

May 28, 2014

**CONFIDENTIAL**

**RESS & COURIER**

Ontario Energy Board  
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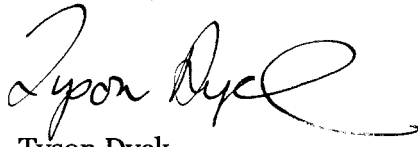
Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: EB-2014-0139 – Jericho Wind, Inc. (“Jericho”) Section 41(9) Application  
(the “Application”) – Responses to Board Staff Interrogatories**

We are legal counsel to Jericho in the above noted proceeding. In accordance with Procedural Order No. 1, please find enclosed Jericho’s responses to the Board staff’s interrogatories.

Yours truly,



Tyson Dyck

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cc: N. Mikhail, OEB Staff  
B. Greenhouse, NextEra Energy  
A. Pinnock, NextEra, NextEra Energy

## **ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Sched. B);

**AND IN THE MATTER OF** an application by Jericho Wind, Inc. (“Jericho”) for an Order or Orders pursuant to Section 41(9) of the *Electricity Act, 1998* (as amended) establishing the location of the applicant’s distribution facilities within certain road allowances owned by Lambton County, all as set out in this application.

### **RESPONSES TO BOARD STAFF INTERROGATORIES**

**EB-2014-0139**

**MAY 28, 2014**

## **Responses Board Staff Interrogatories in EB-2014-0139**

### **Interrogatory No. 1**

- (a) Did Jericho, since filing its April 24 letter to the Board, receive agreement from Lambton County in regard to the location of Jericho's Distribution System in the County's road allowances? Please provide an update on the status of the Applicant's discussion with the County in respect of the proposed Distribution System.

As discussed in the original section 41(9) application, Jericho has reached general consensus with County staff that the proposed Distribution System locations are technically acceptable. However, Jericho has not reached an agreement with the County in respect of the location of Jericho's distribution system (the "Distribution System") within the County's road allowances (the "Road Allowances").

As stated in Exhibit B, Tab 5, Schedule 1 of the Application, at its February 19, 2014 meeting, the County deferred consideration of the County staff report recommending the execution of a proposed road use agreement (the "Agreement") in order to allow for a 60 day public commenting period. That commenting period closed on May 4, 2014.

Following the closure of the commenting period, County staff and Jericho amended the draft Agreement to incorporate public comments associated with Jericho's use of County Road Allowances. At the May 21, 2014, meeting of the County's Committee A.M. (Infrastructure & Development Services/Public Health Services/Cultural Services), County staff tabled a report that described the public comments received. In the same report, staff recommended a revised form of Agreement (the "Revised Agreement"), concluding that such agreement "is considered to take into account protection of the existing and future County road allowances and maintain the County's interests as the road authority for these rights-of-way". A copy of the staff report, which includes the Revised Agreement, is attached hereto at Appendix "A".

Given the conclusion above, on page 6 of the report, County staff recommended that the County Warden and Clerk be authorized to execute the Revised Agreement, which would establish, among other things, the location of the Distribution System within the Road Allowances. On page 4 of the report, County staff also noted its understanding that the present section 41(9) application would be abandoned if a road use agreement was signed between the County and Jericho.

Despite the opportunity for the County to address the public comments received through a Revised Agreement, and despite County's staff's recommendation above, the County

Committee did not vote in favor of authorizing the Warden and Clerk to execute the Revised Agreement. Therefore, the County has again rejected a recommendation that would have allowed Jericho and the County to reach an agreement regarding the location of the Distribution System.

Since the May 21, 2014 meeting, the County has not contacted Jericho with any further comments on the Revised Agreement, or with any alternative proposal regarding the location of the Distribution System within the Road Allowances.

**Interrogatory No. 2**

**Ref: Ex B/Tab 6/Schedule 1, Appendices A and B**

- (a) Since this application was filed, have there been any changes to the location of the Distribution System that is the subject of this application? If there are any changes to the location of the Distribution System, please update the drawings at Ex B/Tab 6/Schedule 1/Appendix B? Please explain if the changes to the location will impact the REA approval?

No, there have been no changes to the location of the Distribution System.

----- **End of Document** -----

**Appendix “A”**  
**County Staff Report**



## INFRASTRUCTURE & DEVELOPMENT SERVICES DIVISION

<b>REPORT TO:</b>	<b>CHAIR AND COMMITTEE MEMBERS</b>
<b>DEPARTMENT:</b>	<b>PUBLIC WORKS</b>
<b>PREPARED BY:</b>	<b>Jason Cole, P. Eng., Manager</b>
<b>REVIEWED BY:</b>	<b>Jim Kutyba, P. Eng., General Manager Ronald G. Van Horne, Chief Administrative Officer</b>
<b>MEETING DATE:</b>	<b>May 21, 2014</b>
<b>SUBJECT:</b>	<b>Jericho Road Use Agreement Public Review Summary</b>

### **BACKGROUND**

At its meeting on November 28, 2012, County Council supported the following motion from the November 21, 2012 Committee A.M. meeting:

*#9: Case/Veen: That staff be authorized to negotiate with the various wind farm proponents regarding installation of utilities placed within, or adjacent to, the County road allowance to protect the long-term viability of the County road network.*

At the January 15, 2014 Committee A.M., a report titled *Jericho Wind, Inc. (NextEra) Road Use Agreement* was presented recommending that the Warden and the Clerk be authorized to execute a Road Use Agreement (RUA) between the County of Lambton and Jericho Wind, Inc. to construct collection and transmission facilities related to the Jericho Wind Energy Centre within County road allowances.

This report was tabled and requested staff to provide additional information under the following motion:

*#12: Bradley/McCharles: That the report be tabled to allow for a further report from staff regarding the terms and details of the agreement.*

A subsequent report titled *Jericho Wind, Inc. (NextEra) Road Use Agreement - Update* was presented to the February 19, 2014 Committee A.M to provide additional information regarding the terms and details of the RUA. The following motion was supported by Committee A.M. that day and then by County Council on March 5, 2014:

*#7: Bradley/McCharles: That the report dated February 19, 2014 regarding Jericho Wind, Inc. (NextEra) Road Use Agreement - Update be tabled for a 60-day period to allow for on-line public feedback via the County's website.*

In response to this motion, the County initiated, and has now completed, a 60-day review period to receive and consider input from the public regarding the Draft RUA with Jericho Wind, Inc.

## **DISCUSSION**

This report is presented to summarize and document the activities and results of the Public Review Period for the Draft RUA between the County and Jericho Wind, Inc.

### **Public Review Process**

The public input process for the Draft RUA was designed to encourage, review, and solicit comments from members of the public and interested stakeholders on the format, content and structure of County's proposed RUA with Jericho Wind, Inc. The 60-day Public Review Period was initiated on March 6, 2014 and continued until May 4, 2014. The Draft RUA was made available to the public via a direct link on the landing page of the County's website and/or through arranged viewing at the County Administration Building in Wyoming. The Public were invited to submit comments using the Feedback Form provided on-line, by e-mail, conventional mail, or by telephone.

### **Public Notices**

Advertisements outlining the purpose of the Public Review Period, timeline, how to access the Draft RUA, and the comment submission process were placed in the following local newspapers:

The Sarnia Observer  
The Lakeshore Advance  
Sarnia-Lambton This Week  
The Watford Guide Advocate  
The Forest Standard

In addition, a press release was distributed to local media outlets. Articles were identified in relation to the County's Public Review process in The Independent, The Sarnia Observer, and The Petrolia Topic.

### **Comment Overview**

During the Public Review Process, the County received and documented a total of 43 individual submissions from 22 individuals or stakeholders. The attached Appendix A summarizes the dates and subject matter of the received comments. The questions and comments covered a wide range of subjects, including public safety, impact to the municipal infrastructure, physical appearance and impacts, adherence to permit requirements, appreciation for the Public Review Period, and general support and opposition for/to the Jericho project. Some specific comments relating to the formatting and structure of the agreement were also received.

## Outcome

As a result of the comments received during the Public Review Process, County staff identified several issues that could potentially be addressed through the RUA. These key issues were brought forward to NextEra for consideration. Both County staff and NextEra have agreed to adjust the Draft RUA in the following areas:

1. A requirement was added to the agreement to have Jericho provide a post construction video recording of pavement condition as part of the Post-Installation Report to be provided to the County following construction.
2. Clarification was included to ensure that all electrical infrastructure (as opposed to just transmission poles) within the proposed road allowance on County Road 6 (Thomson Line) will be relocated to accommodate future road improvements, as per the original intent.
3. A stipulation for 48 hour notice to all emergency service providers prior to temporary road closures was added to the respective clause.
4. Financial compensation from Jericho was included to assist with the control of invasive *Phragmites* that may be introduced by construction activities in areas of the road allowance already treated by the County.

Several other changes to formatting, structure and terminology were also made to simplify or strengthen the agreement. The terms and conditions of the revised Draft RUA is attached to this report as Appendix B and is posted on the County's webpage at [www.lambtononline.ca](http://www.lambtononline.ca) under the 'Renewable Energy Projects' and 'Jericho Wind Energy Centre 1' tabs.

In addition to the material changes in the RUA, the County and NextEra clarified two significant concerns received during the Public Review Period:

1. Legal counsel agreed that the agreement addresses the requirement for Jericho to repair damage and carry out maintenance directly resulting from their operations throughout the life of the facility (construction, operation, and decommissioning).
2. Jericho will have a full time regulatory compliance person on staff dedicated to working with the construction team to monitor and report on compliance with the requirements of all permits and laws. Complaints or questions can be made through a hot line (1-877-463-4963) and through the community liaison committee that will be established as part of the project. The hot line will remain active following construction and through the life of the project.

The majority of public concerns that were not able to be directly addressed dealt with issues that were not within the County's jurisdiction or enforcement abilities through the RUA. These included construction operations on private property and matters under the authority of other governmental bodies or legislation, such as the *Electricity Act*, *Highway Traffic Act*, *Ontario Energy Board Act*, etc.



Finally, several comments received dealt with concerns that are already addressed through County of Lambton By-Laws. This includes the permitting of entrances to private property, permitting of over-dimensional loads on County roads, and seasonal weight restrictions on County roads. NextEra has agreed to comply with the conditions set out in these County By-Laws, which are dealt with outside the RUA through the normal County processes.

There were no changes to the technical plans and drawings of the RUA.

### **Post Study Approvals Update**

Subsequent to initiating the Public Review Period for the RUA, Jericho Wind, Inc. has received two governmental approvals required for construction:

1. Jericho Wind Energy Centre received its Renewable Energy Approval (REA) on April 14, 2014.
2. The Ontario Energy Board (OEB) issued a Decision and Order on May 6, 2014 granting Jericho Wind, Inc. leave to construct the proposed Transmission Facilities for the project (EB-2013-0361).

Jericho Wind, Inc. has one outstanding matter before the OEB requesting a Decision and Order under Section 41(9) of the *Electricity Act* in regards to construction of the Distribution (Collection) facilities (EB-2014-0139). It is understood by staff that this matter would be abandoned if a RUA is signed between the County and Jericho Wind, Inc.

The approval and Order noted above grant Jericho Wind, Inc. the ability to proceed with a significant portion of the Jericho Wind Energy Centre on the public road allowance and on private property. Although there are provisions in the REA for Jericho to continue to work toward a RUA with the County (and other municipalities), no clear ramification or penalty is stipulated for failure to arrive at a mutually agreed upon arrangement for the use of the road allowance.

The OEB Decision and Order agreed with Jericho's argument that the delay for the County to complete the Public Review Period and discuss the RUA before Council would cause significant and material prejudice to Jericho. The Board did impose the conditions of the RUA relating only to the specific location of the transmission facilities within the road allowance, as per its mandate.

### **FINANCIAL IMPLICATIONS**

Changes made to the Draft RUA as a result of comments received during the Public Review Period will increase the revenue received from Jericho Wind, Inc. through a one-time payment of \$20,000 to \$50,000, dependent upon volume of work, to be allocated toward the County's Phragmites Control Program.

**CONSULTATIONS**

As part of the Public Review Period, open comments were solicited and received from various community members and local stakeholders relating to the Jericho Wind Energy Centre project and the Draft RUA. In addition, the County Solicitor and NextEra Energy Canada, ULC were consulted as part of the preparation of this report.

**STRATEGIC PLAN**

Application of Area of Effort #3: " To undertake a broad based community development initiative that enriches the quality of life and the future prospects of Lambton County by developing collaborative initiatives that respond to the following needs:

- Policies that enhance and protect municipal infrastructure."

**CONCLUSION**

A 60-day Public Review Period for the Jericho Draft RUA was carried out by the County, soliciting and documenting public and stakeholder comments. Following review of the concerns and issues raised during this process, the County approached NextEra to consider revisions to the Draft RUA, where applicable as the road authority. Several significant revisions to the terms and conditions are proposed and presented in the updated Draft RUA attached to this report as Appendix B.

County staff continue to act on the mandate of Council from November 28, 2012 to negotiate with various wind farm proponents regarding installation of utilities placed within, or adjacent to, the County road allowance. The updated Draft RUA presented as part of this agreement is considered to take into account protection of the existing and future County road allowance and maintain the County's interests as the road authority for these rights-of-way.

In addition, given that Jericho Wind, Inc. has received the Renewable Energy Approval for the Jericho project from the Ministry of Environment and a Decision and Order from the Ontario Energy Board with respect to construction of the Transmission Facilities, NextEra has been in a legal position as of May 6, 2014 to proceed with a significant portion of the Jericho Wind Energy Centre project without further consent or agreement from the County. As per the letter attached as correspondence PW 06-02-14, NextEra has agreed, however, to postpone construction on the items contained in the RUA until Council members have had the opportunity to review the changes that came about as a direct result of the Public Review Period during the May 21, 2014 Committee A.M. meeting.

**RECOMMENDATIONS**

- a) That the Jericho Wind, Inc. (NextEra) Road Use Agreement - Update report presented at the February 19, 2014 Committee A.M. be lifted from the table.
- b) That the Warden and the Clerk be authorized to execute the proposed Road Use Agreement with Jericho Wind, Inc. , as modified following the 60-day Public Review Period, along with all other necessary documentation, with respect to the use, installation, construction, maintenance, operation, and decommissioning of certain infrastructure on, over, under and within County Road Allowances.

