designated Roads are complete and ending on the date that is twelve (12) months after such completion date.

Section 4.2 Remedies. During the Applicable Warranty Period, each of the Towns and the County, as the case may be, shall notify Flat Rock in writing within fifteen (15) days of discovery by any of the Towns or the County of any defects in the repairs, modifications or improvements, provided that any delay by the Towns or the County beyond such fifteen (15) days in notifying Flat Rock shall relieve Flat Rock from liability only to the extent of any additional expense which may arise as the direct result of such delay. At no additional cost to any of the Towns or the County, Flat Rock shall proceed promptly to take such action relating to its performance hereunder as is necessary to cause the repairs, modifications and improvements to comply with the warranties specified in this Agreement. Flat Rock shall be available either at the Phase I Project or by telephone for the performance of warranty repairs on a seven (7) day a week, twenty-four (24) hours per day basis. Flat Rock shall not be obligated to remedy any materials, equipment, repairs, modifications or improvements which becomes defective as a result of improper operation or maintenance by the Town or which results from normal wear and tear or use by parties other than Flat Rock or the Flat Rock Parties.

Section 4.3 Warranty. Flat Rock warrants that all repairs, modifications, improvements and materials furnished in connection with the performance by Flat Rock and the Flat Rock Parties under this Agreement shall be free and clear of all liens.

## **ARTICLE V REMOVAL OF WIND TURBINES AND IMPROVEMENTS**

Section 5.1 Removal of Improvements Following Abandonment of Phase I Project. In the event that the Phase I Project, or any portion of the Phase I Project, is abandoned for a period of twelve (12) consecutive months (the last day of such period, the "Abandonment Date"), then Flat Rock shall, within six (6) months of the Abandonment Date and at no cost to the Towns or the County, remove all wind turbines and related improvements and equipment that have been so abandoned.

Section 5.2 Removal of Improvements Following Termination of Leases. Each of the Towns and the County acknowledge that Flat Rock has entered into (or will enter into) leases for the real property upon which the Phase I Project shall be located. Upon the expiration or termination of such leases, Flat Rock shall, within six (6) months of such termination or expiration and at no cost to the Towns or the County, remove the wind turbine generators and towers and the tower foundation pedestal and related improvements and equipment from the real property that is subject to such lease; provided that pursuant to the leases Flat Rock shall be entitled to leave in place all portions of the of the tower foundations other than the tower pedestals.

Section 5.3 Failure of Flat Rock to Remove Improvements. In the event Flat Rock shall fail to remove the wind turbines and related improvements and equipment within the

periods described in Sections 5.1 and 5.2, then any of the Towns or the County may, subject to the rights of other parties who may have an interest in the Phase I Project and the wind turbines and related improvements and equipment, remove (or cause to be removed) such wind turbines and related improvements and equipment. In such event, Flat Rock shall pay the reasonable costs of removal incurred by such Town or County in removing (or causing to be removed) such improvements, including legal expenses, and shall also pay a sum equal to fifteen percent (15%) of said actual costs of removal in reimbursement of such Town's or County's administrative costs in effecting such removal. The applicable Town or County may dispose of any wind turbines and related improvements and equipment removed by such Town or County and apply the salvage value received (if any) to the amounts otherwise due to such Town or County from Flat Rock for such removal.

## **ARTICLE VI INDEMNIFICATION; LIMITATION OF LIABILITY**

Section 6.1 Indemnification by Flat Rock. Flat Rock hereby releases and agrees to indemnify and hold harmless the Towns and the County and their respective officers, employees and agents, and their respective heirs, executors, administrators, successors and assigns (hereinafter collectively "Town and County Releasees") from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the Town and County Releasees arising out of or relating to the performance by Flat Rock and the Flat Rock Parties of their respective obligations under this Agreement. More particularly, but without in any way limiting the foregoing, Flat Rock hereby releases the Town and County Releasees and agrees to indemnify and hold harmless the Town and County Releasees from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modifications, repair or improvement of any Designated Road or Non-Project Road by Flat Rock, the Flat Rock Parties and their respective employees, agents, representatives or contractors.

