

THE CORPORATION OF THE TOWNSHIP OF NORTH STORMONT

BY-LAW NO. 14-2018

Being a By-law to Enter into a Road User Agreement for the Nation Rise Wind Farm Project.

WHEAREAS the Province of Ontario awarded EDP Renewables a contract to construct a 100 MW wind turbine project within the Township of North Stormont;

AND WHEREAS the *Municipal Act* permits municipalities to pass by-laws pertaining to spheres of jurisdictions, including highways;

AND WHEREAS the Township of North Stormont finds it expedient to enter into a Road User Agreement to protect municipal infrastructure during the construction of the Nation Rise Wind Farm;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF NORTH STORMONT ENACTS AS FOLLOWS:

1. That the Mayor and CAO/Clerk are hereby authorized to sign the Road User Agreement as approved by Council, which shall come into force and effect on the date the By-law was passed.
2. That the Chief Administrative Officer/Clerk of the Township of North Stormont is hereby authorized to make minor modifications or corrections of a grammatical or typographical nature to the By-Law, after the passage of this By-Law, where such modifications or corrections do not alter the intent of the by-law.

READ A FIRST, AND SECOND TIME AND PASSED in open Council, signed and sealed this 27th, day of March 2018.

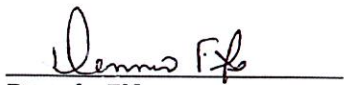


Dennis Fife
Mayor



Marc Chénier
Chief Administrative Officer/Clerk

READ A THIRD TIME AND PASSED in open Council, signed and sealed this 10th, day of April.



Dennis Fife
Mayor



Marc Chénier
Chief Administrative Officer/Clerk

ROAD USE AND RIGHT OF WAY AGREEMENT

THIS ROAD USE AND RIGHT OF WAY AGREEMENT (“**Agreement**”) is made and entered into as of the 10th day of April, 2018 (the “**Effective Date**”) by and between The Corporation of the Township of North Stormont (the “**Township**”) and Nation Rise Wind Farm Limited Partnership, a limited partnership formed pursuant to the laws of Ontario (“**Wind Company**”). The Township and Wind Company are sometimes each referred to herein as a “**Party**” and collectively, as the “**Parties**”.

RECITALS

WHEREAS, the Township is a municipal corporation within the meaning of the *Municipal Act, 2001*, S.O. 2001, Chapter 25 (the “**Municipal Act**”) and is the owner of or exercises jurisdiction over certain public rights-of-way, highways, streets, sidewalks, walkways, driveways, ditches, municipal drains and associated grassy areas and the allowances therefore more particularly shown herein.

AND WHEREAS, Wind Company is planning to construct and operate a 100 MW wind power generation facility in North Stormont, Ontario (the “**Generation Facility**”) comprised of a maximum of Thirty-Three (33) Turbines.

AND WHEREAS, Wind Company desires to use certain portions of the Roadways for the purposes of transporting equipment and materials necessary for the construction and operation of the Project (as defined below).

AND WHEREAS, the Township and Wind Company acknowledge Wind Company’s statutory rights as a distributor of electricity pursuant to the *Electricity Act, 1998*, S.O. 1998, Chapter 15, Schedule A (the “**Electricity Act**”) to install, construct, operate and maintain certain infrastructure for the distribution of electricity from the Generation Facility, including but not limited to, overhead and/or underground distribution lines and poles and related connections, attachments, apparatus, equipment and facilities which the Wind Company deems necessary from time to time, for the distribution of electricity on, over, under along or through the Roadways and for the construction and operation of the Generation Facility (the “**Distribution Facilities**” and together with the Generation Facility, the “**Project**”).

AND WHEREAS, the Township has agreed to confirm and grant such rights, privileges and interests, benefits and easement to the Wind Company to use the Roadways for the purposes of transporting equipment and materials in accordance with the Delivery and Transportation Plan, and installing, constructing, maintaining and operating the Distribution Facilities and in accordance with the Distribution Plan.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Township and Wind Company agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

Nothing contained in this Agreement shall abrogate or prejudice any statutory rights held by either

Party under any applicable statutes including, but not limited to, the *Ontario Energy Board Act*, 1998, the *Green Energy and Green Economy Act*, 2009, the *Municipal Act* and the *Electricity Act*. In the event of any conflict between a provision of this Agreement and a provision of the applicable law, the applicable law shall prevail.

The follows terms used herein shall have the meanings set forth below.

“**Breaching Party**” has the meaning ascribed to such term in Section 10.1.

“**Civil Engineer**” means an independent Ontario licensed professional civil engineer retained by the Township.

“**Commencement of Construction**” means the date on which unlimited and continuous construction of the Project has begun and does not include: (i) testing or surveying (including geotechnical drilling and meteorological testing) to determine the adequacy of the site for construction; and (ii) preliminary grading of any Private Access Road.

“**Commercial Operation Date**” means the date on which the Project becomes commercially operational as evidenced by notice from the Wind Company.

“**Construction Road Damage**” means damage to Roadways resulting from construction activity of Wind Company including, but not limited to, transportation of equipment and components of the generation facility as evidenced with specificity in the Post-Construction Municipal Infrastructure Survey but excluding (i) damages caused by ordinary wear and tear, (ii) existing damage and/or defects or (iii) other minor impairment to Roadways, .

“**Crossing**” means any place where any components of the Distribution Facilities cross, in whole or in part, any portion of a Roadway or municipal drain.