**Summary of Public Review Comments**  
**Draft Road Use Agreement between the County of Lambton and Jericho Wind, Inc. - May 9, 2014**

Correspondence Date	Comments/Concerns	Response	Notes
November 11, 2013	<p>Concerns:</p> <ol style="list-style-type: none"> <li>1. That the construction of the transmission facilities on the municipal road right-of-ways does not prevent any future improvement/widening of these road allowances.</li> <li>2. The maps provide by Jericho appear to indicate the municipal road right-of-way on Thomson Line, west of Arkona Road are 100 feet when they are only 66 feet.</li> <li>3. Safety of farm equipment vehicles and their operators will be impacted by the width and height available after construction of the hydro poles in the right-of-way.</li> <li>4. That the electromagnetic field associated with the proposed transmission facility will have detrimental impact nearby livestock.</li> <li>5. That wind turbines are contributing significantly to the increase in electricity prices in recent years.</li> <li>6. That stray voltage associated with the proposed transmission facilities will have detrimental impact on nearby livestock.</li> </ol>	<p>Respond provided in Report to Committee A.M. Dated February 19, 2014 (Tabled):</p> <ol style="list-style-type: none"> <li>1. The Draft Road Use Agreement specifically addresses future improvement and widening of the road allowance along the transmission route. If the County requires the relocation of any portion of the transmission line for road improvements and widening, Jericho Wind Inc. is responsible for carrying out the relocations at their expense.</li> <li>2. The County has not had any indication that the Jericho transmission line has utilized a road allowance wider than the existing 20 m (66 ft.) on County Road 6 (Thomson Line) west of County Road 79 (Arkona Road). All negotiations and designs prepared as part of the Draft Road Use Agreement and the County's review of the Leave To Construct Application reflect the existing road allowance.</li> <li>3. The design height and roadside clearances associated with the placement of the proposed Jericho transmission line correspond with the Highway Traffic Act (HTA), Ministry of Transportation Roadside Safety Manual and Geometric Design Manual. The clearance height of the transmission lines is also governed by the Electrical Safety Authority, which for transmission lines, is more restrictive than clearances required in the HTA. The conditions of the road allowance following construction of the transmission lines will be similar to those required on any other County road of similar nature.</li> </ol> <p>The remaining questions, which deal with increasing costs of electricity as a result of wind power projects, electromagnetic field impacts on livestock, and stray voltage associated with transmission facilities, are outside the scope of the County to address.</p>	<p>Received by Committee A.M. on January 15, 2014 as Public Works Correspondence (PW 02-15-14) from The Municipality of Lambton Shores.</p>

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February 18, 2014	<p>Request for 60 day review period on RUA.</p> <p>Concerns and questions:</p> <ol style="list-style-type: none"> <li>1. Dufferin County's latest agreement negotiated: <ol style="list-style-type: none"> <li>a) a lump sum payment of \$1,400,000</li> <li>b) insurance requirements of \$20,000,000 as opposed to Lambton's RUA of \$5,000,000</li> </ol> </li> <li>2. Public safety during construction of Jericho project. Specifically construction traffic movement and transport of oversize loads. Cited five separate incidents/news articles locally and on other projects.</li> <li>3. Why are the Jericho substation and transmission lines (located on private lands and road allowances) and the collector lines (from turbines to substation) being included in one agreement when only the transmission facilities are required for the OEB hearing.</li> <li>4. The County should not withdraw from the OEB process, regardless if an agreement is reached, as the County is an unwilling host.</li> <li>5. Consider obtaining independent legal advice similar to other municipalities due to the uniqueness of this project and time constraints on staff.</li> </ol>	<ol style="list-style-type: none"> <li>1. Regarding the most recent Dufferin County agreement: <ol style="list-style-type: none"> <li>a) The Dufferin County agreement was for use of public land (i.e. trail land), not road allowance, and compensations were valued accordingly.</li> <li>b) A \$5,000,000 liability requirement is considered appropriate for this type of facility and is consistent with other industry standards. This condition can be increased if the County's requirements change in the future.</li> </ol> </li> <li>2. The County oversees permitting of oversize and overweight loads on County roads through By-Law 88 of 1998 (Oversize / Overweight Vehicles on County Roads). Enforcement of oversize and overweight loads on County roads is undertaken by OPP and MTO Road User Safety Division.</li> <li>3. The RUA was drafted independent of the OEB and MOE processes to address all impacts to County road allowance. Other aspects the of Jericho construction not covered in these processes were also included in the RUA, such as radius improvements for oversize loads.</li> <li>4. Noted.</li> <li>5. Noted.</li> </ol>	Received by Warden's Office prior to February 19, 2014 Committee A.M.
February 19, 2014	<p>Request and questions:</p> <ol style="list-style-type: none"> <li>1. Provide a list of agreements from other municipalities considered in preparation for this RUA.</li> <li>2. Which section of the Draft RUA was most challenging to reach an agreement?</li> </ol>	<ol style="list-style-type: none"> <li>1. Agreements from Dufferin County, Haldimand County, Grey County, Essex County and Middlesex County were reviewed.</li> <li>2. Not appropriate to disclose.</li> </ol>	

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February 21, 2014	<p>Questions:</p> <ol style="list-style-type: none"> <li>1. Will there be a different agreement for turbine installation?</li> <li>2. RUA does not include reference to Natural Heritage Assessment. Include commitments in Construction Plan Report for Transmission lines.</li> <li>3. Section D Tree Work, Item 29 - Mitigation strategy not included in RUA.</li> <li>4. Section D Tree Work, Item 28 - intentionally deleted. Include original text and strike out so public can see.</li> <li>5. Section F Compensation, Item 39 - \$250,000 bank note to be returned. Should be held for 12 months.</li> <li>6. Safety concerns regarding estimated 20,000+ loads on County roads designed for little traffic.</li> <li>7. Provide signage for possibility of stray voltage.</li> <li>8. Construction Report and mitigation measures for Jericho not referenced in agreement.</li> <li>9. Horizontal directional drilling is listed as a contingency plan in the Jericho Construction Plan Report but not reference in RUA.</li> <li>10. Concern regarding the transportation of Oversize Loads.</li> </ol>	<ol style="list-style-type: none"> <li>1. The RUA only pertains to aspects of the Jericho project within the existing or proposed future right-of-way. It does not include aspects of construction on private lands.</li> <li>2. County RUA does not address construction aspects on private property. Natural heritage features outside right-of-way are dealt with through MOE process.</li> <li>3. Section D Tree Work/Replacement deals with trees in the road allowance. The County generally discourages placement of trees within the right-of-way. The RUA does not address tree removal on private property.</li> <li>4. Section D originally included a clause for maintenance on roads where no winter maintenance is conducted. This was removed as there are no county roads under these conditions.</li> <li>5. The \$250,000 letter of credit is returnable after either the County is satisfied with the repairs or 90 days following the final condition report, the latter of which is deliverable one year following the commercial operation date of the Jericho project.</li> <li>6. All Jericho operations and subcontractors are required to obey the Highway Traffic Act and Occupational Health and Safety Act during throughout the project. A traffic management plan will also be submitted and reviewed by the County to identify any specific areas of concern.</li> <li>7. Management of stray voltage is regulated by the Electrical Safety Authority and outside the scope of the RUA to address.</li> <li>8. Jericho is required to follow the requirements in the Construction Report as part of their Renewable Energy Approval compliance, governed by the Ministry of Environment.</li> <li>9. Horizontal drilling is not currently planned for transmission lines on the Jericho project. Any horizontal drilling for this purpose will be treated according to the terms and conditions for a change to the agreement.</li> <li>10. The County oversees permitting of oversize and overweight loads on County roads through By-Law 88 of 1998 (Oversize / Overweight Vehicles on County Roads). Enforcement of oversize and overweight loads on County roads is undertaken by OPP and MTO Road User Safety Division.</li> </ol>	
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February 23, 2014	Request a copy of the Municipality Consultation Form.	The Community Consultation form was not completed for the Jericho project as the forms were requesting input prior to meaningful dialogue with between the municipality and owner or adequate design of the project was completed. The County was contacted by MOE to confirm that the applicant was engaged in ongoing dialogue with the County.	
February 28, 2014	Is By-Law 8 of 2014 dedicating property on County road allowances related to the Jericho project?	The properties acquired and dedicated under this By-Law are not related to the Jericho project.	
March 4, 2014	<p>Request for 60 day review period for RUA.</p> <p>Concerns and Questions:</p> <ol style="list-style-type: none"> <li>1. Concern regarding ongoing damage to roadways due to post construction maintenance work during the life of the Jericho project.</li> <li>2. Concern regarding legal pressures placed on municipalities when dealing with wind power companies, even with agreements. Cited four separate articles.</li> <li>3. Would a RUA be in effect for the life of the wind farm, nominally 20 years or longer?</li> <li>4. After 12 months, does the County have to maintain the road if heavy equipment is brought in for turbine maintenance?</li> <li>5. Would the RUA prohibit the County from undertaking any other development they may have considered in the past, or moving forward?</li> <li>6. Does road use include only turbine construction conditions or does it include electrical transmission line permission?</li> <li>7. Would the County have to give special priority to these roads for surface drainage, snow removal, or brush trimming ongoing beyond normal maintenance?</li> <li>8. If the radius of curves or intersection need to be undertaken by the developer, is a proper roadbed extension installed to prevent future premature failure in the event that heavy equipment needs to be brought in for turbine maintenance?</li> </ol>	<ol style="list-style-type: none"> <li>1. The RUA requires Jericho to be responsible for any maintenance or repairs directly resulting from their operations through the life of the project.</li> <li>2. Noted.</li> <li>3. The RUA remains in effect through construction, maintenance and decommissioning of the Jericho project, which is longer than 20 years in this case.</li> <li>4. As in (3) above, Jericho will still be responsible for repairs if equipment is brought in for turbine maintenance. Also, all overweight loads require permits from the County of Lambton for use of County roadways.</li> <li>5. The RUA includes protections for planned future road construction and improvements.</li> <li>6. This agreement is a comprehensive agreement dealing with all work and infrastructure within the County's current and planned right-of-way. Construction on private property is outside the scope of the RUA.</li> <li>7. No special maintenance priority will be given to roads where Jericho proposes to work.</li> <li>8. The proposed engineered intersection improvements are temporary and will be removed following the required deliveries during construction. If required during maintenance or decommissioning, the improvements will need to be reinstalled by Jericho at that time through coordination with the County.</li> </ol>	Received by Warden's Office prior to March 5, 2014 County Council Meeting.

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March 7, 2014	Concern regarding NextEra compliance following approvals and permits, in particular with regard to sensitive wood lots. Included letter to the Minister of Environment from Lambton-Kent-Middlesex MPP dated February 21, 2014 regarding the same.	Noted.	
March 12, 2014	Thank you for efforts to protect Lambton County from industrial turbines.	Noted.	
March 12, 2014	Do not permit Jericho infrastructure on road allowance due to, safety concerns from poles in road allowance, increased cost to County and residence, future servicing restrictions.	Noted.	
March 12, 2014	Concerned about road safety during construction (in particular for student transportation) and cost to local economy.	Noted.	
March 13, 2014	Thank you for providing say in community and support of being unwilling wind turbine host.	Noted.	
March 13, 2014	Concerned about size and appearance of transmission lines. Questions: 1. Where will transmission lines for Jericho Project be located? 2. How will the Jericho Project connect to the Bornish Project? 3. Will the transmission lines be underground (strongly prefer buried)?	1. Transmission Lines proposed along CR 6 (Thomson Line) from Jericho Road, easterly to County boundary (reference to drawings provided) 2. Connection to be made by above route into Middlesex County. 3. Transmission Line to be overhead.	
March 14, 2014	Thank you to Council. Objection to province stripping local governments of power through green energy objective.	Noted.	
March 14, 2014	Thank you and support for stand on Green Energy Act.	Noted.	
March 16, 2014	Concern for construction along school bus routes in morning and at end of school day. Request to stop construction during these times.	Noted.	
March 16, 2014	Include requirement for a road condition video after construction, similar to Haldimand County agreement.	Noted.	
March 17, 2014	Section J Miscellaneous, Item 48 - insert "prior" before "written consent" in line 2.	Noted.	
March 17, 2014	Concern regarding tree loss due to project. Request a clause similar to that drafted by Plympton-Wyoming for inventory, replacement, and prior municipal approval for tree removals.	County RUA does not address construction aspects on private property. Natural heritage features outside right-of-way are dealt with through MOE process. Clause to be forwarded to local tier municipalities for consideration in agreements.	Forwarded to the Municipality of Lambton Shores and Township of Warwick.

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March 17, 2014	Concern regarding road safety due to mud and debris.	RUA addresses keeping roadway clear from debris under Section B Grant of Permission, Item 7 (I).	
March 17, 2014	Concern regarding hauling and permitting of oversize loads. Request enforcement officer put in place at Jericho's expense.	The County oversees permitting of oversize and overweight loads on County roads through By-Law 88 of 1998 (Oversize / Overweight Vehicles on County Roads). Enforcement of oversize and overweight loads on County roads is undertaken by OPP and MTO Road User Safety Division.	
March 18, 2014	Questions: 1. What determines the need for increased transmission pole foundations? 2. Will deeper/more extensive pole foundations impact road construction or condition.	1. Required pole foundations are determined by owner based on height, weight, environmental loading, and maintenance. 2. Generally, the pole foundations will not impact the road design or lifespan.	
March 18, 2014	Concern regarding seasonal load restrictions and no large truck deliveries on CR 7 (Lakeshore Road).	CR 7 does have annual load restrictions during March and April (By-Law 40 of 1998). Heavy trucks are also restricted on CR 7 unless engaged in pick-up or delivery within the municipal boundaries of Sarnia, Plympton-Wyoming, or Lambton Shores.	
March 18, 2014	Require delivery trucks for construction to have police escorts, similar to provincial highways.	County oversize load permits (By-Law 88 of 1998) require: <ul style="list-style-type: none"> <li>• Private escort for loads over 3.76 m wide</li> <li>• Police escort for loads over 4.62 m wide</li> </ul>	
March 18, 2014	Recently a truck and trailer transporting wind turbine blades became stuck at CR 21 (Oil Heritage Road) and CR 22 (London Line). 1. Why was the truck using that roadway? 2. Was there a road use agreement in place?	The County is aware of two similar incidents at that intersection; both involving disabled vehicles blocking the path of the oversize loads. 1. Both shipments obtained permits for oversize loads from the County. 2. These shipments were destined for deliveries outside the County and, therefore, a road use agreements was not required.	
March 19, 2014	Concern regarding size and safety of proposed transmission poles close to roadway. Who approves these?	The transmission line design is required to follow MTO guidelines for safe clearances along roadways. Additional measures (such as guiderail or slope flattening) is provided where the poles cannot be placed far enough away from the travelled roadway. The size of the infrastructure and routing of the line are subject to the MOE Renewable Energy Approval and OEB Leave to Construct application.	
March 20, 2014	Are there requirements for "On Call" in the Agreement?	Section C Additional Terms and Conditions Re Easement Rights, Section 21 requires participation in the Ontario One Call system for location of electrical infrastructure.	
March 21, 2014	Confirmation of the County's receipt and proposed response of Jericho Wind Energy, Inc. OEB Section 41(9) application.	Confirmed.	