Section 6.2 Indemnification by the Towns and the County. Each of the Towns and the County hereby release and agree to indemnify and hold harmless Flat Rock and its members, officers, directors, contractors, subcontractors, employees and agents, and their respective employees, heirs, executors, administrators, successors and assigns (hereinafter collectively "Flat Rock Releasees") from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the Flat Rock Releasees arising out of or relating to the performance by any of the Towns and the County of its obligations under this Agreement. More particularly, but without in any way limiting the foregoing, each of the Towns and the County hereby releases the Flat Rock Releasees and agrees to indemnify and hold harmless the Flat Rock Releasees from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modifications, repair or improvement of any Designated Road by any of the Towns and the County, their respective employees, agents, representatives or contractors or their respective employees, agents or representatives.

Section 6.3 Limitation of Liability. The Parties waive all claims against each other (and against each other's parent company and Affiliates and their respective members, shareholders, officers, directors, agents and employees) for any consequential, incidental, indirect, special, exemplary or punitive damages (including loss of actual or anticipated profits, revenues or product loss by reason of shutdown or non-operation; increased expense of operation, borrowing or financing; loss of use or productivity; or increased cost of capital); and, regardless of whether any such claim arises out of breach of contract or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal theory.

## **ARTICLE VII INSURANCE**

Section 7.1 Required Insurance. Flat Rock shall at all times throughout the term of this Agreement maintain in full force and effect worker's compensation insurance in an amount required by applicable law and general liability insurance, naming the Towns and the County as additional insureds, in the amount of Twenty Million Dollars (\$20,000,000) in the aggregate. Flat Rock may utilize any combination of primary and/or excess insurance to satisfy this requirement. Flat Rock may elect to self-insure any or all of the insurance requirements contained in this Agreement.

## **ARTICLE VIII TERM; DEFAULT AND REMEDIES**

Section 8.1 Term of Agreement. This Agreement shall become effective as of the date first written above and shall remain in effect, unless terminated earlier in accordance with this Agreement, until the date that is thirty (30) days after the date on which the last wind turbine and related improvements and equipment is removed from the Phase I Project site in accordance with Article V.

Section 8.2 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Failure by Flat Rock to make any payment or reimbursement due under the terms of the Agreement when due and payable, and such failure continues for thirty (30) days after receipt by Flat Rock of written notice of such failure from the Towns and the County.

(b) Any representation or warranty made by Flat Rock in this Agreement or in any report, certificate, financial statement, or other instrument furnished at any time under or in connection with this Agreement shall prove to have been false, misleading, or incorrect in any material respect as of the date made.

(c) Failure by Flat Rock to comply with any covenant, agreement or obligation contained in this Agreement, and such failure continues for thirty (30) days (or such longer period as the Parties may agree if such failure is not susceptible of cure

within such thirty (30) day period) after receipt by Flat Rock of written notice of such failure from the Towns and the County.

(d) Flat Rock's:

- i. application for or consent to the appointment of or the taking of possession by a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of its property;
- ii. admission in writing of its inability to pay its debts as such debts become due;
- iii. making of a general assignment for the benefit of its creditors;
- iv. commencing a voluntary case under the United States Federal Bankruptcy Code (as now or hereafter in effect);
- v. filing of a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; or
- vi. failure to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the United States Federal Bankruptcy Code.

(e) The institution of a case or proceeding against Flat Rock in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up or composition or readjustment of debts of Flat Rock; or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of Flat Rock or of all or any substantial part of its assets, unless such proceeding or case is dismissed within sixty (60) days thereafter.

Section 8.3 Remedies Upon Default. Whenever an Event of Default described in Section 8.2 shall have occurred, the Towns and the County shall have the right to take any or all of the following actions:

(a) Declare Flat Rock in default and to seek immediate payment of any amount due hereunder from any surety guaranteeing Flat Rock's full and faithful performance hereunder, such payment to be immediately due and payable together with interest thereon at the rate of nine percent (9%) per annum from the date of default through the date of payment, without any further notice of demand of any kind or any presentment or protest.

(b) Take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce the

performance or observance of any obligations, agreements, or covenants of Flat Rock under this Agreement.