“**Date of Commencement of Initial Construction**” means the earlier of (i) the date on which the work is commenced for Upgrades of Roadways or (ii) the first date that heavy load wind facilities components for the Project are transported over Roadways.

“**Decommissioning**” has the meaning ascribed to such term in Section 4.1.

“**Delivery and Transportation Plan**” means the plan, drawn to scale, showing the Roadways to be used pursuant to the Delivery and Transportation Use including the transportation route for the delivery and moving of equipment and materials and including specifications relating to any Road Improvements (defined below), as shown and described in Exhibit B to this Agreement, as may be amended from time-to-time.

“**Delivery and Transportation Use**” has the meaning ascribed to such term in Section 3.1.1.

“**Distribution Plan**” means the plan drawn to scale, showing the location of the Distribution Facilities or part thereof within the Roadways, together with specifications relating to the proposed Distribution Facilities or part thereof including the location of any Crossing, as shown and described in Exhibit C, to this Agreement.

“**Distribution Use**” has the meaning ascribed to such term in Section 3.2.1.

“**Event of Default**” has the meaning ascribed to such term in Section 10.1.

“**Force Majeure**” has the meaning ascribed to such term in Section 10.3.

“**Municipality**” means and includes the territorial limits under and subject to the jurisdiction of the Township on the date when this Agreement takes effect.

“**Non-Breaching Party**” has the meaning ascribed to such term in Section 10.3.

“**Permits**” shall mean those permits, approvals, consents or authority within the jurisdiction of the Township required in connection with the work contemplated by this Agreement including those set out in Exhibit E to this Agreement.

“**Post-Construction Municipal Infrastructure Survey**” has the meaning ascribed to such term in Section 3.3.2(ii).

“**Posting Period**” has the meaning ascribed to such term in Section 3.5.

“**Posting Period Repairs**” has the meaning ascribed to such term in Section 3.5.

“**Pre-Construction Municipal Infrastructure Survey**” has the meaning ascribed to such term in Section 3.3.2(i).

“**Private Access Roads**” means access roads necessary for the construction, repair, replacement, operation and maintenance of the Project constructed and installed by Wind Company on private property under written agreement with the landowner.

“**Proposed Warranty Repairs**” has the meaning ascribed to such term in Section 3.3.4.

“**Road Repair Escrow**” has the meaning ascribed to such term in Section 3.9.

“**Road Repairs**” has the meaning ascribed to such term in Section 3.4.1.

“**Road Standards**” has the meaning ascribed to such term in Section 3.3.4.

“**Roadways**” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the open or unopened road allowance now or at any time during the term hereof under the jurisdiction of the Township. For greater clarity, the portions of highways affected by this agreement are more particularly located as shown and described in Exhibit A, Exhibit B and Exhibit C to this Agreement.

“**Term**” has the meaning ascribed to such term in Section 2.1.

“**Upgrade and Improvement Plan**” has the meaning ascribed to such term in Section 3.3.3.

“**Upgrade Warranty**” has the meaning ascribed to such term in Section 3.3.4.

“**Upgrades**” has the meaning ascribed to such term in Section 3.3.3.

“**Warranty Repairs**” has the meaning ascribed to such term in Section 3.3.4.

“**Wind Company Party**” has the meaning ascribed to such term in Section 3.1.1.

ARTICLE II TERM

Section 2.1 Term. Except if otherwise terminated in accordance with the terms of this Agreement, this Agreement shall be for an initial term commencing on the Effective Date and ending on the earlier of (i) the date of completion of the Decommissioning; and (ii) the date that is forty-five (45) years following the Effective Date (the “**Term**”).

ARTICLE III USE OF ROADWAYS BY WIND COMPANY

Section 3.1 Delivery and Transportation Use.

3.1.1 In connection with the development, construction, operation and maintenance of the Project, the Township hereby acknowledges and agrees that Wind Company and Wind Company’s contractors and subcontractors and their respective agents, employees, representatives and permitted assigns (each a “**Wind Company Party**” and collectively, the “**Wind Company Parties**”), may, in accordance with the Delivery and Transportation Plan: (i) use the Roadways for the delivery and transportation of equipment, including heavy equipment and all materials necessary or convenient for the construction, repair, replacement, operation and maintenance of the Project; (ii) widen certain Roadways, including temporary widening of any corner radius necessary to facilitate the turning of transport and delivery trucks and equipment and making certain modifications and improvements (both temporary and permanent) to such Roadways (including to culverts, bridges, road shoulders) to permit such equipment and materials to travel over the Roadways; and (iii) install entrances to the Roadways from Private Access Roads constructed in connection with the Project (the “**Delivery and Transportation Use**”). In the event Wind Company desires to change the Delivery and Transportation Plan, Wind Company shall deliver a copy of the proposed revised Delivery and Transportation Plan to the Civil Engineer. Notwithstanding the notice provisions in Section 8.1, the proposed revised Delivery and Transportation Plan shall not be deemed received until actual receipt of the Delivery and Transportation Plan in the office of the Civil Engineer. The Civil Engineer shall have twenty (20) days to review and approve or reject the revised Delivery and Transportation Plan which approval shall not be unreasonably withheld, delayed or conditioned. The Parties agree to execute an amendment incorporating the revised Delivery and Transportation Plan once it is approved by the Civil Engineer. If the proposed revised Delivery and Transportation Plan is rejected by the Civil Engineer, or if a reply is not provided within the twenty (20) day review period, the Parties agree to work together in good faith to agree to a revised Delivery and Transportation Plan within the following ten (10) day period. If the Parties fail to reach agreement on the revised Delivery and Transportation Plan within such ten (10) day period, then the dispute resolution procedures set forth in Section 7.2 shall apply.