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March 21, 2014	<p>Questions and request:</p> <ol style="list-style-type: none"> <li>1. Why one agreement addresses collection lines and transmission lines, which are separate parts of the Jericho project?</li> <li>2. Have the local tier municipalities been consulted as to how the Jericho infrastructure will impact intersections with their roadways to County roads?</li> <li>3. That a 5 to 1 replacement be required for each tree removed.</li> </ol>	<ol style="list-style-type: none"> <li>1. The RUA was drafted independent of the OEB and MOE processes to address all impacts to County road allowance. Other aspects the Jericho of construction not covered in these processes were also included in the RUA, such as radius improvements for oversize loads.</li> <li>2. The County has involved the local tier municipalities during the development of the RUA. The County has made an effort to accommodate local tier municipal needs at intersection and other aspects, such as future servicing and municipal drains, as part of the agreement.</li> <li>3. Section D Tree Work/Replacement deals with trees in the road allowance. The County generally discourages placement of trees within the right-of-way. The RUA does not address tree removal on private property.</li> </ol>	
March 27, 2014	Support Jericho project and green energy as benefit to community.	Noted.	
March 27, 2014	Support Jericho project and green energy as benefit to farmers and environment.	Noted.	
March 28, 2014	Support Jericho project and green energy as benefit to farmers and local environment. Have not seen negative impacts on farm land from windmills.	Noted.	
March 28, 2013	Support Jericho project as benefit to farmers. Have not observed negative effects from nearby wind turbines.	Noted.	
March 28, 2014	See attached comments.	See attached responses.	
March 30, 2014	Concern regarding the impact of the Jericho construction on the County and local efforts to control invasive Phragmites australis and potential to either implement a clean equipment protocol or supplement control efforts.	No current requirement is identified in the RUA for work on County road allowance. The RUA does not relate to operations on private property.	Additional terms and conditions added to RUA, as agreed upon by Jericho.
March 31, 2014	Support of Jericho project, wind development and green energy. Opportunities for farming families and the community. Have not seen impacts from other nearby turbines.	Noted.	
April 1, 2014	Support Jericho project and green energy. Additional financial support for farm owners.	Noted.	
April 8, 2014	Support Jericho project for local businesses and economy. Support clean energy as opposed to alternatives.	Noted.	

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April 8, 2014	<p>Concerns and requests:</p> <ol style="list-style-type: none"> <li>1. Concern for traffic safety due to placement of transmission poles along right-of-way. Recommend moving poles away from roadside or burying cable.</li> <li>2. Concern regarding stray voltage from transmission facilities.</li> <li>3. Recommend the County not signing the RUA as an unwilling host.</li> </ol>	Response ad per Committee A.M. April 16, 2014.	Correspondence (PW 05-10-14) directly to Committee A.M.. Received and filed at on April 16, 2014.
April 9, 2014	Support Jericho project and green energy initiatives. Not concerned with visual impacts. Benefit for community, jobs, and local businesses.	Noted.	
April 10, 2014	Concern regarding power and access given to wind energy companies, compliance during construction, and impact on road condition.	Noted.	
April 14, 2014	Support of Jericho project and green energy befitting local economy and farmers. Have not observed negative effects.	Noted.	
April 14, 2014	Support of Jericho project as it is helping to grow local businesses and employ more local community members.	Noted.	
May 5, 2014	Concern raised regarding proximity of transmission pole at Townsend Line and Kerwood Road (Middlesex County) located within 50 feet from occupied home and the number of crossings required.	The location of the poles and the crossings were determined by Jericho. Poles of similar proximity to houses were not identified in Lambton portion of the transmission route and the County has not received concerns from impacted residents to date. There are a number of crossings along the transmission route. These are required mainly due to the availability of property/easements, safe placement of poles, and separation from existing utilities.	

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**Comments Received March 28, 2014**

**Preliminary Comments on some OEB Rulings re RUAs to Date**

1. In EB-2013-0203, the Ontario Energy Board (the Board) determined that "in this proceeding it does not require the Applicant to submit a document to the Board showing a proposed form of agreement (i.e. Road Use) with the Township for purposes of section 97 of the Act." Further, the Board noted that

Subsection 41(10) of the *Electricity Act* removes the power of the Board to determine the location of a line under the *Electricity Act* but it does not detract from the powers conferred upon a transmitter or distributor under the other provisions of section 41. The holder of a leave to construct order issued by the Board possesses at least an executory right to construct and own a transmission or distribution system for the purposes of section 41 of the *Electricity Act* and therefore may rely upon the rights conferred in subsections 41 (1)-(8) of the *Electricity Act*.

2. Board staff offered a contrary opinion:

Board staff submitted that section 41 of the *Electricity Act* does not exempt the Applicant from the requirement set out in section 97 of the Act that requires an applicant to offer a form of agreement approved by the Board to each owner of land affected by the route or location. Staff noted that while section 41 of the *Electricity Act* does give a transmitter or distributor certain rights over municipal rights of way, nowhere in the section does it reference "the form of agreement" or section 97 of the Act. Therefore, staff submitted that in this case, the Township is a landowner that is affected by the route and as such the road use agreement with the Township is subject to approval as required by section 97 of the Act. Board staff further submitted that the approval of the road use agreement should be limited to the review of a standard form of agreement which represents the initial offering to the affected landowner, i.e. the Township. This position, Board staff submitted, was consistent with the Board's approach in previous proceedings.

3. Jericho has initiated, as it said it would, a new OEB hearing application under Section 41(9) of the *Electricity Act*, 1998, for the establishment of the location of Jericho's distribution facilities within certain road allowances owned by Lambton County ( EB-2014-0139).
4. Jericho submits that because it is a transmitter and generator of electricity, Lambton County cannot charge any fees for use of the road allowances.

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5. Ontario Regulation 548/06 Section 9 does not allow a municipality to impose fees or charges on a generator of electricity, including on the wind turbine itself (i.e. over and above the property-tax assessment based on a valuation of \$40,000/megawatt).
6. The posted Ontario Ministry of Energy Renewable Energy Facilitation Office (REFO) document **Renewable Energy Development: A Guide for Municipalities** contains two relevant sections:

#### **4.9.2 Additional Municipal Permits and Agreements**

In addition to building permits, renewable energy projects may be subject to other municipal permit requirements, for example, tree cutting permits, permits allowing the use of municipal land and road access permits. As well, municipalities may require developers to enter into agreements relating to municipally-provided services such as emergency response, sewer and water, and garbage collection.

Developers are expected to take responsibility for the costs of project development. Municipalities have statutory authority that may allow them to charge developers for certain types of costs, similar to fees charged for other types of development. For example, the *Municipal Act, 2001* (and the *City of Toronto Act, 2006*) may provide authority for municipalities to levy charges for costs impacting municipal infrastructure, such as road cuts, road access, occupancy permits, emergency response, sewer, water and waste collection.

Municipalities are also entitled to charge building permit fees (*Building Code Act, 1992* (BCA)). The amount of these fees may not exceed the cost to the municipality to administer and enforce the BCA and the Building Code. The Building Code set out what renewable projects can be subject to a building permit.

Municipalities can also recover from developers growth-related capital costs under the authority of the *Development Charges Act, 1997*, to the extent the renewable energy development gives rise to increased needs for eligible services.

#### **5.2 Municipal Costs and Fees**

As a result of the GEA, municipalities may be uncertain about how they can recover fees from developers related to potential municipal costs that may result from renewable energy projects.

Municipalities retain authority to recover incurred costs for certain activities under certain Acts, such as the *Municipal Act, 2001* and the *City of Toronto Act, 2006*. For example, municipalities may still charge fees to developers for the use of municipal property. As well, municipalities may negotiate with developers for fees and reimbursement of costs the municipality may incur in deciding whether to grant formal Council support of the project.

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7. The Board in EB 2013-0040 and EB 2013-0041 recognizes that infrastructure development cannot proceed in an orderly way without municipal engagement. Road Use Agreements accomplish that goal. The interpretive rule is that specific provisions prevail over general provisions. The most specific iteration of the Ministry of Energy's GEA and the FIT Program is expressed through the REFO in its **Guide to Municipalities** – see 6. above. RUAs are part of the implementation process.

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**PART A: Recommended Amendments to the Jericho RUA Organized by Section**

**Whereas:**

1. amend G. by
  - insertion of the word "repair" after the word "operation"
  - deletion of the word "and" after the word "operation"
  - insertion of the words "and decommissioning" after the word "maintenance".
2. amend J. by deletion of the words "County acknowledges Jericho's right" and insertion of the words "County acknowledges Jericho's wish".
3. amend K. by deletion of the words "Jericho shall have the right" and insertion of the words "the County grants Jericho the right".
4. amend L. by deletion of the words "shall have the right" and insertion of the words, "the County grants Jericho the right" after the word "County".

**Definitions**

5. Amend 3. by addition of new subsections to read:
  - "Abandon" shall have the meaning set out in 43. and "Abandonment" shall have the corresponding meaning;
  - "Effective Date" is defined at the top of page 1 herein
  - "Road **Work**" means work involved in any temporary reconstructing or realigning of road sections, turns and intersections on the Road Allowances to permit the delivery or movement of oversized Wind Project components, including wind turbine blades, tower sections and nacelles;
  - "Traffic Effects" means any temporary modification of traffic patterns or the imposition of temporary restrictions on public access to or use of the Road Allowances;
  - "Emergency" means a sudden unexpected occasion or combination of events necessitating immediate action to prevent or mitigate materially adverse consequences to the health and safety of individuals or the integrity and safety of public utilities and infrastructure;
  - "Third **Party Work**" means work performed by a party other than Jericho or the County.
6. amend 3. (k) by deletion of the words "wind turbines and other infrastructure" and insert "materials, components and equipment" in their stead.
7. amend 3. (l) by addition of the words "ground grid" after the word "arms".

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8. amend 3. (o) by deletion of the word "and" before the word "relocating" and insertion of the word "or" in its stead.
9. amend 3. (p) by insertion of the words "to be constructed by Jericho, as applicable," after the word "Allowances" at the beginning of line 2.
10. amend 3. (q) by addition to read "and substation facilities".
11. amend 3. (v) **Plan** (i) by deletion of the word "and" after the word "size" and addition of the words "and scope" after the word "elevation".
12. amend 3. (z) **Repair Work** by deletion of the word "and" in lines one and two, and insertion of the word "or".
13. amend 3. (bb) "**Secured Party**" or "**Secured Parties**" by addition to read "means Jericho's lenders, who, from time to time, provide financing to Jericho in respect of the development, construction or operation of the Wind Project or the Work as determined by Jericho at its sole discretion"
14. amend 3. (dd) by insertion of the phrase "(whether above ground or buried)"

**Non-Exclusive Permission**

15. amend 9. by deletion of the phrase "not materially or commercially unreasonable" and insert "practicable" in its stead.
16. amend 9. by addition of a sentence to read "Jericho shall provide the County with 5 days written notice of any temporary closure."

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### **Electrical Infrastructure at Expense of Jericho**

17. amend 13. by addition of the sentence: "The County is satisfied that Jericho has secured cash assets sufficient to cover the entire cost of development, construction and decommissioning of the electrical infrastructure without reliance on any form of provincial funding, including taxation and other incentives and that the risk of securing provincial financing is entirely with Jericho and will not fall to the County."

### **Grant of Permission**

18. amend **Grant of Easement 7.** to read:

"Subject to the conditions set forth in "*Prior Approvals*" below, the County hereby grants and transfers to Jericho for the duration of the Term.

1. non-exclusive easement rights as identified in the Approved Road Use Plan (**Schedule "B"**) and,
  2. the right to perform Deliveries, Work, Road Work, Repair Work, Entrance Work, Electrical Infrastructure Work and Tree Work."
19. amend "Prior Approvals" (a) by an addition at the end to read.

"and prior to any construction shall submit a complete set of engineered drawings to the County, and proof of all legally required approvals and permits for the Work."
20. amend "Prior Approvals" (e) by deletion of the phrase "not materially or commercially unreasonable" and insertion of the word "practicable".
21. amend "Prior Approvals" (m) by deletion of the phrase "not materially or commercially unreasonable" and insertion of the word "practicable".

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#### **Non-Exclusive Permission**

22. amend 9. by deletion of the phrase "not materially or commercially unreasonable" and insertion of the word "practicable".

#### **Restoration**

23. amend 16. by insertion of the words "for the term of the Agreement" after the word "Infrastructure" at the beginning of line 3.

#### **Relocation of Installed Infrastructure**

24. amend 22. by deletion of the words "not be permitted"
25. amend the subsection title *Temporary Reconstruction or Realignment of Road Allowance* by renaming it "Road Work".
26. amend 27. (a) by deletion of the words "temporarily...order" and insertion of the words "Conduct Road Work".
27. amend 27. (b) by addition of the sentence "Each access road that intersects with a public road shall be secured by means of locked gates and both Parties shall have keys to such locks."