Section 8.4 Remedies Cumulative. The rights and remedies of the Towns and the County under this Agreement shall be cumulative and shall not exclude any other rights or remedies the Towns or the County may have at law or in equity with respect to any Event of Default under this Agreement.

Section 8.5 Arbitrary and Capricious. If at any time Flat Rock shall disagree with the any of the Designees, Flat Rock may commence an Article 78 or other proceeding to determine whether such Designee has acted in an arbitrary or capricious manner.

Section 8.6 Attorney's Fees. In the event that the Town has to take any actions to enforce this Agreement or otherwise obtain compliance with its terms, Flat Rock agrees to reimburse the Towns and the County for all costs so incurred, including reasonable attorney's fees.

#### **ARTICLE IX PROVISION OF SECURITY FOR PERFORMANCE**

Section 9.1 Form of Security. For the period commencing on the date that construction of the Phase I Project begins and ending on the date that commercial operation of the Phase I Project is achieved, Flat Rock agrees to furnish a payment and performance bond (i) in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) for the joint and several benefit of the Towns and County, with such surety and on such terms as are reasonably satisfactory to the beneficiaries, guaranteeing (i) the full and faithful performance of the repairs, modifications and improvements by Flat Rock and the Flat Rock Parties hereunder and (ii) the payment of all liens of all persons performing labor or providing services, materials, equipment, supplies, machinery, and other items in connection with the performance of such repairs, modifications and improvements by Flat Rock and the Flat Rock Parties hereunder. The amount of the payment and performance bonds is not intended to limit in any way the obligation of Flat Rock to perform its obligations, all in accordance with this Agreement.

Section 9.2 Release of Security. Upon the achievement of commercial operation of the Phase I Project and the completion of the repair work to the reasonable satisfaction of the Designees, the Designees shall issue to Flat Rock a certification in writing that the performance is accepted. At such time the security provided pursuant to Section 9.1 shall be returned to Flat Rock.

#### **ARTICLE X FORCE OF MAJEURE EVENT**

Section 10.1 Force Majeure Event Defined. As used in this Agreement, "Force Majeure Event" means, causes or events that are beyond the reasonable control of, and without the fault

or negligence of, the Party claiming such Force Majeure Event, including, without limitation, natural disasters; fire; lightening strikes; earthquake; unavailability of equipment; acts of God; unusually or unseasonably severe actions of the elements such as snow, floods, hurricanes, or tornadoes; causes or events affecting the performance of third-party suppliers of goods or services to the extent caused by an event that otherwise is a Force Majeure Event under this Section 10.1; sabotage; terrorism; war; riots or public disorders; strikes or other labor disputes; and actions or failures to act (including expropriation and requisition) of any governmental agency, to the extent such cause or event prevents or delays performance of any obligation imposed on the Party claiming such Force Majeure Event (other than an obligation to pay money).

Section 10.2 Applicability of Force Majeure Event. No Party will be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:

(a) the non-performing Party will give the other Parties written notice within forty-eight (48) hours of the commencement of the Force Majeure Event, with details to be supplied within fourteen (14) calendar days after the commencement of the Force Majeure Event further describing the particulars of the occurrence of the Force Majeure Event;

(b) the delay in performance will be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;

(c) the Party whose performance is delayed or prevented will proceed with commercially reasonable efforts to overcome the events or circumstances preventing or delaying performance and will provide a written report to the other Parties during the period that performance is delayed or prevented describing actions taken and to be taken to remedy the consequences of the Force Majeure Event, the schedule for such actions and the expected date by which performance will no longer be affected by the Force Majeure Event; and

(d) when the performance of the Party claiming the Force Majeure event is no longer being delayed or prevented, that Party will give the other Parties written notice to that effect.

## ARTICLE XI MISCELLANEOUS PROVISIONS

Section 11.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflict of laws provisions in such state.

Section 11.2 Amendments and Integration. This Agreement (including Appendices) shall constitute the complete and entire agreement between the Parties with respect to the subject

matter hereof. No prior statement or agreement, oral or written, shall vary or modify the written terms hereof. This Agreement may be amended only by a written agreement signed by all of the Parties.