3.1.2 In connection with the Delivery and Transportation Use, Wind Company shall have the right, but not the obligation, to bore and take core samples of the Roadways and perform other testing as deemed appropriate by the Wind Company for the purposes of determining road condition and composition and shall repair any damage caused by boring activities to the reasonable satisfaction of the Township.

Section 3.2 Installation of Distribution Facilities.

3.2.1 In connection with the development, construction and maintenance of the Project and in addition to the Delivery and Transportation Use, the Wind Company Parties shall have the right to construct, maintain, replace, remove, operate and repair the Distribution Facilities within the Roadways and across such Roadways for the distribution of electricity (the “**Distribution Use**”) in accordance with the Distribution Plan. In the event Wind Company Parties desire to make material changes to the change the Distribution Plan, including, without limitation, adding new routes or using new Roadways, Wind Company Parties shall deliver a copy of the proposed revised Distribution Plan to the Civil Engineer. The Civil Engineer shall have twenty (20) days to review and approve or reject the revised Distribution Plan, which approval shall not be unreasonably withheld, delayed or conditioned. The Parties agree to execute an amendment incorporating the revised Distribution Plan once it is approved by the Civil Engineer. If the Distribution Plan is rejected by the Civil Engineer, or if a reply is not provided within the twenty (20) day review period, the Parties agree to work together in good faith to agree to a Distribution Plan within the following ten (10) day period. If the Parties fail to reach agreement on the Distribution Plan within such ten (10) day period, then the dispute resolution procedures set forth in Section 7.2 shall apply.

3.2.2 If applicable, Wind Company may transfer certain components of the Distribution Facilities to Hydro One Networks, Inc. or another licensed distributor of electricity (each, a “**Licensed Transferee**”) for incorporation into the Licensed Transferee’s distribution system. Upon a transfer by Wind Company of all or any component of the Distribution Facilities to a Licensed Transferee, Wind Company shall be released from any and all obligations under this Agreement relating to the transferred portion of the Distribution Facilities with the exception of any default by the Wind Company relating to obligations in existence as of the date of the transfer of the components to the Licensed Transferee.. In the event that Wind Company transfers less than the whole Distribution Facilities to a Licensed Transferee and Licensed Transferee requests the benefit of this Agreement, then the Township will, at the request of Wind Company, either amend this Agreement or enter into new agreement(s) with the Licensed Transferee and Wind Company on the same terms and conditions herein, to reflect the allocation of the ownership of the Distribution Facilities resulting from such transfer.

Section 3.3 Conditions of Use.

3.3.1 Non-Exclusive Use. Wind Company’s Delivery and Transportation Use and Distribution Use shall be subject to the right of free use to the Roadways by all persons entitled to it, and subject to the rights of the owners of the property adjoining the Roadways of full access to and from the Roadways and of crossings and approaches from their properties, and subject to the rights and privileges that the Township may grant to other persons on the Roadways, all of which rights are expressly reserved but shall not interfere with and shall be subject to the Wind Company’s rights under applicable law, including, but not limited to, the Electricity Act and other rights set forth herein.

3.3.2 Construction Survey of Municipal Infrastructure.

- (i) Pre-Construction. Prior to the Commencement of Construction and within sixty (60) days of Wind Company's request, the Civil Engineer shall, at Wind Company's sole cost and expense but subject to the requirements set out in Section 14.9, perform a survey to record the condition of the Roadways included in the Delivery and Transportation Plan and the Distribution Plan, including culverts, bridges and other drainage structures, utilizing the Pavement and Condition Index created by the Ontario Good Roads Association as a guideline and perform such other surveys and studies as agreed to by Wind Company and the Civil Engineer, in their reasonable discretion and as contemplated by this Agreement (the "**Pre-Construction Municipal Infrastructure Survey**"). In the event that the Parties disagree on the appropriate surveys and studies, then the dispute resolution procedures set forth in Article VII shall apply. The Pre-Construction Municipal Infrastructure Survey shall include, at minimum, videotaping of the Roadways, culverts, bridges and drainage structures and, boring and other such other tests deemed necessary by the Civil Engineer to determine the pre-construction condition of the Roadways. The Township shall deliver a copy of the Pre-Construction Municipal Infrastructure Survey to the Wind Company within thirty (30) days after the completion of the Pre-Construction Municipal Infrastructure Survey or the full execution of this Agreement, whichever is later. The Civil Engineer shall provide a written assessment of whether the proposed loads can safely traverse the existing bridges and culverts and shall provide written recommendations for any improvements necessary to strengthen the bridges and culverts so as to prevent damage from the proposed loads. Notwithstanding the foregoing, if the Township fails to meet its obligation under this provision within ninety(90) days, Wind Company in its sole discretion may perform all pre-construction activities as contemplated under this Agreement
- (ii) Post-Construction. Following the Commercial Operation Date, within sixty (60) days of Wind Company's request, the Township shall, at Wind Company's sole cost and expense, retain a Civil Engineer to perform a survey to record the condition of the Roadways included in the Delivery and Transportation Plan and the Distribution Plan, including culverts, bridges and other drainage structures, utilizing the Pavement and Condition Index created by the Ontario Good Roads Association as a guideline and perform such other surveys and studies as were performed as part of the Pre-Construction Municipal Infrastructure Survey and as contemplated by this Agreement (the "**Post-Construction Municipal Infrastructure Survey**"). The Township shall deliver a copy of the Post-Construction Municipal Infrastructure Survey to Wind Company within thirty (30) days after the completion of the Post-Construction Municipal Infrastructure Survey. The Civil Engineer shall provide a written assessment comparing the Pre-Construction Municipal Infrastructure Survey to the Post-Construction Municipal Infrastructure Survey and shall provide written recommendations to address any Construction Road Damage. Notwithstanding the foregoing, if the Township fails to meet its obligation under this provision within sixty (60) days, Wind Company in its sole discretion may perform all post-construction activities as contemplated under this Agreement.