#### **D. TREE/WORK/REPLACEMENT**

28. amend 28. by deletion of the phrase "Intentionally Deleted" and insertion of a paragraph that reflects other submissions on this topic.

#### **First Security Deposit**

29. amend 38. by insertion of "(LC)" after the word "credit" in line 2.

#### **J. Miscellaneous**

30. amend 48. by insertion of the word "prior" before the word "written" in line 2.

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## **PART B OTHER ITEMS**

31. Insert a provision for the creation of a position **Compliance** Officer to monitor implementation of the Agreement for the duration of the Agreement, at Jericho's sole expense, provide for the Compliance Officer to have authority to issue Stop Work orders as needed and provide for the purchase of equipment, particularly noise measuring devices, that the Compliance officer may need for the performance of duties.
32. Insert a provision that provides monetary relief for health and quality of life adversities that residents residing within two kilometres of the Project Boundary may experience.
33. Insert a provision that provides monetary relief for residents residing within two kilometres of the Project Boundary for any devaluation in property values over the term of the agreement.

## **PART C: Housekeeping Items**

### **Whereas**

34. amend B. by insertion of the word "to" after the word "respect".
35. amend M. by insertion of the word "at" after the word "that" in line 1.

### **A. INTERPRETATION**

36. amend 2. by deletion of the word "any" before the word "Party" and insertion of the word "either" in line 4 and by deletion of the word "any" before the word "other" and insertion of the word "the" so that the phrase reads "covenant by either Party will not relieve the other Party"

### **B. GRANT OF PERMISSION**

37. amend (j) by deletion of the word "potion" and insertion of the word "portion" in line 5.

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### **Response to March 28, 2014 Comments**

The County reviewed your submission and brought the items forward to NextEra for consideration in the context of the original negotiations for the Agreement. The following is provided in specific response or confirmation of the aspects addressed in your submission.

### **Preliminary Comments On Some OEB Rulings re RUAs to Date**

The information in this section provided consideration regarding municipal road use and fees from sections of the Electricity Act and Ontario Energy Board Act, recent precedent set by Ontario Energy Board (OEB) as part of specific file responses and rulings, Jericho's stated position through the OEB process on their rights within the road allowance, and the position of the Ministry of Energy as published through the Renewable Energy Development: A Guide for Municipalities (December 2012). The County developed the Draft Road Use Agreement with Jericho to address considerations and compensations to protect and maintain the public interest of the road allowance, and not necessarily to facilitate NextEra's requirements under the OEB Leave To Construct Application. Generally, the Agreement confirms and reinforces the permitting processes already outlined in existing County of Lambton By-Laws. In addition, the Agreement establishes conditions for construction of the transmission facilities within the existing and future right-of-way, which has not been traditionally addressed by other transmission facilities in the County.

As part of the proposed Agreement, the County and NextEra have agreed that the permits and fees associated with the road use are applicable and reasonable. In the absence of a signed agreement, the County will continue to present to the OEB that these requirements are fundamental ensuring that the County is able to manage the road allowance as a responsible road authority and is not unduly burdened with additional responsibilities, costs, and liability associated with the presence of Jericho's proposed infrastructure. The information provided in your submission will assist in presenting and supporting this case in front of the OEB Tribunal.

### **Part A: Recommended Amendments to the Jericho RUA Organized by Section**

The recommend adjustments to the agreement were presented to NextEra and were generally accepted with the following exceptions:

Item 2 - The term "right" was maintained as appropriate in the context of this clause, although it is recognized that this may be a conditional "right" as your submission indicated in the preceding section.

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Items 15, 20, 21, and 22 - The phrase "not materially or commercially unreasonable" was arrived at through extensive discussions and a specific result of this negotiation process.

Item 17 - Conditions pertaining to provincial funding, financing, and municipal taxation are outside the jurisdiction and ability to enforce as part of this agreement.

Item 18 - The existing wording in the Agreement was considered appropriate.

Item 19 - The County does not have the jurisdiction or ability to become an overall permitting authority for other governmental agencies. The County will, however, enforce the permits and requirements under this agreement.

Item 27 - This would impose an entrance condition unusual to other facilities in the County that could impede on access to private properties. Gates may be used on private property to control access, however, many of the proposed entrances will serve the private property owner following construction; this decision should rest with the property owner. Entrance permitting is governed by the existing County By-Law process, as agreed to in the Agreement.

Item 28 - The portion of this agreement removed as "Intentially Deleted" dealt with roads that do not have winter maintenance. It was a clause derived from a similar RUA, but as the County of Lambton has no County roads under this condition, the clause was removed. The clause in its original state is provided as follows:

**F. MAINTENANCE, SNOW CLEARANCE AND TREE WORK/REPLACEMENT**

**No County Winter Maintenance**

28. In the event that Jericho requires any Road Allowances which are not maintained by the County for winter use to be maintained for winter access, Jericho shall undertake the necessary snow plowing on its own accord and at its expense and shall be responsible for all costs associated with the repair of any Road Allowance damaged as a result of such use by Jericho.

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## **Part B: Other Items**

These items were not able to be addressed in the context of the Road Use Agreement. Particularly Items 31 and 32 deal with aspects of private property and are outside the scope of this agreement. NextEra provided the following statement in response to Item 30:

Jericho Wind takes safety and environmental compliance with our permits very seriously . We have full time teams of safety and environmental personnel on site ensuring enforcement on a daily basis. This includes two safety leads, as well an environmental team lead with aboriginal , archeological and environmental monitors. These individuals have offsite corporate advisors at their disposal should they need to discuss any concerns or issues.

At daily contractor meetings, all safety and environmental concerns are reviewed and re-enforced. All site personnel are required to attend a safety and environmental orientation prior to commencing work, and must attend subsequent weekly safety meetings. Personnel are also required to comply with daily audits. Any violations are treated very seriously.

We also have a full time regulatory compliance lead on staff dedicated to working with the construction team, who is responsible for monitoring compliance with the requirements of our permits and all Ontario laws. Any complaints or questions can be made through our hot line at **1-877-463-4963** and through our community liaison committee.

It is understood that the hot line number will remain active to address concerns, including those relating to permit compliance, throughout the life of the project, not just during construction.

## **Part C: Housekeeping Items**

All submissions were agreed to and recommended for adjustment in the Agreement.

Your submission will be included as part of the County's Public Review Period for the Jericho Wind Energy Centre Draft Road Use Agreement. If you have any further questions or comments regarding this Agreement, please feel free to contact me.

Information collected during the Review Period will be used in accordance with the Freedom of Information and Protection of Privacy Act. With the exception of personal information, all comments will become part of the public record.

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## **ROAD USE AGREEMENT**

**THIS AGREEMENT** effective this \_\_\_\_ day of \_\_\_\_\_, 2014 (the “**Effective Date**”)

**B E T W E E N :**

**THE CORPORATION OF THE COUNTY OF LAMBTON**  
(hereinafter referred to as the “**County**”)

OF THE FIRST PART

- and -

**JERICO WIND, INC.**  
a corporation established under the laws  
of the Province of New Brunswick  
(hereinafter referred to as “**Jericho**”)

OF THE SECOND PART

**WHEREAS:**

- A. the County is a municipal corporation with the meaning of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, is governed by Warden and Council and operated by Administration, which is hereby authorized to administer this Agreement in its entirety, including but not limited to decisions with respect to the operation and termination of this Agreement in accordance with its provisions;
- B. the County exercises jurisdiction with respect to approval of certain activities with respect to public rights of way, highways, ditches and boulevards within the County of Lambton;
- C. the County owns the roads identified in the Approved Road Use Plans, which is attached hereto as **Schedule “B”** and forms a part of this Agreement;
- D. Jericho is a wind farm owner/operator, has a current registered corporate identity in New Brunswick; has an office and mailing address at 390 Bay Street, Suite 1720, Toronto, ON M5H 2Y2;
- E. Jericho is the owner of the Wind Project, as defined herein;
- F. Jericho is the owner of the Power Purchase Agreement for the Wind Project, all assets of the Wind Project, as provided in the Jericho Asset Document, which is attached hereto as **Schedule “A”**, forms a part of this Agreement but shall be treated as confidential between the parties to extent possible under Applicable Law;

- G. Jericho wishes to make use of certain roads located in the County of Lambton to allow for construction, operation, repair, maintenance and decommissioning of the Wind Project and to deliver components and materials thereto;
- H. pursuant to section 50(3)(d.1) of the *Planning Act*, as amended, the Parties may enter into an agreement that has the effect of granting a use of or right in land directly or by entitlement to renewal for a period of more than twenty-one years;
- I. the County and Jericho enter into this Agreement with respect of the use, installation, construction, maintenance and operation of certain Electrical Infrastructure on, over, under and within the Road Allowances, as defined herein;
- J. subject to Provincial legislation and Ontario Energy Board Approval, and the terms and conditions set forth below with respect to the use of County Road Allowances, the County acknowledges Jericho's right to install, construct, maintain, operate and decommission such Electrical Infrastructure over, along, across or under Road Allowances;
- K. subject to obtaining the necessary approvals from the County for non-electricity transmission related work, the County grants Jericho the right to temporarily reconstruct or realign certain portions of the Road Allowances to permit delivery or movement of oversized Wind Project components, including wind turbine blades, tower sections and nacelles;
- L. subject to obtaining an entrance permit from the County, the County grants Jericho the right to connect access roads from Wind Project turbines to the Road Allowances to permit ongoing access to the wind turbines during Wind Project operations; and
- M. Jericho warrants that at all times throughout the Term of this Agreement, including its option periods, it shall retain assets which have a minimum value of \$5 million dollars.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT**, in consideration of the payment of the sum of TWO DOLLARS (\$2.00) from each Party to the other and other good and valuable consideration, including the terms, covenants and provisions herein, the receipt and sufficiency of which is hereby acknowledged and agreed, the Parties covenant and agree as follows:

**A. INTERPRETATION**

- 1. The above recitals are true and the same are hereby incorporated into this Agreement by reference.
- 2. Each obligation of the Parties hereto contained in this Agreement, even if not specifically expressed as a covenant, shall be considered for all purposes to be a covenant. Each covenant in this Agreement is a separate and independent covenant and a breach of covenant by either Party will not relieve the other Party from its obligation to perform each of its covenants; except as otherwise provided herein.



### Definitions

3. In this Agreement, in addition to terms defined elsewhere in this Agreement, the following terms have the following meanings:
- (a) “**Abandon**” shall have the meaning set out in Section 41, and “**Abandonment**” shall have the corresponding meaning;
  - (b) “**Agreement**” means this Agreement, including all Schedules, as it may be confirmed, amended, modified, supplemented or restated by written agreement between the Parties.
  - (c) “**Anti-Bribery Laws**” mean any anti-bribery law or international convention, as may apply now or in the future, including the Canadian Corruption of Foreign Public Officials Act, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and the OECD Convention on Combating Bribery of Foreign Public Officials.
  - (d) “**Applicable Law**” means all present or future applicable laws, statutes, regulations, treaties, judgments and decrees and all present or future applicable published directives, rules, policy statements and orders of any Public Authority and all applicable orders and decrees of courts and arbitrators of like application to the extent, in each case, that the same are legally binding on the Parties in the context of this Agreement.
  - (e) “**Appropriate Emergency Service Providers**” means those emergency service providers set out in Schedule “C”, which is attached hereto and forms a part of this Agreement;
  - (f) “**Approved Road Use Plans**” means the diagrams attached as Schedule “B” hereto depicting the location of and other aspects in relation to Electrical Infrastructure in Road Allowances, as approved by the County Engineer prior to the execution of this Agreement.
  - (g) “**As-Built Plan**” means a Plan following the placement, installation, construction, re-construction, inspection, maintenance, operation, alteration, enlarging, repairing, replacing, relocating and removing Electrical Infrastructure confirming the exact location and specifications of any Electrical Infrastructure installed over, along, across, under or within the Road Allowances.
  - (h) “**Business Day**” means any day excluding a Saturday, Sunday or statutory holiday in the Province of Ontario, and also excluding any day on which the principal chartered banks located in the County of Lambton are not open for business during normal banking hours.
  - (i) “**Commercial Operation Date**” means the Commercial Operation Date as defined in the Power Purchase Agreement, as defined herein.