### Section 11.3 Assignment.

(a) Except as provided in subsections (b), (c), and (d) below, no Party to this Agreement shall assign, transfer, delegate or encumber this Agreement or any or all of its rights, interests or obligations under this Agreement without the prior written consent of the other Parties. In those instances in which the approval of a proposed assignee or transferee is required or requested: (1) such approval shall not be unreasonably withheld, conditioned or delayed; and (ii) without limiting the foregoing, in the case of the Towns or the County, the Towns' or the County's approval may not be conditioned on the payment of any sum or the performance of any agreement other than the agreement of the assignee or transferee to perform the obligations of Flat Rock pursuant to this Agreement.

(b) Flat Rock may, without the consent of the Towns or the County, assign this Agreement or any or all of its rights, interests or obligations under this Agreement to (1) an affiliate of Flat Rock or (2) an entity to which Flat Rock has conveyed or leased the Phase I Project provided the assignment is in connection with the conveyance or lease of the Phase I Project; provided further that, the Flat Rock assignee agrees in writing to be bound by the terms of this Agreement.

(c) Flat Rock may, without the consent of the Towns or the County, pledge, mortgage, grant a security interest in, or otherwise collaterally assign this Agreement or any or all of its rights, interests and obligations under this Agreement to any lender providing financing for the Phase I Project as security for Flat Rock's obligations under the financing agreements (including a trustee or agent for the benefit of its lenders) (a "Permitted Collateral Assignee"). In connection with any such collateral assignment to a Permitted Collateral Assignee, each of the Towns and the County shall, upon the request of Flat Rock, deliver to Flat Rock and the Permitted Collateral Assignee without delay a consent agreement in a form reasonably requested by Flat Rock and the Permitted Assignee and which shall contain customary provisions.

(d) Flat Rock may, without the consent of the Towns or the County, assign this Agreement or any or all of its rights, interests and obligations under this Agreement to any corporation, partnership, limited liability company or other business entity that acquires all or substantially all of the assets used in connection with the Phase I Project or (ii) any corporation, partnership, limited liability company or other business entity that acquires all or a portion of the membership interests in Flat Rock, provided that, in each case, such Flat Rock assignee agrees in writing to be bound by the terms of this Agreement.

Section 11.4 Notices. All notices, requests, demands and other communications required or permitted to be given by the Parties hereunder shall be in writing and shall be

delivered in person or by facsimile or by first class certified mail, postage and fees prepaid, to the address of the intended recipient as set forth below. Notice delivered in person shall be acknowledged in writing at the time of receipt. Notice delivered by facsimile shall be acknowledged by return facsimile within twenty-four (24) hours, excluding Saturdays, Sundays, and public holidays. All such notices, requests, demands and other communications shall be deemed to have been received by the addressee, if by first class certified mail, three (3) days following mailing; if by facsimile, immediately following transmission; or if by personal delivery, upon such delivery. All such notices, requests, demands and other communications shall be sent to the following addresses:

To Martinsburg: Town of Martinsburg  
Route 26  
Martinsburg, New York 13404  
Attn: Supervisor

To Lowville: Town Of Lowville  
5533 Bostwick Street  
Lowville, New York 13367  
Attn: Supervisor

To Harrisburg: Town of Harrisburg  
7886 Cobb Creek Road  
Copenhagen, New York 13626  
Attn: Supervisor

To Watson: Town of Watson  
Star Route, P.O. Box 158  
Lowville, New York 13367  
Attn: Supervisor

To the County: Lewis County  
7660 State Street  
Lowville, New York 13367  
Attn: County Manager

To Flat Rock: Flat Rock Windpower LLC  
7612 N. State Street  
Lowville, NY 13367  
Attn: Phase I Project Manager

With a copy to: Flat Rock Windpower LLC  
1001 McKinney Street, Suite 1740  
Houston, TX 77002  
Attn: Rick Winsor

The foregoing addresses may be changed by any Party by giving written notice to the other Parties as provided above.