3.3.3 Municipal Infrastructure. In the event that the Civil Engineer determines that any of the Roadways is in insufficient condition for the Delivery and Transportation Use and that upgrades and/or improvements are necessary for the safety and welfare of the Wind Company, its

contractors and subcontractors and the general public (“**Upgrades**”), Wind Company shall deliver to the Civil Engineer a proposed upgrade and improvement plan setting forth the proposed Upgrades, including the specifications of such Upgrades (the “**Upgrade and Improvement Plan**”). The Civil Engineer shall have fifteen (15) days to review and approve or reject the Upgrade and Improvement Plan, which approval shall not be unreasonably conditioned or delayed. Wind Company acknowledges that, if any part of the Upgrades are to be paid for by the Township, the approval of the Council may be required for the Upgrades which shall occur subsequent to the review by the Civil Engineer. In the event that the Parties disagree on the appropriate Upgrades, then the dispute resolution procedures set forth in Article VII shall apply. The Parties agree to execute an amendment adding the Upgrade and Improvement Plan to the Agreement by adding it as **Exhibit D** to the Agreement once it is approved by the Civil Engineer and the Council (if required).

3.3.4 Construction of Upgrades. All Upgrades performed by Wind Company or Township shall be paid for by the Wind Company and shall be constructed in accordance with: (i) the Ontario Provincial Standards for Roads and Public Works, Volume 1-General & Construction Specifications, as amended as of the Effective Date for the initial construction of the Project; (ii) the Ontario Provincial Standards for Roads and Public Works, Volume 1-General & Construction Specifications as in effect at the time of any future construction, repair, maintenance or operation of the Project (the “**Road Standards**”) and (iii) if the Upgrade is performed by the Township, in accordance with the Township procurement and purchasing policies and by laws. When the Road Standards permit alternative methods of implementation, the Parties shall agree on the appropriate method to be used. In the event the Wind Company performs the Upgrades, Wind Company shall warrant the condition of the Upgrades for a period of two (2) years from the Completion Date, reasonable wear and tear excepted (the “**Upgrade Warranty**”). In the event that the Township determines, acting reasonably, that the condition of the Upgrades are not consistent with the Road Standards, reasonable wear and tear excepted, the Township shall provide Wind Company written notice detailing proposed repairs to the Upgrades (the “**Proposed Warranty Repairs**”). Wind Company shall review the Proposed Warranty Repairs and shall, within fifteen (15) days of receipt, either accept or reject the Proposed Warranty Repairs. In the event that Wind Company rejects the Proposed Warranty Repairs, the Parties agree to work together in good faith to come to an agreement as to the repairs needed to the Upgrades. In the event the Parties cannot agree upon the Proposed Warranty Repairs within sixty (60) days of Wind Company’s receipt of the Proposed Warranty Repairs, the dispute resolution procedures of Article VII shall apply. Once the Parties have agreed upon the Proposed Warranty Repairs (the “**Warranty Repairs**”), Wind Company shall either: (i) at its sole cost and expense, perform or cause to be performed all Warranty Repairs; or (ii) elect to allow the Township to perform the Warranty and pay to the Township the reasonable costs and expenses of such Warranty Repairs. In the event that the Wind Company elects to perform or cause to be performed the Warranty Repairs, the Township shall approve the identity of any contractor performing the repairs, which approval shall not be unreasonably withheld, delayed or conditioned. In the event that Wind Company elects to have the Township complete the Warranty Repairs, Wind Company shall obtain not less than two (2) estimates for the costs and expenses of the Warranty Repairs from reputable contractors located in Ontario with experience in performing such work and notwithstanding anything to the contrary contained herein, the amount of costs and expenses that Wind Company shall be required to pay to the Township shall not exceed the highest estimate for the Warranty Repairs obtained by the Wind Company, unless such costs are directly related to work outside the scope of the original

estimate done at the direction of the Wind Company. Wind Company shall not warrant any Warranty Repairs performed by or at the direction of the Township.

Section 3.4 Repair and Restoration of Roadways.

3.4.1 Road Repairs. In the event of damage caused to the Roadways by any Wind Company Party, including, but not limited to, Construction Road Damage, Township shall either: (i) elect to have Wind Company restore those Roadways identified and used by Wind Company in the Delivery and Transportation Plan to near as practicable condition as existed prior to the Commencement of Construction (the “**Road Repairs**”), at Wind Company’s sole cost and expense; or (ii) elect to perform the Road Repairs as per Section 3.4.3.