- (j) **“Consulting Engineer”** means an independent qualified professional engineer as appointed by Jericho, from time to time.
- (k) **“County Engineer”** means the individual designated to serve in the position of Manager, Public Works or his/her designate for the Corporation of the County of Lambton duly passed via municipal by-law.
- (l) **“Deliveries”** means the transporting of materials, components and equipment including overweight or over-size cargoes across or along Road Allowances, to provide for the construction, maintenance, repair, replacement, relocation or removal of materials, components and equipment for the Wind Project.
- (m) **“Distribution Infrastructure”** means infrastructure and systems for the purposes of conveying electricity at voltages of 50 kilovolts or less and includes all structures, equipment or other things used for that purpose including, but not limited to, towers and/or poles, with such wires and/or cables for the distribution of electricity at voltages of 50 kilovolts or less, and all necessary and proper foundations, safety barriers, footings, cross arms, ground grid and other appliances, facilities and fixtures for use in connection therewith including without limitation, substation facilities and equipment, pads, vaults and junction boxes (whether above or below ground), manholes, handholes, conduits, fiber optics, cables, wires, distribution lines and other conductors of any nature, multiple above or below ground control, communications, data and radio relay systems, and telecommunications equipment, including without limitation, conduits, fiber optics, cables, wires and lines.
- (n) **“Easement Rights”** means the right to place, install, construct, re-construct, inspect, maintain, operate, alter, enlarge, repair, replace, relocate and remove Electrical Infrastructure over, along, across, within or under the Road Allowances provided for this Agreement.
- (o) **“Effective Date”** is defined at the top of page 1 herein.
- (p) **“Electrical Infrastructure”** means, collectively, all Distribution Infrastructure and Transmission Infrastructure.
- (q) **“Electrical Infrastructure Work”** means the installing, constructing, operating, inspecting, maintaining, altering, enlarging, repairing, replacing, relocating or removing of Electrical Infrastructure over, along, across, within or under the Road Allowances in connection with the Wind Project.
- (r) **“Emergency”** means a sudden unexpected occasion or combination of events necessitating immediate action to prevent or mitigate materially adverse consequences to the health and safety of individuals or the integrity and safety of public utilities and infrastructure.
- (s) **“Entrance(s)”** means one or more points of access across and through the Road Allowances from the travelled portion of the Road Allowances to be constructed

by Jericho, as applicable, connecting to private lands beyond and certain access roads in and upon adjacent lands used in connection with the Wind Project, which has been approved by the County Engineer

- (t) **“Entrance Work”** means the constructing and maintaining of Entrances to private wind turbine access roads and substation facilities.
- (u) **“Material Change”** has the meaning ascribed to such term in Section 29.
- (v) **“Municipal Infrastructure”** means structures, services or facilities of any kind owned or operated by or for the benefit of the County or its local municipalities, including drains, water mains and culverts.
- (w) **“Parties”** means the County and Jericho collectively, and **“Party”** means any one of them.
- (x) **“Permits”** means those permits required to be obtained by Jericho from the County for the purposes of performing the Work and for the purposes of use of the Road Allowances, along with all requirements for the issuance of such Permits and all fees associated with such Permits, as set out in the Permits and Fees Document, which is attached hereto as **Schedule “D”** and forms a part of this Agreement.
- (y) **“Plan”** means a detailed plan drawn to scale, which:
  - (i) identifies the location, size, elevation and scope of the Electrical Infrastructure;
  - (ii) demonstrate that the installation of the Electrical Infrastructure will comply with applicable safety, technical and regulatory standards and the requirements of Applicable Law; and
  - (iii) show the Road Allowances where the installation of Electrical Infrastructure is proposed and the location of the proposed Electrical Infrastructure or part thereof together with specifications relating to the proposed Electrical Infrastructure or part thereof.
- (z) **“Plans”** means more than one Plan, as defined herein, referred to collectively.
- (aa) **“Power Purchase Agreement”**, (hereinafter **“PPA”**) means the Feed-In Tariff Contract made between Jericho and the Ontario Power Authority, including any amendments or renewals thereof.
- (bb) **“Public Authority”** means any governmental, federal, provincial, regional, municipal or local body having authority over the County, Jericho, the Wind Project, the Electrical Infrastructure or the Road Allowances.

- (cc) **“Repair Work”** means work involving the maintenance, repair or replacement of the Wind Project, including the maintenance, repair or replacement of installed Electrical Infrastructure and Entrances that does not cause the location, elevation, position, layout or route of the Electrical Infrastructure or Entrances to materially change.
- (dd) **“Road Allowances”** means public rights of way, road allowances, streets, sidewalks, highways, walkways, driveways, ditches and boulevards and the allowances therefor, and includes all existing infrastructure located on or within the Road Allowances, all owned, or managed under the legal jurisdiction of the County as shown in the Approved Road Use Plans (**Schedule “B”**).
- (ee) **“Road Work”** means work involved in any temporary reconstruction or realignment of road sections, turns and intersections on the Road Allowances to permit the delivery or movement of oversized Wind Project components, including wind turbine blades, tower sections and nacelles.
- (ff) **“Secured Party”** or **“Secured Parties”** means Jericho’s lenders, who, from time to time, provide financing to Jericho, which financing shall include, but not be limited to the development, construction or operation of the Wind Project or the Work, as determined by Jericho in its sole discretion.
- (gg) **“Third Party Work”** means work performed by a party other than Jericho or the County.
- (hh) **“Traffic Effects”** means any temporary modification of traffic patterns or the imposition of temporary restrictions on public access to or use of the Road Allowances.
- (ii) **“Transmission”** means the conveyance of electricity at voltages in excess of 50 kilovolts.
- (jj) **“Transmission Infrastructure”** means infrastructure conveying electricity at voltages in excess of 50 kilovolts and includes all structures, equipment or other things used for that purpose including, but not limited to, a line or lines of towers and/or poles, with such wires and/or cables for the transmission of electricity at voltages in excess of 50 kilovolts, and all necessary and proper foundations, safety barriers, footings, cross arms, ground grid and other appliances, facilities and fixtures for use in connection therewith including without limitation, pads, vaults and junction boxes manholes, handholes, conduits, fiber optics, cables, wires, transmission lines and other conductors of any nature, multiple above or below ground control, communications, data and radio relay systems, and telecommunications equipment, including without limitation, conduits, fiber optics, cables, wires and lines (whether above ground or buried).
- (kk) **“Tree Work”** means the cutting, trimming, removing or replacing of trees or bushes growing in or extending into, over or under the Road Allowances.

- (ll) **“Wind Project(s)”** means the 150 megawatt renewable energy generating facility known as Jericho Wind Energy Centre and its appurtenant wind turbines, equipment, buildings and Electrical Infrastructure, a portion of which is to be constructed in the County of Lambton for the purpose of supplying electricity in accordance with the PPA.
- (mm) **“Work”** means all work required to be performed by Jericho pursuant to the terms of this Agreement, including, but not limited to, all Deliveries, Electrical Infrastructure Work, Entrance Work, Tree Work, Road Work and Repair Work.

#### **Schedules**

4. The following schedules to this Agreement are an integral part of this Agreement:

##### **Schedule “A”**

##### **Jericho Asset Document**

Shows type and value of all current assets owned by Jericho

##### **Schedule “B”**

##### **Approved Road Use Plans**

Geographically shows the location of the Wind Project; municipal description and location of County Road Allowances; and particulars with respect of the route of Electrical Infrastructure, including but not limited to location of poles, engineering details of poles (type, material, size, foundation, construction methods, guying details.), electrical transmission line arrangement (height of cables, vertical clearances, expected cable sag/sway, etc.), and the location of any alteration of the County Road Allowances in relation to the installation of said Electrical Infrastructure (ditch grading and guardrails).

##### **Schedule “C”**

##### **Appropriate Emergency Service Providers**

##### **Schedule “D”**

##### **Permits and Fees**

Shows all Permits and fees required to be applied for and obtained by Jericho from the County, including but not limited to Oversize/Overweight Permits, Entrance Permits, Signage Permits.

**Schedule "E"**

Rights and Remedies afforded to Secured  
Parties

**Statutory Rights**

5. The Parties agree that nothing contained in this Agreement shall abrogate or prejudice any statutory rights held by any Party under any applicable statute, including but not limited to the *Municipal Act, 2001*, as amended, the *Ontario Energy Board Act, 1998*, as amended, the *Green Energy and Green Economy Act, 2009*, as amended and the *Electricity Act, 1998*, as amended.

**B. GRANT OF PERMISSION**

**Term**

6. The rights provided for in this Agreement shall be for a term which is the greater of: (i) thirty (30) years from the Effective Date plus an option in favour of Jericho to extend the term of this Agreement for two (2) further ten (10) year periods, or (ii) from the Effective Date to the expiry of the term of the PPA and any extensions thereof, together with such additional time (not to exceed nine (9) months) as may be reasonably required to complete the decommissioning of the Wind Project, (hereinafter, the "**Term**").

**Grant of Easement**

7. The County hereby grants and transfers to Jericho for the duration of the Term, the non-exclusive right, privilege, interest, benefit and easement to enter upon and use the Road Allowances as identified in the Approved Road Use Plans (**Schedule "B"**) with such persons, vehicles, equipment and machinery as may be necessary for the purpose of placing, installing, constructing, re-constructing, inspecting, maintaining, operating, altering, enlarging, repairing, replacing, relocating and removing Electrical Infrastructure and the right to perform Work over, along, across, within or under the Road Allowances in connection with the Wind Project, subject to the following conditions:

*Prior Approvals*

- (a) Jericho, prior to the installation, placement, installation, construction, re-construction, inspection, maintenance, operation, alteration, enlarging, repair, replacement, relocation and/or removal of any Electrical Infrastructure over, along, across, within or under the Road Allowances, shall obtain the approval of any Public Authority required by or have the authority pursuant to Applicable Law in connection with such activity.

*Notice*

- (b) Jericho shall make its best effort, prior to the installation, placement, installation, construction, re-construction, inspection, maintenance, operation, alteration, enlarging, repair, replacement, relocation and/or removal of any Electrical Infrastructure over, along, across, within or under the Road Allowances, to

provide notice to all other existing Road Allowance users of the aforementioned installation, placement, installation, construction, re-construction, inspection, maintenance, operation, alteration, enlarging, repair, replacement, relocation and/or removal of any Electrical Infrastructure over, along, across, within or under the Road Allowances.

*Transmission Infrastructure Placement*

- (c) All Transmission Infrastructure shall be installed above-grade within the Road Allowances in the location specified in the Approved Road Use Plans (**Schedule “B”**) within a reasonable error range and supported by stand facilities (poles) at an appropriate elevation to avoid incompatibilities and/or conflicts with other existing infrastructure;

*Distribution Line Placement*

- (d) All Distribution Infrastructure shall be installed below-grade and within but under the Road Allowances at an appropriate depth so as to avoid incompatibilities and/or conflicts with other existing and potential infrastructure, except where Jericho in consultation with the County identifies environmental, topographical or other obstacles that require the installation of poles or other above-grade Distribution Infrastructure to permit the distribution of electricity over, around or across the obstacle;

*Distance from Travelled Portion and Property Line*

- (e) The Parties agree that Jericho shall, provided it is not materially or commercially unreasonable, install Electrical Infrastructure in the following locations within the Road Allowances:
  - (i) in locations between the outer limit of the travelled portion of the roadway and the property line of the Road Allowance;
  - (ii) at depths and/or elevations within the relevant Road Allowance to avoid incompatibilities and/or conflicts with existing infrastructure and, provided it is not materially or commercially unreasonable, avoid incompatibilities and/or conflicts with currently planned infrastructure; and
  - (iii) in consistent locations within the Road Allowances such that the number of road crossings is minimized.

*Permits/Fees*

- (f) Jericho will obtain all Permits from the County and pay the appropriate fees associated with obtaining the same, which fees are shown in the Permits and Fees Document (**Schedule “D”**). The County shall issue all such Permits within the timelines set out in the County’s by-laws or in the relevant statutes or regulations

or thirty (30) days following receipt from Jericho of its applications and fees, whichever is less, and, without limiting the generality of the foregoing, in respect of grading, guardrails and culverts related to the Electrical Infrastructure, shall issue approval on the basis of standards typically applied in accordance with the MTO Road Safety Manual;

*Legal Compliance*

- (g) All actions of Jericho and the County shall be in compliance with Applicable Law;

*Insurance Coverage*

- (h) Jericho agrees that prior to the placing, installing, constructing, re-constructing, inspecting, maintaining, operating, altering, enlarging, repairing, replacing, relocating and removing Electrical Infrastructure over, along, across, within or under the Road Allowances, Jericho shall arrange for and maintain commercial general liability insurance (hereinafter, the “CGL”), insuring Jericho and naming the County as an additional insured. The CGL shall provide, at a minimum limits of liability, not less than five million dollars (\$5,000,000.00) per incident and in the aggregate. In addition, the CGL shall contain a cross liability and severability of interest clause and provide for a minimum of ten (10) days’ notice of cancellation of the CGL. Jericho shall upon written request thereof, deliver to the County, from time to time and in any event prior to commencement of the Work, a copy of a certificate of insurance evidencing that the CGL is in full force and effect. Following the date that is ten (10) years after the Effective Date and every ten (10) years thereafter, the Parties shall, acting reasonably, review the minimum limits of liability of the CGL to determine if appropriate adjustments are required. Jericho may comply with the CGL requirement through any combination of primary and excess/umbrella coverage.

*Commencement of Work*

- (i) Prior to the commencement of any Work, Jericho shall document, by means of a video recording or other means satisfactory to the County, acting reasonably, the then-existing condition of all Road Allowances or structures that Jericho expects will or may be used for or subject to Work, and both Parties shall receive a complete copy of such video recording or document;
- (j) Jericho agrees to maintain the surface of the Road Allowances for a period of twelve (12) months following the Commercial Operations Date and restore the surface of the Road Allowance to at least the same condition as prior to the commencement of any Work, except in the cases where the alteration to the untraveled portion of the Road Allowance forms part of the Work;
- (k) Jericho agrees the Easement Rights shall be exercised and carried out in a good, safe and workmanlike manner;



- (l) Jericho shall be responsible for any damage caused to the Road Allowances at any time by itself, its agents, employees or contractors and for removing all debris from the work area following the undertaking of any of the Easement Rights contemplated herein;
- (m) Jericho shall, provided it is not materially or commercially unreasonable, protect the integrity and security of all existing equipment, installations, utilities, and other facilities within the Road Allowance or which might otherwise be located in, on, or under the Road Allowances or any adjacent lands;
- (n) Jericho shall make all payments and taking all such steps as may be reasonably necessary to ensure that no construction lien or other lien is registered against the Road Allowances as a result of the undertaking by Jericho of any of the Easement Rights or any other work contemplated in this Agreement and taking such steps as may be required to cause any such registered lien or claim for lien to be discharged or vacated immediately after notice thereof from the County is provided to Jericho.

**Non-Exclusive Permission**

- 8. The Easement Rights provided for in this Agreement shall constitute a non-exclusive easement. Without limiting the foregoing, the Easement Rights are subject to the rights of the owners of the property adjoining the Road Allowances who are entitled access to and from the Road Allowances from their properties, and subject to the rights and privileges that the County may grant to other persons on the Road Allowances, all of which rights are expressly reserved; the rights shown on the Approved Road Use Plans and As-Built Plan and specifications only excepted. Jericho hereby acknowledges and agrees that there are other utilities and third parties that do and/or may have similar rights over the Road Allowances and Jericho hereby agree to accommodate the interests of other third parties when exercising the Easement Rights, provided such accommodation is not materially or commercially unreasonable.
- 9. In respect of and without limiting the foregoing and provided it is not materially or commercially unreasonable, Jericho agrees that when engaging in any Work, it shall ensure there is minimal interference with the traveled portion of any Road Allowances or any pedestrian, vehicular, or other traffic thereon, or any use or operation of any ditch or drain adjacent to such public right-of-way, highway, street, or walkway. Unless otherwise agreed by the County, the Road Allowances shall always be open to pedestrian, vehicular or other traffic and shall be open to the public. Without limiting the generality of the foregoing, Jericho shall be entitled to temporarily close any of the Road Allowances with the prior written consent of the County Engineer, which consent shall not be unreasonably withheld, delayed or conditioned. If Jericho proposes the temporary closure of a Road Allowance, it shall also provide not less than forty-eight (48) hours prior written notice to the Appropriate Emergency Service Providers.