Section 11.5 Exercise of Rights and Waiver. The failure of any Party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by any Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

Section 11.6 Flat Rock II. The Towns and the County acknowledge that Flat Rock II, an affiliate of Flat Rock, intends to develop, construct, own and operate Phase II of the Flat Rock Wind Project near or adjacent to the Phase I Project. In connection therewith, the Towns and the County agree, upon the request of Flat Rock II, to negotiate in good faith an agreement for road use, repair and improvements with Flat Rock II.

Section 11.7 Independent Contractor; Relation of the Parties. The status of Flat Rock under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, Flat Rock and its officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of the Towns or the County. As an independent contractor, Flat Rock shall accept full responsibility for providing to its employees all statutory coverage for worker's compensation, unemployment, disability or other coverage required by law.

Section 11.8 Severability. In the event that any clause, provision or remedy in this Agreement shall, for any reason, be deemed invalid or unenforceable, the remaining clauses and provisions shall not be affected, impaired or invalidated and shall remain in full force and effect.

Section 11.9 Headings and Construction. The section headings in this Agreement are inserted for convenience of reference only and shall in no way effect, modify, define, or be used in construing the text of the Agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words. Notwithstanding the fact that this Agreement has been prepared by one of the Parties, all of the Parties confirm that they and their respective counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the Parties. This Agreement is to be construed as a whole and any presumption that ambiguities are to be resolved against the primary drafting party shall not apply. All Appendices and Exhibits referenced in this Agreement are incorporated in and form a part of this Agreement.

Section 11.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Section 11.11 No Third Party Beneficiary. No provisions of this Agreement shall in any way inure to the benefit of any person or third party so as to constitute any such person or third

party as a third-party beneficiary under this Agreement, or of any one or more of the terms of this Agreement or otherwise give rise to any cause of action in any person not a Party hereto.

Section 11.12 Confidentiality. All data and information acquired by the Towns and the County from Flat Rock (or its affiliates, representatives, agents or contractors) in connection with the performance by Flat Rock of its obligations hereunder, including information regarding the Phase I Project, shall be confidential and will not be disclosed by the Towns or the County to any third party, and upon request of Flat Rock will be returned thereto, except that the Towns and the County will not be obligated to return any such information contained in documents generated by the Towns or the County that are stored electronically by the Towns and the County. With respect to any such retained electronically stored confidential information, the Towns and the County will continue to comply with the obligations of this Section 11.12. Notwithstanding the foregoing, the Parties acknowledge and agree that such confidential information may be disclosed to third parties as may be necessary for Flat Rock and the Towns or the County to perform their respective obligations under this Agreement. This provision will not prevent the Towns or the County from providing any confidential information or in response to the reasonable request of any government agency charged with regulating such party's affairs, provided that, if feasible, the appropriate Town or the County will give prior notice to Flat Rock of such disclosure and, if so requested by Flat Rock, will have used all reasonable efforts to oppose or resist the requested disclosure, as appropriate under the circumstance, or to otherwise make such disclosure pursuant to a protective order or other similar arrangement for confidentiality.

Section 11.13 Representative of Flat Rock. Flat Rock shall appoint a representative to act as the manager and coordinator of this Agreement on Flat Rock's behalf ("Flat Rock Representative"). The Flat Rock Representative shall act as liaison for Flat Rock's communications with the Towns and the County, and their respective Designees. All written communications given to or received from the Flat Rock Representative shall be binding on Flat Rock.

Section 11.14 Safety. Flat Rock and the Flat Rock Parties shall perform the work hereunder in a safe manner and shall obey all safety requirements of Flat Rock that may be established from time to time. While work is being done on Designated Roads, Flat Rock shall cause the Flat Rock Parties to (i) place signs stating that people and vehicles are entering a construction area and (ii) identify certain hazards that may be present on the road. Flat Rock also agrees to cause the Flat Rock Parties to provide traffic control on the Designated Roads when such roads are blocked during their use by Flat Rock or the Flat Rock Parties under this Agreement.

Section 11.15 Dust Control. Prior to commencing work under this Agreement, Flat Rock shall prepare a plan for dust control during periods of construction or repair of the Designated Roads, which plan shall be subject to approval by the Designees of the Town and County (which shall not be unreasonably withheld, conditioned or delayed).