3.4.2 Performance of the Road Repairs by Wind Company. In the event the Township elects to have Wind Company perform the Road Repairs, Wind Company shall warrant the performance of the work for a period of two (2) years from the date of Wind Company’s notice of completion in connection with the work. During the period of construction, the Wind Company shall provide as security to the Township no less than one hundred (100%) of the cost of the work to be completed, at the election of Wind Company either as a bond or in the form of a letter of credit in a form acceptable to the Township, acting reasonably. After acceptance of the Road Repairs by the Township, the security will be reduced to ten percent (10%) for the duration of any warranty period. Following the expiration of any warranty period, the security will be released, provided no warranty claims have been made. All Road Repairs performed by Wind Company shall be consistent with the Road Standards unless otherwise agreed to by the Parties in writing.

3.4.3 Performance of the Road Repairs by the Township. In the event that Township elects to complete the Road Repairs, Wind Company shall obtain not less than two (2) estimates for the costs and expenses of the Road Repairs from reputable contractors located in Ontario and notwithstanding anything to the contrary contained herein, the amount of costs and expenses that Wind Company shall be required to pay to the Township shall not exceed the highest estimate for the Road Repairs obtained by the Wind Company. Wind Company shall not warrant any Road Repairs performed by or at the direction of the Township. Any funds paid or reimbursed to the Township for Road Repairs shall be used at the discretion of the Township for the completion of the Road Repairs, provided however, that upon receipt of the funds the Township shall immediately release, defend, indemnify and hold Wind Company harmless from and against any and all losses, expenses, liabilities, claims or lawsuits arising out of or related to the Township’s failure to use the funds or a portion thereof for the completion of Road Repairs.

Section 3.5 Posting Periods. Wind Company may not use (except to the extent such use is in connection with a Passenger or Light Duty Vehicle as defined by the Ontario Ministry of Transportation), improve or repair the Roadways during the posting/half load period as set by the Township (the “**Posting Period**”) without the approval of the Township. In the event Wind Company wants to use (except to the extent such use is in connection with a Passenger or Light Duty Vehicle as defined by the Ontario Ministry of Transportation), improve or repair any Roadways during the Posting Period, Wind Company shall provide a written request to the Township detailing the proposed use, improvement or repair. The Township shall, within fifteen (15) days of Wind Company’s request, approve such proposed use, improvement or repair during the Posting Period in their reasonable discretion. Wind Company shall either: (i) repair or cause to be repaired any damage to the Roadways caused by Wind Company arising from any such

permitted use during the Posting Period (“**Posting Period Repairs**”) at its sole cost and expense; or (ii) elect to have the Township perform the Posting Period Repairs and pay to the Township the costs and expenses of the repairs. For the avoidance of doubt and for purposes of this Agreement, use of a Passenger or Light Duty Vehicle as defined by the Ontario Ministry of Transportation shall be considered a permitted use.

Section 3.6 Permits. Subject to the legislative discretion of the Township’s elected Council, as applicable, the Township shall fully support and cooperate with Wind Company in its efforts to obtain any other governmental approval, authorization or permit required for the construction and operation of the Project. Such full support and cooperation shall extend to and include the Permits together with, without limitation, crossing agreements for underground collection, crossing agreements for crane paths, building permits, entrance permits for access roads, turning radii and county right of ways. Notwithstanding the foregoing, to the extent Township provides authorization or decision-making authority with respect to any and/or all activities under this Agreement, this Agreement hereby provides all such necessary authorizations, consents or approvals, however, for greater certainty Wind Company acknowledges that it shall be required to obtain the Permits in accordance with the applicable by-laws or requirements of Township.

Section 3.7 Road Conditions. Wind Company shall use all reasonable efforts to keep the Roadway surfaces free and clear of hazards and obstructions at all times when performing the Upgrades, Warranty Repairs, Road Repairs and Posting Period Repairs. Wind Company may park and/or store vehicles, equipment and materials in the Roadway necessary for the completion of the Upgrades, Warranty Repairs, Road Repairs and Posting Period Repairs in accordance with the rules, regulations and policies issued by the Township. Wind Company shall or shall cause its contractor to apply dust suppressant to the Roadways and within the Project area when requested by the Township. All traffic protection shall be provided in accordance with the Ontario Traffic Manual and other applicable laws, regulations, by-laws and ordinances.

Section 3.8 Road Closure. In the event that Wind Company determines that any Roadway must be closed, in whole or in part, during the performance of any Upgrades, Warranty Repairs, Road Repairs and Posting Period Repairs, Wind Company shall request consent from the Township. The Township shall not unreasonably withhold, delay or condition such consent for closure. In connection with any road closure, Wind Company will strive to comply with applicable procedures and conditions set out in the Township’s Road Closure Policies or By-laws; provided, however, the Township shall be provided with not less than forty-eight (48) hours advanced written notice of any road closure. In addition, if the Township shall determine that any Roadway must be closed, in whole or in part, from public use for the health, safety and welfare of the public during the performance of any Upgrades, Warranty Repairs, Road Repairs and Posting Period Repairs, Wind Company shall close such Roadways in whole or in part as directed by the Township. Wind Company shall provide, at its sole cost and expense, flagging protection necessary to protect the health, safety and welfare of the public, to direct and control traffic during any such closure periods.