**Right of Entry**

10. The County reserves its right to enter upon and use the Road Allowances without notice to Jericho for its own purposes and to grant and transfer rights to third parties to enter upon and use the Road Allowances to construct, operate, maintain, alter, repair or relate infrastructure, and to modify the Road Allowances, provided such entry, use, grant or transfer by the County does not adversely affect the Electrical Infrastructure, the Work, the Wind Project or the exercise of Jericho's rights under this Agreement.

**Title**

11. The County represents that:
- (a) it has legal and beneficial title to the Road Allowances;
  - (b) it has obtained the full and unconditional due authorization for execution and delivery of this Agreement by all required resolutions and other required municipal approvals;
  - (c) it shall defend its title to the Road Allowances against any person or entity claiming any interest adverse to the County in the Road Allowances during the Term of this Agreement, save and except where such adverse interest arises as a result of the gross negligence or willful misconduct of Jericho or any person for which they are responsible at law;
  - (d) the Permits are the only permits, approvals, consents or authority within the jurisdiction of the County required in connection with the Work and the fees as set forth in attached hereto are the only fees payable by Jericho in connection with the Permits; and
  - (e) the execution and delivery of this Agreement by the County will not result in a breach of any other agreement to which the County is a party and no rights, interests or privileges have been granted in respect of the Road Allowances by the County which will or could adversely affect the rights, interests or privileges granted to Jericho hereunder.

**Electrical Infrastructure at Expense of Jericho**

12. Notwithstanding and without limiting any other term hereof, Jericho agrees and undertakes that all Electrical Infrastructure over, along, across, within or under the Road Allowances will be placed, installed, constructed, re-constructed, inspected, maintained, operated, altered, enlarged, repaired, replaced, relocated and removed at its own expense and in accordance with good engineering practices, and in compliance with Approved Road Use Plans, this Agreement and Applicable Law.

**C. ADDITIONAL TERMS AND CONDITIONS RE EASEMENT RIGHTS**

**Road Closure**

13. The County agrees, in the event of closing of any Road Allowances, to give Jericho reasonable notice of such closing and to provide Jericho with a further easement over that part of the closed Road Allowances, sufficient to allow Jericho to preserve any part of the Electrical Infrastructure in its then existing location, and to enter upon the closed Road Allowances to maintain and repair such part of the Electrical Infrastructure.

**Traffic Effects**

14. Notwithstanding and without limiting any other term hereof, the Parties acknowledge that the Work from time to time may require Traffic Effects. In the event that Jericho determine that Traffic Effects are required, Jericho agrees to:
- (a) give five (5) days' notice of anticipated Traffic Effects to the County Engineer and affected residents and to coordinate with the County Engineer and the Appropriate Emergency Service Providers to minimize and mitigate any adverse impacts of the Traffic Effects and to ensure public safety; and
  - (b) use reasonable efforts to maintain adequate public access to and use of the Road Allowances while Traffic Effects are in progress and to remove the Traffic Effects as soon as reasonably possible when the Traffic Effects are no longer necessary.

**Restoration**

15. Jericho further agrees that in the event that it becomes necessary to break, remove, or otherwise pierce the existing surface of any of the Road Allowances or any other municipal lands to undertake any placing, installing, constructing, re-constructing, inspecting, maintaining, operating, altering, enlarging, repairing, replacing, relocating and removing Electrical Infrastructure or to undertake any Work over, along, across, within or under the Road Allowances, Jericho in all cases will repair, reinstate and restore such surface at its own expense to the same or better condition which existed prior to the performing of the Work. Jericho also agrees that, except in those cases where breaking, removing or otherwise piercing the untraveled portion of the Road Allowance forms part of the Work, it shall thereafter, for a period of twelve (12) months following the Commercial Operation Date (the "**Interim Period**"), monitor that portion of such restored Road Allowances, at the sole expense of Jericho, and repair any settling thereof directly caused by the placing, installing, constructing, re-constructing, inspecting, maintaining, operating, altering, enlarging, repairing, replacing, relocating and removing Electrical Infrastructure or any of the Work performed over, along, across, within or under the Road Allowances to the satisfaction of the County Engineer, acting reasonably.

**Repairs**

16. Jericho shall be liable for any and all Repair Work required to be performed on the Electrical Infrastructure or on the Road Allowances due to the existence of the Electrical

Infrastructure for the term of this Agreement. Any Repair Work undertaken shall restore the road surface to at least the same condition it was in immediately prior to the use of the Road Allowances by Jericho. In the event that Repair Work is required, Jericho agrees to provide the County with at least five (5) days' notice that the Repair Work will occur if such Repair Work:

- (a) will have or is likely to have Traffic Effects;
  - (b) will involve or is likely to involve Tree Work;
  - (c) could present a danger to public health and safety; or
  - (d) is located in Entrances.
17. Subject to the provisions of this Agreement and provided that Repair Work on Electrical Infrastructure complies with this Agreement, Jericho shall be entitled to conduct Repair Work on Electrical Infrastructure without prior approval of the County Engineer.

#### **Emergency**

18. Notwithstanding any other provision of this Agreement, in the event of any Emergency involving the Electrical Infrastructure, Jericho shall notify the Appropriate Emergency Service Providers immediately upon becoming aware of the situation and shall do all that is necessary and desirable to control the Emergency, including such work in and to the Electrical Infrastructure or the Road Allowances as may be required for the purpose. If after reasonable and unsuccessful efforts to communicate with the County and in the event the Emergency, at Jericho's sole determination, Jericho requires immediate access to Electrical Infrastructure, Jericho may enter upon the subject Road Allowances and/or municipal lands without prior notice to the County in order to gain access to such Electrical Infrastructure in order to address such Emergency and, in so doing, shall undertake to rectify the Electrical Infrastructure to the standards and as are otherwise required by the terms of this Agreement and to thereafter provide written notification and details and specification of such Repair Work to the County on the next Business Day and to thereafter file amended Plans and drawings detailing such repairs as is otherwise required by this Agreement. Without limiting the foregoing, subject to resolving to the Emergency, Jericho agrees that all work completed under this subsection shall maintain the same location of the Electrical Infrastructure as previously approved by the County.
19. Jericho shall be responsible for all costs associated with such emergencies. The Parties hereby agree to cooperate with each other and with the Appropriate Emergency Service Providers and Hydro One Networks Inc. to develop and adopt protocols applicable in the event of an Emergency involving the Electrical Infrastructure.

#### **Upgrades Required**

20. In the event that the standard, condition or maintenance of any of the Road Allowances is not sufficient to permit Jericho to carry out its desired operations, Jericho shall be solely

responsible for carrying out any work or maintenance required to upgrade the Road Allowances, at its own expense.

**Locating Infrastructure:**

21. Jericho agrees at its sole expense to:
- (a) mark the location of Electrical Infrastructure installed by Jericho within the Road Allowances with appropriate markings;
  - (b) participate in the "Ontario One Call" system to facilitate ongoing notice to the public of the location of the Electrical Infrastructure; and
  - (c) upon written request of the County, Jericho shall properly and accurately identify the location of any Electrical Infrastructure within the County, and provide such reports to identify the depth of the relevant portion of the Electrical Infrastructure, such request to be made in writing to Jericho with advance notice of twenty (20) days prior to the County or a third party commencing work that may conflict with the Electrical Infrastructure.

**Relocation of Installed Infrastructure**

*Upon Election of Jericho*

22. In the event that Jericho wishes to relocate Electrical Infrastructure which has been previously installed in accordance with this Agreement at 100% its own expense, Jericho shall notify the County of such request, in writing, and such request will thereafter be considered and administered by the County acting reasonably and with diligence giving due consideration to the scope of the works already undertaken by Jericho on the Road Allowances, provided that, in considering and administering such request the County shall be entitled to take into consideration any specific municipal or engineering interests affected by such relocation including any additional facilities located within the Road Allowances. Jericho shall obtain all Permits and/or approvals from the County which are required for any such relocation. Notwithstanding the foregoing, the County shall not unreasonably withhold, delay or condition its approval for such request.

*Required by the County*

23. In the event that the County, in conjunction with an approved municipal plan, and acting reasonably, deems it necessary for the location of the Electrical Infrastructure or Entrances (hereafter, a "**General Relocation**") to be taken up, removed, or modified within the Road Allowances, the General Relocation and any related installation work shall be conducted at 100% of the expense of Jericho within a reasonable period of time and subject to Force Majeure. Furthermore, in the event Electrical Infrastructure situated on private property directly adjacent to the Road Allowances located between the Jericho Collection Substation and Arkona Road along Thomson Line (all as identified on Schedule "B"), are required to be relocated as part of a widening of such Road

Allowances by the County, such relocation shall be conducted at 100% of the expense of Jericho within a reasonable period of time and subject to Force Majeure.

24. Without limiting and in addition to Section 23, in the event that Jericho determines that leave to construct or amendment thereto or any other approval is required from a Public Authority, or any successor thereof, with respect to the proposed General Relocation or related installation work, then the County shall provide such reasonable period of time as is necessary for Jericho to obtain such leave to construct, amendment or other approval before closing or disposing of the Road Allowance, if applicable; provided, however, in the event that any Public Authority's approval is not provided to Jericho, both Jericho and the County shall be bound to comply with the determination of the Public Authority and shall modify or discontinue the relocation of the Electrical Infrastructure or Entrances as necessary.

*Required by Legislation or Lawful Order*

25. In the event that a General Relocation is required as a result of the County's compliance with a legislative requirement, Ministerial order or such other law or order of a body which has the ability to force the County to act then the costs of the General Relocation and/or related installation work associated with the installed Electrical Infrastructure shall be performed by Jericho at 100% its cost.

*By Third Party*

26. Where the General Relocation under Section 24 is required due to the County accommodating Third Party Work, the required General Relocation or related installation work shall be conducted by Jericho in accordance with the terms of this Agreement respecting installation, and the full cost of the amendment or General Relocation shall be borne solely by the third party and paid in advance. The County agrees to provide Jericho with ninety (90) days' notice of the need for any such Third Party Work and to require that the relevant third party or parties bear the full cost of such Third Party Work and indemnify Jericho against all claims and liabilities arising from the amendment or General Relocation as a condition precedent to any such amendment or General Relocation.

*Road Work*

27. Jericho shall, upon reasonable prior notice to the County, have the right to:
- (a) Conduct Road Work to permit the delivery or movement of oversized Wind Project components, including wind turbine blades, tower sections and nacelles; and
  - (b) connect access roads located on private land and running from the Wind Project turbines to the Road Allowances to permit ongoing access to such wind turbines during the period of commercial operation of the Wind Project.

**D. TREE WORK**

28. Notwithstanding applicable statutory rights, in the event that Jericho deems it necessary to perform any Tree Work, Jericho shall be entitled to conduct the Tree Work. In the event that trees are removed from within the Road Allowances, Jericho agrees at its sole expense, to remove the tree stump to a level below grade and to restore and remediate the surface of the Road Allowance.

**E. IMPLEMENTATION OF PLANS**

**Revisions Required**

29. In the event that physical features of the Road Allowances or other obstacles or circumstances frustrate the ability of Jericho to complete the placement, installation, construction, re-construction, inspection, maintenance, operation, alteration, enlargement, repair, replacement, relocation and removal of Electrical Infrastructure in compliance in all material respects with the Approved Road Use Plans, Jericho agrees to revise the relevant Plans and submit such revised Plans for review and approval by the County Engineer. If revisions to the Plans are required which would impact either (i) the safety or operation of the Road Allowances or (ii) other existing Road Allowance users, in accordance with applicable engineering and industry standards (such revisions being, a “**Material Change**”), subject to Section 61 of this Agreement, the County agrees to expedite its review of the Plans submitted and agrees not to unreasonably condition, delay or withhold approval of revised Plans.

**Adherence to Approved Road Use Plans**

30. Jericho further agrees to commence, perform and complete the placement, installation, construction, re-construction, inspection, maintenance, operation, alteration, enlarging, repairing, replacing, relocating and removing Electrical Infrastructure in compliance with the Approved Road Use Plans, provided there is no material impact on (i) the safety or operation of the Road Allowances or (ii) other existing Road Allowance users, in accordance with current engineering and industry standards or unless otherwise approved by the County Engineer, acting reasonably.

**Filing of As-Built Plan Following Installation etc.**

31. Following the completed placement, installation, construction, re-construction, inspection, maintenance, operation, alteration, enlarging, repairing, replacing, relocating and removing Electrical Infrastructure and within one hundred eight (180) days after the Commercial Operation Date, Jericho agree to conduct the necessary investigation necessary to produce and file with the County Engineer an As-Built Plan together with a final electronic copy (CD ROM or DVD) prepared in an AUTOCAD, CAD or GIS environment of the As-Built Plan, showing the exact location and specifications of any Electrical Infrastructure installed over, along, across, under or within the Road Allowances and any Entrances. The Parties agree that the County shall not release of any deposits or securities held until the As-Built Plan is filed.

### **Post-Installation Report and Required Repairs**

32. Following the County Engineer's receipt of notice from Jericho confirming that installation of the placement, installation, construction, re-construction, inspection, maintenance, operation, alteration, enlarging, repairing, replacing, relocating and removing Electrical Infrastructure over, along, across, within or under the Road Allowances is complete (the "**Completion Notice**"), the Consulting Engineer shall conduct a further inspection and provide a post-installation report (the "**Post-Installation Report**"), which includes the following:
- (a) identification of the Road Allowances which in the opinion of the Consulting Engineer, have been damaged or destroyed by Jericho and its employees, agents or contractors during the placement, installation, construction, re-construction, inspection, maintenance, operation, alteration, enlarging, repairing, replacing, relocating and removing Electrical Infrastructure over, along, across, within or under the Road Allowances, hauling, or establishing of Entrances;
  - (b) a video recording, of the then-existing condition of all Road Allowances or structures that Jericho has used or were subject to Work; and
  - (c) identification of the repairs, replacements or remedial work necessary to repair the damaged Road Allowances.