Section 11.16 Excess Materials. Flat Rock and the Flat Rock Parties agree that in connection with certain improvements to be made hereunder, there may be certain materials

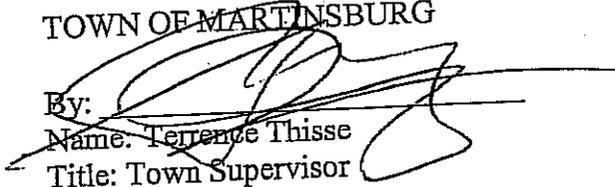
removed that are no longer necessary (the "Excess Materials"). Flat Rock agrees to remove such materials and stockpile them for use by the Towns and County. The Designees of the Towns and County agree to designate the place on Town or County property in which the Excess Materials will be stored.

11.17 Certain Martinsburg Roads. The Parties acknowledge that Martinsburg has for some time desired that certain roads within the town be improved or modified. Accordingly, in connection with the work Flat Rock is undertaking on behalf of Phase I of the Flat Rock Wind Project, Martinsburg hereby designates Flat Rock as its representative and prime contractor for the construction and/or improvement of the following roads: French Road, Graves Road, Maple Ridge Road, Borkowski Road and Centerville Road (the "Martinsburg Project"). Flat Rock is hereby authorized to enter into such subcontracts as it deems necessary to complete the Martinsburg Project. Such subcontracts shall identify the Project, specify the location where the materials and services are to be provided, and shall state that (i) Martinsburg is the owner of the improvements described in such subcontract, and (ii) no part of the cost of the materials or services provided under such subcontract are subject to New York State or local sales tax. The Parties intend that this Section 3.7 constitute proof of sales tax exemption with respect to the costs of the Martinsburg Project pursuant to 20 NYCRR 529.2 and 541.3.

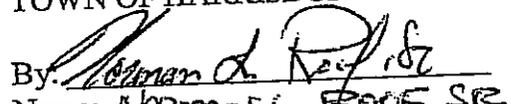
**[SIGNATURES FOLLOW ON NEXT PAGE]**

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Agreement for Road Use, Repair and Improvements this 24<sup>th</sup> day of March, 2005.