Section 3.9 Road Repairs Escrow. Within fourteen (14) days following the Effective Date, the Wind Company shall either : (i) deposit the sum ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) in an interest-bearing escrow account to be established by the Township at a local banking institution ; or (ii) provide a letter of credit from a chartered Bank in the amount of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) in a form satisfactory to the

Township (the “**Road Repair Escrow**”), with interest accruing to the Wind Company’s benefit, to be used by the Township solely for potential cost overruns related to the Road Repairs that are not otherwise covered by an applicable bond or letter of credit as may be required elsewhere in this Agreement. The Road Repair Escrow shall be maintained for twelve (12) months following the Commercial Operation Date. To the extent Wind Company performs any work following the Commercial Operation Date requiring the use of a vehicle exceeding the dimensional limits or the weight limits set out in the *Highway Traffic Act* or any legislation in replacement thereof, Wind Company shall re-establish the Road Repair Escrow for an additional twelve (12) month period following completion of such work. If the cost of the Road Repairs performed by the Township exceeds the amount of the Road Repairs (for damage to the Roadways caused by the Project), the Township shall document and report such cost overrun to the Wind Company and may thereafter withdraw the amount of such cost overrun from the Road Repair Escrow. If the cost overrun for the Township exceeds the principal balance of the Road Repair Escrow, the Wind Company shall have no obligation to (i) provide additional funding for or replenish the Road Repair Escrow, (ii) reimburse the Township for any such amounts, or (iii) perform any Road Repairs. Upon the expiration of the twelve (12) month period following the Commercial Operation Date, the Road Repair Escrow shall be closed and any monies remaining therein shall be returned to the Wind Company.

**ARTICLE IV
DECOMMISSIONING PLAN**

Section 4.1 Decommissioning. The Parties acknowledge that Turbines may, from time to time, be decommissioned and removed from the Project (“**Decommissioning**”). In connection with Decommissioning, Wind Company shall use the Roadways necessary at the time of Decommissioning in accordance with the applicable Decommissioning plan included in the Wind Company’s REA approval. The use of the Roadway during the Decommissioning shall be governed by the terms of this Agreement.

**ARTICLE V
FIRE PROTECTION CONTROL AND SAFETY**

Section 5.1 Annual Meetings with Fire Chief. An appropriate representative from Wind Company will meet, on an annual basis, or as mutually agreed by the Parties, with the fire chief of the Township to review current access, fire suppression, water supply placement, training needs, and other related issues. The initial meeting with the fire chief will take place within ninety (90) days of Commencement of Construction.

Section 5.2 Fire Protection Plan. Within ninety (90) days after the initial meeting with the fire chief, the Wind Company will submit to the fire chief and to the Township, a fire protection plan which identifies and addresses any reasonable and necessary concerns raised by the fire chief. If necessary, such plan shall be updated within thirty (30) days after each subsequent meeting. The Wind Company must take commercially reasonable steps to mitigate any reasonable and necessary concerns raised by a fire chief. Notwithstanding the provisions of this Article V, in the event of a conflict between this Agreement and the REA permit, the most restrictive requirements or obligations shall govern .

**ARTICLE VI
NOISE MONITORING PROGRAM**

Section 6.1 Annual Meeting with Township. The Parties recognize that the Turbines are subject to noise regulations issued by the Province of Ontario. Notwithstanding the requirements of the REA, the Wind Company will meet, on an annual basis, or as mutually agreed by the Parties, with the Township to review any complaints received by the Wind Company regarding the noise level of the Turbines and review any measures taken by the Wind Company to comply with the provincial regulations. The initial meeting will take place within ninety (90) days of the Commercial Operation Date.

**ARTICLE VII
DISPUTE RESOLUTION**

Section 7.1 Responsibility for Upgrades and Repairs. If the Parties disagree as to the extent of or responsibility for Upgrades, Warranty Repairs, Road Repairs, Posting Period Repairs, repair of damage to the Roadways, or the adequacy or completeness of the foregoing, then Wind Company and the Township will, in good faith, attempt to resolve the dispute and shall involve a mutually agreed upon third-party neutral licensed engineer or licensed structural engineer, as applicable, to resolve the dispute within a thirty (30) day period. The costs of the intermediary will be paid equally by the Parties if an agreeable solution is proposed, or if not, the costs of the intermediary will be paid by the Party rejecting the intermediary-proposed solution. Either Party may reject the intermediary solution by written notice to the other Party within two (2) days after the date it is proposed by the intermediary, in which case the matter shall be submitted for resolution in accordance with Section 7.3.

Section 7.2 Approval of Plans and Modifications to Plans. If the Parties fail to reach agreement on the Delivery and Transportation Plan or the Pre- or Post- Construction Survey using the procedures set forth in Section 3.1, 3.2.1, 3.2.2, and 3.3.2 as applicable, then the Parties will in good faith attempt to resolve the dispute and shall involve a mutually agreed upon third-party neutral licensed engineer or licensed structural engineer, as applicable, to resolve the dispute within a thirty (30) day period. The costs of the intermediary will be paid equally by the Parties if an agreeable solution is proposed, or if not, the costs of the intermediary will be paid by the Party rejecting the intermediary-proposed solution. Either Party may reject the intermediary solution by written notice to the other Party within two (2) days after the date it is proposed by the intermediary, in which case the matter shall be submitted for resolution in accordance with Section 7.3.

Section 7.3 Arbitration. Subject to Section 7.1 and Section 7.2 , all disputes or differences between the Parties in respect of or concerning or connected with the interpretation or implementation of this Agreement or arising out of this Agreement shall be resolved by arbitration in accordance with this paragraph. Such arbitration shall be conducted by a single arbitrator. Unless otherwise agreed to by the Parties, the arbitration shall be held in a neutral location in eastern Ontario to be determined. The arbitration shall be conducted in English. The procedure to be followed shall be agreed to by the Parties or, in default of such agreement, determined by the arbitrator. The arbitration shall proceed promptly in accordance with the provisions of the *Arbitration Act, 1991* (Ontario) except that the parties shall agree upon and choose and share the cost equally of one mutually acceptable arbitrator. The arbitrator shall have the power to proceed

with the arbitration and to deliver his or her award notwithstanding the default by any Party in respect of any procedural order made by the arbitrator. The decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

Section 7.4 Intentionally deleted.