The Consulting Engineer's inspection, for the purposes of producing the Post-Installation Report shall be completed no later than ten (10) business days following receipt by the County of the Completion Notice. Jericho agree to repair any and all damage to the Road Allowances directly caused by the Work in accordance with the Post-Installation Report (hereinafter referred to as the "**Required Repairs**"). In the event Jericho fails to complete the Required Repairs in a manner and within a timeframe acceptable to the County Engineer acting reasonably, the County may do so at the sole expense of Jericho.

### **Final Condition Report and Final Repairs**

33. Following the expiry of the Interim Period, the County's Engineer shall forthwith conduct an inspection of the Road Allowances to either (i) confirm its satisfaction that all restoration work has been completed and that the Road Allowances are in the same or better condition which existed prior to the performing of the Work; or (ii) identify those Road Allowances which are not in the same or better condition which existed prior to the performing of the Work and identify the repair, replacement or remedial work required to repair the Road Allowances to the same condition which existed prior to the performing of the Work (the "**Final Condition Report**"). The County Engineer's inspection, for the purposes of producing the Final Condition Report shall be completed no later than ten (10) Business Days following the expiry of the Interim Period and the Final Condition Report shall be delivered to Jericho not later than ten (10) Business Days following the date of inspection aforesaid. Jericho agrees to repair any damage to the Road Allowances identified in the Final Condition Report (the "**Final Repairs**") within a reasonable period of time. In the event Jericho fails to complete the Final Repairs in a manner and within a



timeframe acceptable to the County Engineer acting reasonably, the County may do so at the sole expense of Jericho.

**F. COMPENSATION**

**For Use of Road Allowances**

34. To offset the administrative expenses incurred by the County as a result of the use of its Road Allowances and to further secure covenants of Jericho as set out in this Agreement, Jericho agrees to pay to the County:

- (a) An initial payment of Fifteen Thousand Dollars (\$15,000.00) within thirty (30) days of the Effective Date of this Agreement, which shall *inter alia*, fully compensate the County for all reasonable out of pocket costs incurred in connection with the preparation and implementation of this Agreement including reasonable legal, engineering and inspection costs;
- (b) An annual fee in the amount of four thousand dollars (\$4,000.00) per kilometer of overhead transmission lines located on County Road Allowances per year, payable by March 31 of every year during the Term of this Agreement. The Parties estimate that Jericho will have approximately three (3) kilometres of overhead transmission lines located within County Road Allowances;
- (c) A fee (the “**Distribution Fee**”) in the amount of:
  - (i) one thousand dollars (\$1,000.00) per road crossing of Distribution Infrastructure; plus
  - (ii) one thousand five hundred dollars (\$1,500.00) per kilometer of Distribution Infrastructure buried on County Road Allowances.

The Distribution Fee shall be payable within thirty (30) days following the Effective Date and thereafter once every five (5) years, on the fifth (5<sup>th</sup>) anniversary of the Effective Date. The Distribution Fee may be amended by the County, from time to time, in accordance with amendments to County by-laws, provided the Distribution Fee charged to Jericho shall be consistent, in all respects, with other such fees charged by the County to similar Road Allowance users. For the purposes of this Agreement, the Parties estimate that Jericho will have approximately twenty-five (25) Distribution Infrastructure road crossings located within County Road Allowances and approximately twenty-six (26) kilometers of Distribution Infrastructure buried on County Road Allowances; and

- (d) The appropriate permit fees, which fees are shown in the Permits and Fees Document (**Schedule “D”**) with respect to those permits Jericho requires in order to engage in desired actions while using the rights identified in this Agreement.
35. All overdue payments payable by Jericho to the County under the terms of this Agreement shall bear interest at the rate of ten (10%) per cent per annum.

### **First Security Deposit**

36. Prior to the commencement of the Work, Jericho shall deposit with the County an irrevocable letter of credit (“**LC**”) or surety bond in a form satisfactory to the County and from a financial institution satisfactory to the County, acting reasonably (the “**First LC**”) in the amount of Five Hundred Thousand Dollars (\$500,000.00), which shall secure the obligations of Jericho pursuant to this Agreement during the initial placement, installation and construction of the Electrical Infrastructure over, along, across, within or under the Road Allowances. Jericho acknowledges and agrees that the County shall be entitled to draw on and use the proceeds from the First LC to complete the Required Repairs if Jericho fails to do so in accordance with Section 32 of this Agreement.

### **Second Security Deposit**

37. Following the completion of any Required Repairs to the satisfaction of the County acting reasonably, the County shall forthwith return the First LC to Jericho and Jericho shall, within five (5) business days of the receipt of the First LC, provide a second irrevocable letter of credit or surety bond in a form satisfactory to the County and from a financial institution satisfactory to the County, acting reasonably (the “**Second LC**”) in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00), which shall secure the obligations of Jericho with respect to Section 33. Jericho acknowledges and agrees that the County shall be entitled to draw on and use the proceeds of the Second LC to complete the Final Repairs in the event Jericho fails to do so within a reasonable period of time, in accordance with Section 33 of this Agreement. The County shall return the Second LC to Jericho within five (5) business days following the earlier of, (i) the date on which Jericho notifies the County that the Final Repairs required to be performed by Jericho pursuant to Section 33 have been satisfactorily completed in the opinion of the County, acting reasonably; and (ii) the date which is ninety (90) days following the date of the Final Condition Report.

## **G. LIABILITY**

### **Risk with Jericho**

38. Jericho hereby acknowledges that the placement, installation, construction, reconstruction, inspection, maintenance, operation, alteration, enlarging, repair, replacement, relocation and/or removal of any Electrical Infrastructure by Jericho in accordance with the Easement Rights granted hereunder is performed entirely at the risk of Jericho and that the County shall in no way or under any circumstances will be responsible or liable to Jericho or its contractors, agents, or customers for any damage or losses in consequence thereof, unless due to the negligent or intentional acts of the County or those for whom it is at law responsible.

### **Indemnification**

39. Jericho will indemnify and hold harmless the County, its Warden, Councilors, officers, employees, legal counsel, agents and contractors from and against any and all claims, suits, demands, liabilities, losses, costs, damages, and other expenses of every kind that

the County may incur or suffer as a direct consequence of the Easement Rights granted hereunder, except where such claims, suits, demands, liabilities, losses, costs, damages, and other expenses result from the negligence or intentional acts of the County, its Warden, Councilors, officers, employees, legal counsel, agents or contractors.

**No Joint Venture, Partnership or Co-ownership**

40. The Parties hereby acknowledge and agree that this Agreement is solely a road use agreement and that no relationship is formed between the Parties in the nature of a joint venture, partnership co-ownership arrangement or other similar relationship.

**H. ABANDONMENT AND DECOMMISSIONING OF ELECTRICAL INFRASTRUCTURE**

**Notice of Abandonment**

41. During the Term of this Agreement, Jericho may elect to permanently discontinue the use of (hereinafter, “**Abandon**”) any part of the Electrical Infrastructure in which event Jericho shall provide written notice specifying the part of the Electrical Infrastructure to be Abandoned and the date when the Abandonment will occur.

**Removal**

42. If Jericho Abandons any part or all of the Electrical Infrastructure, it shall decommission and remove in accordance with the Wind Project’s decommissioning plan and the Ministry of Environment (“**MOE**”) requirements in Jericho’s Renewable Energy Approval (“**REA**”). Should Jericho fail to decommission and remove the infrastructure as set out above, the County may, to the extent permitted by Applicable Law, retain necessary personnel to remove the infrastructure and Jericho shall compensate the County for 100% of its cost to decommission and remove the infrastructure. This provision shall survive the termination of this Agreement.

**I. DEFAULT**

**Breach**

43. Subject to the rights granted to any Secured Parties hereunder or by the County, in the event that a Party commits a material breach of or omits to comply with any of the provisions of this Agreement (the “**Defaulting Party**”) which continues for at least sixty (60) days after written notification of such default is provided to the Defaulting Party, the other Party (the “**Complainant**”) shall have the right to terminate this Agreement. However, if the Defaulting Party shall have remedied the breach or shall have commenced to remedy the breach and has diligently pursued the remedying thereof within the sixty (60) days after the initial written notification of default, the Defaulting Party shall be allowed not less than one hundred and fifty (150) days after the expiry of the original notice period to remedy the breach, or such longer period of time as is reasonable in the circumstances. In the event of default by Jericho and without such

default being rectified within the time period referred to in this section, the County shall have the right to terminate this Agreement.

**Force Majeure**

44. Whenever, and to the extent that a Party will be unable to fulfill or will be delayed or restricted in the fulfillment of any obligations under any provision of this Agreement by reason of:

- (a) strikes;
- (b) lock-outs;
- (c) war acts of military authority;
- (d) rebellion or civil unrest;
- (e) material or labour shortage not within the control of the affected Party;
- (f) fire or explosion;
- (g) inclement weather, flood, wind, water, earthquake, or other casualty;
- (h) changes in Applicable Law not wholly or mainly within the control of the affected Party, including the revocation by any Public Authority of any permit, privilege, right, approval, license or similar permission granted to Jericho or the Wind Project;
- (i) any event or matter not wholly or mainly within the control of the affected Party (other than lack of funds or any financial condition of the parties hereto); or,
- (j) acts of God,

(in each case a “**Force Majeure**”) not caused by the default or act of or omission by that Party and not avoidable by the exercise or reasonable effort or foresight by it, then, so long as any such impediment exists, that Party will be relieved from the fulfillment of such obligation and the other Party will not be entitled to compensation for any damage, inconvenience, nuisance or discomfort thereby occasioned. The Party relying on Force Majeure will be required and is entitled to perform such obligation within a period of time immediately following the discontinuance of such impediment that is equal to the period of time that such impediment existed. A Party shall promptly notify the other Party of the occurrence of any Force Majeure, which might prevent or delay, that doing or performance of acts or things required to be done or performed.

**J. MISCELLANEOUS**

**Assignment**

45. Subject to the provisions in other paragraphs of this Agreement, Jericho shall not assign this Agreement without the prior written consent of the County, which shall not be unreasonably withheld, delayed or conditioned, except that no consent shall be required for Jericho to assign this Agreement to an affiliated or successor entity, or for purposes of securing indebtedness or other obligations respecting the Electrical Infrastructure or the Wind Project. The County acknowledges that a change in control of Jericho shall not be considered an assignment by Jericho of this Agreement or of any of Jericho's rights and obligations under this Agreement.
46. Jericho shall be entitled to assign this Agreement and all of its rights thereunder without the consent of the County to the Secured Parties as security for Jericho's obligations to such Secured Parties which shall be further entitled to assign this Agreement and Jericho's rights thereunder in connection with an enforcement of their security. The County hereby grants to any Secured Party the rights and remedies set forth in this Agreement, including those rights and remedies set forth in **Schedule "E"**. In addition, the County will, from time to time, at the request of the Secured Party, promptly execute and deliver in favour of any Secured Party such consents and acknowledgements granting and confirming the rights and remedies in this Agreement, including those rights and remedies set forth in **Schedule "E"**. The County shall enter into any other reasonable agreements with the Secured Party, as may reasonably be required by Jericho in order to obtain financing from the Secured Party.
47. Jericho shall be entitled, with the written consent of the County, which may not be unreasonably conditioned, delayed, or withheld, to assign this Agreement to a transferee of the Wind Project other than an affiliated or successor company, and Jericho shall thereupon be released from any and all obligations under this Agreement from and after the date of such assignment, provided that such assignee has agreed in writing with the County, in a form acceptable to the assignee and the County, both acting reasonably, to be bound by the provisions of this Agreement from and after the date of the assignment.
48. In the event Jericho applies to the County for consent to a transfer, the County shall have a period of thirty (30) days following receipt of sufficient information to make a determination as to whether the County shall provide or refuse to provide its consent to the proposed transfer. The County's failure to respond within that thirty (30) day period shall be construed as consent by the County.
49. Any documents relating to a transfer or the County's consent will be prepared by the County or its solicitors or their retained agents and all of the legal costs borne as a result by the County together with a reasonable administrative charge of One Thousand Dollars (\$1,000) shall be reimbursed to the County by Jericho on demand.

### **Dispute Resolution**

50. In the event that either Party provides the other Party with written notice of dispute regarding the interpretation or implementation of this Agreement (a “**Dispute**”) then both Parties shall use their best efforts to settle the Dispute by consulting and negotiating with each other in good faith to reach a solution satisfactory to both Parties. However, if the Parties do not resolve the Dispute within thirty (30) days following receipt of such notice, then either Party may provide written notice to the other Party (the “**Arbitration Notice**”) requiring resolution by arbitration or thereafter the Dispute shall be referred to arbitration in accordance with the provisions of the *Arbitration Act, 1991*.
51. The Parties agree to the following with respect to any arbitration between the Parties:
- (a) the arbitration tribunal shall consist of an arbitrator appointed by mutual agreement of the Parties or, if the Parties fail to agree on an arbitrator within ten (10) days after receipt of the Arbitration Notice then either Party may apply to a judge of the Ontario Superior Court of Justice to appoint an arbitrator;
  - (b) The arbitrator shall be qualified by education and training to be able to decide upon the matter to be decided;
  - (c) The arbitration shall be conducted in English;
  - (d) The arbitration shall take place in the geographic boundary of the County of Lambton or another place mutually agreed upon by the Parties;
  - (e) The arbitration award shall be given in writing and shall address the question of costs of the arbitration and all related matters;
  - (f) The arbitration award shall be final and binding on the Parties as to all questions of fact and shall be subject to appeal only with respect to matters of law or jurisdiction.
52. The Parties agree that except to the extent that a matter is specifically the subject of a Dispute, both Parties shall continue to observe and perform the terms and conditions of this Agreement pending the resolution of a Dispute.

### **Termination by Jericho**

53. Jericho may upon six (6) months’ notice in writing, terminate this Agreement. Once the notice has been provided, Jericho shall be liable to the County for the provisions of this Agreement to the date of termination. Following the termination date, Jericho will only be liable for those obligations contained in Sections 15, 16, 32, 33, 36, 37, 38, 39 and 42, all of which shall survive such termination.