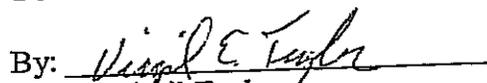
TOWN OF MARTINSBURG

By:   
Name: Terrence Thisse  
Title: Town Supervisor

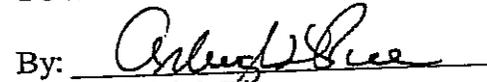
TOWN OF HARRISBURG

By:   
Name: NORMAN C. ROOF, SR.  
Title: Town Supervisor

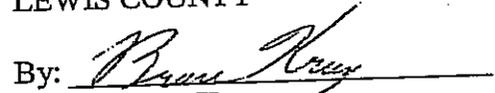
TOWN OF WATSON

By:   
Name: Virgil Taylor  
Title: Town Supervisor

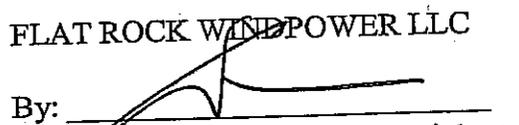
TOWN OF LOWVILLE

By:   
Name: Arleigh Rice  
Title: Town Supervisor

LEWIS COUNTY

By:   
Name: Bruce Krug  
Title: Chairman,  
Board of Legislators

FLAT ROCK WINDPOWER LLC

By:   
Name: RAWINSOR  
Title: Authorized Representative

**APPENDIX A  
DESIGNATED ROADS**

**[see attached]**

**Appendix A  
Designated Haul Routes**

Town Road	Type of Traffic		
HWY 177	Aggregate	Concrete	WTG Components & other Equipment
HWY 26	Aggregate	Concrete	
HWY 12	Aggregate	Concrete	
County Rd 31		Concrete	
Kubinski	Aggregate	Concrete	WTG Components & other Equipment
Cobb Rd.	Aggregate	Concrete	WTG Components & other Equipment
Sweet Rd.	Aggregate	Concrete	WTG Components & other Equipment
Boshart	Aggregate	Concrete	WTG Components & other Equipment
Beetle	Aggregate	Concrete	
Snyder	Aggregate	Concrete	WTG Components & other Equipment
Gardner	Aggregate	Concrete	WTG Components & other Equipment
Eagle Factory	Aggregate	Concrete	WTG Components & other Equipment
Borkowski	Aggregate	Concrete	WTG Components & other Equipment
Reclor	Aggregate	Concrete	WTG Components & other Equipment
Swernicki	Aggregate	Concrete	WTG Components & other Equipment
Flat Rock	Aggregate	Concrete	WTG Components & other Equipment
Centerville	Aggregate	Concrete	WTG Components & other Equipment
Keener Hill	Aggregate	Concrete	
Graves	Aggregate	Concrete	WTG Components & other Equipment
Maple Ridge	Aggregate		WTG Components & other Equipment
French Rd.	Aggregate		WTG Components & other Equipment
Cemetery Road	Aggregate		
Whitaker	Aggregate		
Bickford Rd.	Aggregate		
West Line	Aggregate	Concrete	
McLane Rd.	Aggregate		
River St.		Concrete	
Hodge Rd.		Concrete	
West Road	Empty	Empty	Empty

\* Truck transportation leaving the Phase I site following delivery of equipment and materials.

**APPENDIX A-1  
CRANE TRAVEL PATH**

**[see attached]**

**APPENDIX B  
IMPROVEMENTS AND MODIFICATIONS**

**[see attached]**

**Appendix B  
Road Improvements & Upgrades\***

ROAD NAME	STARTING	ENDING	LENGTH	EXISTING WIDTH	PROPOSED WIDTH	Proposed Widening
Kubinski	HWY 177	WTG 149	2400	14'	16'	2'
Sweet Rd.	HWY 177	WTG 154	3775	13'	16'	3'
Boshart	WTG 174	WTG 177	825	22'	34'	12'
Steinmaker	Boshart	WTG 20	2175	15'	16'	1'
Snyder	Borkowski	WTG 35	1650	9'	34'	25'
Snyder	WTG 35	WTG 32	375	9'	16'	7'
Gardner	WTG 23	WTG 193	2300	22'	34'	12'
Gardner	WTG 182	WTG 178	3700	22'	34'	12'
Borkowski	Gardner	Rector Rd	9500	9'	16'	7'
Rector	Borkowski	Swernicki	7950	15'	16'	1'
Swernicki	Rector Rd	Flat Rock	6725	18'	34'	16'
Flat Rock	WTG 82	WTG 62	8100	12'	16'	4'
Flat Rock	WTG 62	WTG 77	4600	20'	34'	14'
Centerville	WTG 88	WTG 89	750	10'	16'	6'
Centerville	WTG 89	WTG 93	8350	10'	16'	6'
Centerville	WTG 93	Graves	3650	14'	34'	20'
Keener Hill	Graves	WTG 97	1950	19'	34'	15'
Graves	Centerville	WTG 103	2900	19'	34'	15'
Graves	WTG 106	WTG 107	975	16'	34'	18'
Graves	WTG 107	WTG 111	1750	13'	16'	3'
Maple Ridge	Graves	WTG 108	4900	12'	16'	4'
French Rd	Graves	WTG 185	1050	13'	16'	3'

\* In addition to the proposed widening described in Appendix B, Flat Rock shall also improve certain culverts, perform necessary grading, and other related work, all in accordance with the design drawings, reviewed with designees.

\*\* Road width is temporary during construction and will be returned at the completion of construction to the greater of 16' or the existing width

## APPENDIX C

### SPECIFICATIONS FOR IMPROVEMENTS AND MODIFICATIONS

The majority of the Designated Road modifications and improvements will be accomplished using conventional earth excavating equipment employing traditional cut and fill procedures. Rock excavation techniques may be warranted in certain locations to achieve the required grades. Road widening within the Towns' and County's road limits shall be accomplished as follows:

- After the removal of soft, wet or otherwise unsuitable materials from within the shoulder areas, the exposed sub grade of the area to be widened shall be proof-rolled with approved construction equipment such as a loaded 10 wheel tandem dump truck or loaded pan. This measure will help increase the density of the existing ground and help locate any isolated soft spots, which are too unstable to accommodate compacted fill.
- Unstable areas shall be excavated, scarified, aerated and/or re-compacted prior to fill placement or removed and replaced with controlled, compacted fill. Alternatively, the use of an approved geogrid may be incorporated to stabilize or bridge soft areas on an as needed basis.
- New fill will not be placed on surfaces that are muddy or frozen, or have not been approved by testing and/or proof rolling.
- All sloping areas upon which fill is to be placed shall be benched or "notched" so that a smooth interface between existing ground and new fill will not be present.
- For permanent improvements or modifications, controlled fill slopes shall be constructed at 2.5H:1V slopes or flatter. All fill slopes will have final grades sloped such that surface water from precipitation is directed away from the face of the slopes. In addition, erosion matting may be used to help establish and maintain vegetative growth on the face of the slopes.
- All fill areas shall be sufficiently sloped and properly sealed with a smooth drum roller at the end of each workday to help prevent softening from surface water infiltration.

Materials to be used for improving Designated Roads will primarily be obtained from local quarries and consist of both coarse and fine aggregate. Shale shall not be used as fill material except on road shoulders and for temporary roads; provided however; that Flat Rock shall not use shale on road shoulders in (i) Lowville and Harrisburg and (ii) Gardener Road, Flatrock Road, Rector Road and Swernicki Road in Martinsburg. The typical fill section will utilize coarse aggregate such as a 4" crusher run in the deeper portion of a fill and be capped with finer aggregate meeting the requirements of a NYDOT approved road sub base material. The use of geogrids will be utilized as needed, to stabilize and/or bridge soft, wet or otherwise unsuitable soil conditions. If the improvements extend beyond the Towns' or County's right of way, it is Flat Rock's responsibility to obtain the appropriate landowner's consent.

**APPENDIX D**  
**34.5kV COLLECTION LINE INSTALLATION**

**1. Underground and Overhead Collection Lines**

Underground collection lines may be routed across and along and parallel to the following Designated Roads (exact locations and distances are subject to final engineering and approval by the Designee, not to be unreasonably withheld). This table also identifies overhead collection lines crossing the Designated Roads (exact locations and distances are subject to final engineering and approval by the Designee, not to be unreasonably withheld). The numbers identified in the attached table as "WTG #\_" are references to specific wind turbines in the Phase I Project. The designation "OH" in the attached table indicates an overhead collection line. See attached Appendix D table.

**Appendix D**  
**Collection Lines that Cross or Run Parallel with the Road**

Road Name	Town	Comments
HWY 177	Harrisburg	Between WTG 157 & 158
Kubinski	Harrisburg	Between Turbines 150 & 151
Borkowski	Martinsburg	Between WTG 38 to WTG 39
Rector	Martinsburg	Between WTG 58 & 59 Between WTG 55 & Rector Rd Substation OH Between WTG 55 & Rector Rs Substation
Swernicki	Martinsburg	From WTG 58 to WTG 59 Between WTG 69 & WTG 70 From WTG 71 to Flat Rock Rd.
Flat Rock	Martinsburg	From WTG 75 to WTG 71 From WTG 67 to WTG 72 From WTG 196 to WTG 86 OH Between WTG 72 & WTG 65
Centerville	Martinsburg	From Flat Rock Rd. to Graves Rd. OH from WTG 93 to WTG 92
Keener Hill	Martinsburg	From WTG 96 to Graves Rd.
Graves	Martinsburg	From Centerville to Maple Ridge Between WTG 111 & 110
Maple Ridge	Martinsburg	From Graves Rd. to WTG 108
French Rd.	Martinsburg	From WTG 185 to Graves Rd.
Cobb Rd	Harrisburg	From WTG 143 to WTG 151
Sweet Rd.	Harrisburg	From WTG 187 to WTG 154
Boshart	Harrisburg	From WTG 174 to WTG 177
Gardner	Martinsburg	From WTG 176 to WTG 23
McLane Rd	Harrisburg	From WTG 21 to WTG 20
Eagle Factory	Lowville	From WTG 15 to Gardner Rd
Snyder	Martinsburg	From WTG 26 to WTG 32