ARTICLE VIII NOTICES

Section 8.1 Notices. All notices, statements, demands, correspondence or other communications required or permitted by this Agreement shall be in writing and deemed given:

- (i) when personally delivered to the recipient,
- (ii) five (5) days after deposit in the United States mail or Canadian mail, as applicable, certified and postage prepaid, or
- (iii) one (1) day after delivery to a reputable overnight courier (provided receipt is obtained and charges prepaid by the delivering Party) and addressed as follows:

If to the Township: The Corporation of the Township of North Stormont
15 Rue Union St., P.O. Box 99
Berwick, ON. K0C 1G0

If to Wind Company: Nation Rise Wind Farm Limited Partnership
c/o EDP Renewables Canada Ltd.
219 Dufferin Street , Suite 217C
Toronto, Ontario M6K 3J1

With a copy to: EDP Renewables North America LLC
808 Travis, Suite 700
Houston, Texas 77002
Attention: General Counsel

Any Party may change its address (and the person to whom notice is to be sent) for purposes of this Section by giving written notice of such change to the other parties in the manner provided in this Section.

ARTICLE IX TERMINATION

Section 9.1 Termination by Wind Company. Wind Company may terminate this Agreement at any time prior to the Commencement of Construction and shall have no liability to the Township. If, after Commencement of Construction, Wind Company elects to discontinue to the Project and terminate this Agreement, Wind Company shall provide written notice of such termination to the Township at least sixty (60) days before such termination and , provided Wind Company is not in breach of its obligations under this Agreement, Wind Company shall have no obligations under this Agreement except: (i) Wind Company shall remove any turning radii in the public right of

way installed by Wind Company upon the request of the Township, at its sole cost and expense; and (ii) its obligations under Section 3.5 regarding any Posting Period Repairs, Section 3.3.4 for Warranty Repairs , Section 3.4 for Road Repairs and Section 4.1 for any Decommissioning obligations .

Section 9.2 Expiration of Power Purchase Agreement. Notwithstanding any other term or provision of this Agreement, if the power purchase agreement of Wind Company with respect to the Project (the “Power Purchase Agreement”) expires or is terminated and not otherwise extended or renewed during the Term of this Agreement, and Wind Company acting diligently does not secure an adequate replacement market for the electricity generated by the Project within ninety (90) days of the expiry or termination of the Power Purchase Agreement, this Agreement shall, at the option of Wind Company, be terminated and , provided Wind Company is not in breach of its obligations under this Agreement, Wind Company shall have no obligations under this Agreement except: (i) Wind Company shall remove any turning radii in the public right of way installed by Wind Company upon the request of the Township, at its sole cost and expense; and (ii) its obligations under Section 3.5 regarding any Posting Period Repairs, Section 3.3.4 for Warranty Repairs , Section 3.4 for Road Repairs and Section 4.1 for any Decommissioning obligati.

ARTICLE X EVENT OF DEFAULT AND REMEDIES

Section 10.1 Event of Default. Each Party covenants and agrees that, if a Party (the “**Breaching Party**”) fails to comply with or perform its obligations pursuant to this Agreement, the Party seeking to enforce this Agreement (the “**Non-Breaching Party**”) shall provide the Breaching Party with written notice of such failure to perform, which notice shall describe the details of such failure to comply or perform. If the Breaching Party does not cure the breach within thirty (30) days after receipt of such notice from the Non-Breaching Party (or if the breach cannot be cured within such thirty (30) day period, if the Breaching Party has not commenced and continued its efforts to cure the breach) then the Breaching Party will be in default (the “ **Event of Default**”).

Section 10.2 Remedies in Event of Default. If and whenever an Event of Default occurs and is continuing, the Non-Breaching Party shall have the following rights and remedies, exercisable immediately and without further notice and at any time while the Event of Default continues, the Non-Defaulting Party may seek:

- (a) specific performance, injunctive relief, or any other remedy available at law or in equity;
- (b) to remedy or attempt to remedy the Event of Default for the account of the Breaching Party and to enter upon the Roadways for such purposes. The Non-Breaching Party shall not be liable to the Breaching Party for any loss, injury or damages caused by acts of the Non-Breaching Party in remedying or attempting to remedy the Event of Default, save and except for any instances of gross negligence or wilful misconduct by the Non-Breaching Party. The Breaching Party shall pay to the Non-Breaching Party, within five (5) Business Days of demand therefor, all reasonable expenses incurred by the Non-Breaching Party in remedying the Event of Default, together with an administration fee of ten percent (10%) from the date such expense was incurred by Non-Breaching Party; and

- (c) to recover from the Breaching Party all damages, costs and expenses incurred by the Non-Breaching Party as a result of the Event of Default.

Section 10.3 Force Majeure. 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 or acts of military authority;
- (d) rebellion or civil commotion;
- (e) material or labour shortage not within the control of the affected Party;
- (f) fire or explosion;
- (g) icing, snow in excess of twelve (12) inches in a twenty-four (24) hour period, 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 Wind Company or the 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);
- (j) third party claims of ownership to the Roadways; or
- (k) 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.