#### **Further Assurances**

54. Each of the Parties covenant and agrees with the other that it will at all times hereafter execute and deliver, at the request of the other, all such further documents, agreements, deeds and instruments, and will do and perform all such acts as may be necessary to give full effect to the intent and meaning of this Agreement.

#### **Notices**

55. The parties hereto agree as follows:

Any written notice provided for and contemplated by this Agreement will be delivered to the parties by hand or registered mail at the following addresses:

To the County:                      The Corporation of the County of Lambton  
Attention: County Clerk  
789 Broadway Street, Box 3000  
Wyoming, ON N0N 1T0

To Jericho:                          Jericho Wind, Inc.  
Attention: Business Management  
390 Bay Street, Suite 1720  
Toronto, ON, M5H 2Y2, Canada

Phone: (416) 364-9714

With a copy to:                      Jericho Wind, Inc.  
Attention: General Counsel  
700 Universe Blvd. LAW/JB  
Juno Beach, Florida 33408  
Phone: (561) 691-2359

Every such notice shall be deemed to have been received if personally delivered at the time of such delivery and if sent by prepaid registered mail, at the end of five (5) business days after the mailing thereof.

#### **Governing Law**

56. This Agreement shall be governed by, and be construed and interpreted in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario.

#### **Counterparts**

57. This Agreement may be executed by facsimile or PDF transmission and in one or more counterparts, all of which shall be considered one and the same Agreement.

### **Binding Covenant**

58. This Agreement and the rights granted hereunder are and shall be of the same force and effect, to all intents and purposes, as a covenant running with the Road Allowances. The provisions of this Agreement, including all of the covenants and conditions herein shall extend, be binding upon and enure to the benefit of the County, Jericho and their respective successors and permitted assigns as the case may be.

### **Severability**

59. The invalidity or unenforceability of any provision of covenant contained in this Agreement shall affect the validity or enforceability of such provision or covenant only and any such invalid provision or covenant shall be deemed to be severable from the balance of this Agreement, which shall be enforced to the greatest extent permitted by law.

### **Amendments to the Agreement**

60. No supplement, modification, amendment, or waiver of this Agreement shall be binding unless executed in writing by the Parties.

### **Amendments to the Approved Road Use Plans**

61. Any Material Change to the Approved Road Use Plans will be submitted to the County Engineer for his approval, who will not unreasonably withhold such approval. The Parties agree that once approved, the amended Approved Road Use Plans shall substitute for, and replace the attached **Schedule "B"** as part of this Agreement.

### **Waiver**

62. No supplement, modification, amendment, or waiver of this Agreement shall be binding unless executed in writing by the Parties.

### **Foreign Corrupt Practices Act and Anti-Bribery Indemnity**

63. Notwithstanding anything to the contrary herein, the County, in its administration of this Agreement, shall refrain from offering, giving or promising, directly or indirectly, money or anything of value to a Canadian or foreign governmental official to influence the official in his or her official capacity, induce the official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person. For the purposes of this Section, "**anything of value**" includes, but is not limited to, cash or a cash equivalent, discounts, gifts, use of materials, facilities or equipment, entertainment, drinks, meals, transportation, lodging, insurance benefits, or promise of future employment. "**governmental official**" shall mean any person holding any level of legislative, administrative, or judicial office of the Canadian or a foreign government or any of its departments or agencies or divisions; any person acting on behalf of the Canadian or a foreign government, including a local or provincial agency, enterprise, or



organization; any official or agent of a Canadian or a foreign public administration or publicly funded organization; any official of a Canadian or a foreign political party; any officer or agent of a public international organization (e.g., World Bank, International Monetary Fund, World Health Organization, United Nations, World Trade Organization); or any relatives or close family/household members of any of those listed above. The County shall indemnify and hold harmless Jericho from all claims brought against Jericho as a result of the County or its representatives' failure to comply with Anti-Bribery Law. The County shall immediately report any breach of Anti-Bribery Law by the County or its representatives. The County shall indemnify and hold harmless Jericho from all claims brought against Jericho as a result of the County or its representatives' failure to comply with Anti-Bribery Law. The County shall immediately report any breach of Anti-Bribery Law by the County or its representatives. Jericho shall have the right to audit the County's books and records with respect to payments made on behalf of Jericho in the event that Jericho believes that the County has violated this Section 63. Jericho shall have the right to immediately terminate all payments to the County under this Agreement if the County fails to comply with this Section 63.

#### **Phragmites Prevention/Control Payment**

64. In recognition of the threat of *Phragmites australis*, Jericho agrees to make payments to the County in the amount of not less than \$20,000.00 and up to \$50,000.00 in total (the "**Phragmites Payment**") to support efforts by or on behalf of the County to prevent and/or control the spread of *Phragmites australis* within Lambton County. The scope of the effort shall be determined by County Staff in consultation with Jericho, and will prioritize the spending of the Phragmites Payment and agree upon appropriate prevention and/or control methods within the area encompassed by the Wind Project wherever possible. The Phragmites Payment shall be payable by Jericho to the County within thirty (30) days of Jericho and County staff agreeing on the scope of the effort.

**[Signature page follows]**

IN WITNESS WHEREOF the parties hereto affix their hands and seal or corporate seals, attested to by the hand of their authorized officers, as the case may be, at \_\_\_\_\_, Ontario, this \_\_\_\_ day of \_\_\_\_\_, 2014 to be effective as of the date first written above.

SIGNED, SEALED AND DELIVERED  
in the presence of

**THE CORPORATION OF THE  
COUNTY OF LAMBTON**

---

Warden

---

Clerk

*We have the authority to bind the Corporation*

SIGNED, SEALED AND DELIVERED  
in the presence of

**JERICHO WIND INC.**

---

Per:

Title:

*I have the authority to bind the Corporation*

**SCHEDULE "A"**

**Jericho Asset Document**

Jericho Wind, Inc. ("Jericho") is the project entity for the Jericho Wind Energy Centre ("Jericho Project") located in Middlesex County, Ontario. Jericho is the owner of a Feed-In-Tariff Contract with reference number F-002172-WIN-130-601 (FIT Contract).

The Jericho Project will generate up to 150 megawatts, and Jericho is the owner of wind farm leases and easement agreements to support the infrastructure and facilities for the Jericho Project.

Jericho will own all the turbines and infrastructure for the Jericho Project. Jericho will also have an interest in portions of the transmission lines and facilities supporting the Jericho Project. The estimated value of the assets of the Jericho Project, as of the commercial operation date, will be not less than \$XXXXXXXXXXXX.

***CONFIDENTIAL***

**SCHEDULE "B"**

Approved Road Use Plans

- B1 Jericho Transmission Plan and Profile**
- B2 Jericho Transmission Foundation Designs**
- B3 Jericho Transmission Pole Configurations**
- B4 Jericho Transmission Pole Clear Zone Mitigation Map**
- B5 Jericho Transmission Pole Clearance from Edge of Roadway**
- B6 Jericho Typical Culvert Cross Section**
- B7a Jericho Transmission Line Construction Methods**
- B7b Jericho Distribution (Collection) Construction Methods**
- B8 Jericho Conductor Horizontal Clearances**
- B9 Jericho Distribution (Collection) Longitudinal Cross-Sections**
- B10 Jericho Distribution (Collection) Perpendicular Cross-Sections**
- B11 Jericho Distribution (Collection) Location Map**
- B12 Improvements to Intersections**

**SCHEDULE "C"**

Appropriate Emergency Service Providers

**Police Services**

In case of emergency call 911

- OPP Grand Bend detachment
  - 58 Main St, Grand Bend, ON. N0M 1T0  
Office: 519-238-2345
- OPP Forest detachment
  - 101 Broadway Street, PO BOX 130, FOREST, ON. N0N 1J0  
Office: 519-786-2349

**Fire Services**

In case of emergency call 911

- Municipality of Lambton Shores
  - 7883 Amtelecom Parkway, Forest, ON N0N 1J0  
Office: 519-786-2335
  - Grand Bend Fire Hall – 4 Municipal Drive
  - Arkona Fire Hall – 7355 Arkona Road
  - Thedord Fire Hall – 109 Pearl Street
  - Forest Fire Hall – 65 Main Street
  - Northville Fire Hall – 9575 Port Franks Road

**Emergency Medical Services**

In case of emergency call 911

- Lambton County EMS
  - 3958 Petrolia Line, RR4, PETROLIA, ON. N0N 1R0  
Office: 519-882-2442

**SCHEDULE "D"**

Permits and Fees

*\*All references to legislation, by-laws and fees in this Schedule shall be interpreted as references to those by-laws and fees as they may be amended, superceded or replaced from time to time*

<b><u>By-Law Reference</u></b>	<b><u>Permit Required with Appropriate Application</u></b>	<b><u>Cost</u></b>
By-law #142 of 1994: Entrances to County Roads By-Law	Entrance Permit (authorizing access to County Roads, permanent and/or temporary, via entrance permit application)	\$25.00 fee plus \$1,000.00 security deposit
By-law #88 of 1998: Moving of Oversize or Overweight Objects over County Roads	Overdimension/Overweight Permit (authorizing moving of oversize and overweight objects on County Roads, via oversize/overweight permit application)	Varies fee (\$50.00-\$500.00) per load based on dimensions and/or weight, plus security deposit and \$2,000,000 liability insurance coverage
By-law #94 of 1999: Displaying of Signs, Notices or Advertising Devices	Sign Permit (authorizing the erection of signs within the County's Control area adjacent to County Roads via sign permit application)	\$100.00 fee

**SCHEDULE "E"**

**Rights and Remedies Accorded to Secured Parties**

1. The County will from time to time execute and deliver such consents and acknowledgements reasonably requested by the Secured Party.
2. The County agrees that, upon the Secured Party giving the County written notice of any security granted by Jericho in the Agreement, the Secured Party will, without any further action being required, have the benefit of the following provisions until such time as the Secured Party advises the County in writing that its security is no longer in effect (and, if the Secured Party so requests, the County will (i) acknowledge in writing that the Secured Party so benefits from these provisions, or (ii) enter into a written agreement with the Secured Party substantially in accordance with these provisions):
  - (a) the County will give prompt written notice to the Secured Party of any breach or default by Jericho of its obligations under the Agreement in respect of which the County proposes to exercise any of its remedies;
  - (b) the County will give the Secured Party the right to cure any breach or default by Jericho under the Agreement, within a period of 90 days commencing on the later of (i) the expiry of the cure period afforded Jericho under the Agreement, and (ii) the date on which the County gives the Secured Party notice of such breach or default pursuant to Section 2(a), or such longer period of time as the Secured Party may reasonably require to cure such breach or default; and no exercise by the County of any of its rights or remedies against Jericho will be effective against Jericho or the Secured Party unless the County has provided the Secured Party such notice and opportunity to cure.
  - (c) the County will, at any time and from time to time, upon not less than ten (10) days' prior request by Jericho or the Secured Party or proposed the Secured Party, execute any agreements, certificates or acknowledgements that Jericho or the Secured Party may reasonably request with respect to this Agreement; and
  - (d) all notices to the Secured Party from the County will be in writing and will be sent by personal delivery, registered mail, email or by fax to the address, email address or facsimile number of the Secured Party set out in any notice that the Secured Party delivers to the County.
3. The provisions of Section 2 will enure to the benefit of the Secured Party and its successors and assigns, and any rights conferred on the Secured Party by the terms of this Agreement or limiting its liability under the Agreement will benefit each receiver or receiver-manager appointed by the Secured Party or by a court of competent jurisdiction.
4. The County hereby acknowledges that Jericho may grant security to a trustee or collateral agent acting on behalf of one or more lenders (a "**Collateral Agent**"), and the County hereby acknowledges and agrees that upon its receipt of notice that such security was granted, the

- 34 -

Collateral Agent will be entitled to all of the rights of the Secured Party set forth in this and such notice will constitute notice of the existence of the Collateral Agent as the Secured Party.



PW 06-02-14



May 8, 2014

Council of the Corporation of Lambton County  
c/o David Cribbs, General Manager, Solicitor / Clerk  
County of Lambton  
789 Broadway Street, Box 3000  
WYOMING, ON. N0N 1T0

**BY EMAIL**

Dear Mr. Cribbs:

On May 6<sup>th</sup>, 2014 the Ontario Energy Board (OEB) granted Jericho Wind, Inc. leave to construct its transmission facilities in Lambton and Middlesex Counties. Along with our Renewable Energy Approval, this approval grants the authority that Jericho Wind requires to commence construction of our transmission facilities.

As you know, we have been in discussion with the County in an effort to put in place a road use agreement (RUA) that codifies the process and relationship between Jericho Wind and the County during construction, as well as during the operational phase of the project. In particular, the current draft RUA requires Jericho Wind to name the County as an additional insured on our commercial general liability insurance, repair damage incurred to the right of way during construction, and to post security to backstop those repair obligations. In addition, Jericho Wind has agreed to compensate the County for locating electrical infrastructure in County rights-of-way and to bear the cost of relocating said infrastructure in certain circumstances. While a number of conditions and commitments by Jericho in the RUA may not be required by law, Jericho has, nonetheless, agreed to these terms in an effort to address concerns raised by County staff.

The completion date mandated in our contract with the Ontario Power Authority makes commencing this construction increasingly urgent. In discussions with County staff, we understand that staff's report on the RUA is scheduled to come before committee on May 21<sup>st</sup> to review the results of the 60 day public comment period, as well as to report on the OEB's recent decision. To demonstrate our good faith and strong preference for entering into a RUA with Lambton County, Jericho Wind plans to delay construction within the County's rights of way until after May 21 so as to allow councillors, through its Committee A.M. – and Committee P.M. as required – a chance to receive the staff's report and to advise us on the County's resulting position on the RUA.

We look forward to continuing to work with Lambton County in this regard.

Sincerely,  
**JERICHO WIND, INC.**

A handwritten signature in blue ink, appearing to read "Ben Greenhouse".

**BY:** Ben Greenhouse  
Director, Development

**cc:** Jason Cole, Lambton County

NextEra Energy Canada, ULC

390 Bay Street, Suite 1720 | Toronto, Ontario M5H 2Y2 | 416 364 9714