ARTICLE XI REPRESENTATIONS AND WARRANTIES

Section 11.1 Due Authorization. Each Party represents and warrants as to itself: (i) each person or entity signing this Agreement on behalf of such Party is authorized to do so, (ii) each Party has

the unrestricted right, power and authority to enter into and perform its obligations under this Agreement and to grant the rights granted hereunder, (iii) no other person is required to execute this Agreement in order for it to be fully enforceable.

Section 11.2 Representations of the Township. The Township represents that:

- (a) to the best of its knowledge, it has legal and beneficial title to the Roadways and full power and authority to grant the rights over the Roadways in the manner set out in this Agreement;
- (b) the execution and delivery of this Agreement by the Township will not result in a material breach of any other agreement to which the Township is a party and no rights, interests or privileges have been granted in respect of the Roadways by the Township which will or could adversely affect the rights, interests or privileges granted to Wind Company hereunder;
- (c) as of the Effective Date ,the Permits are the only permits, approvals, consents or authority within the jurisdiction of the Township required in connection with the work contemplated by this Agreement and , if , in the future, the Township requires additional Permits for the type of work contemplated in this Agreement, the requirements for such Permits will not be more onerous for the Wind Company than the requirements for other applicants with respect to similar work ;and
- (d) the Township agrees that the fees to be charged to Wind Company for the Permits as of the Effective Date are set forth in Exhibit E of this Agreement and the Township warrants that such fees do not and any future fees will not during the term of this Agreement exceed the usual and customary fees that are generally applicable to the public.

ARTICLE XII RELEASE AND INDEMNIFICATION

Section 12.1 Compliance with Laws. The Wind Company shall comply with all applicable laws of Canada and of Ontario and the applicable by-laws of the Township and the United Counties of Stormont , Dundas, Glengarry, as applicable.

Section 12.2 Indemnity. The Wind Company covenants and agrees to indemnify, defend, release and save harmless the Township and its respective directors, officers, employees, agents, elected officials, contractors and assigns from and against all losses, claims or demands, including charges, damages and expenses which they may at any time or times bear, sustain or suffer by reason, or on account of the breach of this Agreement by the Wind Company and the Wind Company will, upon demand by the Township, at the Wind Company's sole risk and expense, defend any and all suits, actions or other legal proceedings which may be brought or instituted by third parties against the Township on any such claim, demand or cause of action, and will pay and satisfy any judgment or decree which may be rendered against the Township in any such suit, action or legal proceeding, and will reimburse the Township for any and all reasonable legal expenses on a solicitor-client basis incurred in connection therewith. The Wind Company's foregoing obligation to indemnify, defend and save harmless the Township shall not be applicable to (and the Township shall release,

indemnify, defend and save harmless the Wind Company from and against) any and all losses, claims, charges, damages or expenses which arise out of or are related to the acts, omissions, negligence or willful misconduct of the Township or its directors, officers, employees, agents, elected officials, contractors and assigns.

Section 12.3 Limitation of Liability. Notwithstanding any term in this Agreement, in no circumstances whatsoever will the Parties be liable to each other for consequential liabilities, damages, losses, costs or expenses damages, loss of profit, economic loss, interest or any other damages or loss suffered or incurred by the other Party and arising out of this Agreement.

ARTICLE XIII INSURANCE

Section 13.1 Insurance. The Wind Company shall maintain during the term of this agreement a comprehensive general liability insurance with a reputable and licenced insurance Wind Company on an occurrence basis for not less than \$5,000,000 in the aggregate and shall include the Township as an additional insured with respect to the Wind Company's operations, acts and omissions relating to its obligations under this Agreement. The Wind Company covenants to provide a certificate of insurance evidencing the said insurance upon written request by the Township. The insurance shall provide that it cannot be amended or cancelled without providing the Township with a 30 day written notice.

ARTICLE XIV MISCELLANEOUS

Section 14.1 Development Charges. As of the Effective Date, there are no development charges applicable to the Project. In the event Wind Company is required to pay development charges in respect of the Project, any such payments or increased amounts shall be set off against and deducted from the other payments or contributions required under this Agreement. For clarity, this provision does not apply to any development by the Wind Company in the future other than the Project.

Section 14.2 Governing Law. This Agreement and the enforcement thereof shall be governed by and construed under the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each of the parties hereby submits to the jurisdiction of the courts in the Province of Ontario.

Section 14.3 Counterparts. This Agreement may be executed in one or more counterparts which when taken together shall constitute one Agreement.

Section 14.4 Assignment. Wind Company shall have the right at any time to assign this Agreement in whole or in part without the consent of the Township. For greater certainty, Wind Company shall have the right to pledge, mortgage, grant a security interest in, collaterally assign, encumber and hypothecate this Agreement in connection with any financing or financing of the Project.

Section 14.5 Amendments and Integration. This Agreement shall constitute the complete and entire agreement between the Township and Wind Company with respect to the subject matter

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

Section 14.6 Successors and Assigns. This Agreement shall enure to the benefit of and shall be binding upon the Parties hereto, their respective successors and assigns.

Section 14.7 Reasonableness. For greater certainty and subject to the legislative discretion of the Township's elected Council, as applicable, , wherever an approval or consent is required to be given hereunder, the consent or approval shall not be unreasonably withheld, delayed or conditioned and any withholding of approval or consent shall be accompanied by reasons therefore.

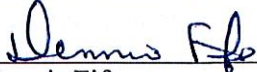
Section 14.8 Severability. If any provision of this Agreement is held invalid under any applicable law, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision and, to this end, the provisions hereof are severable. As used in this Agreement, the term "Agreement" shall be interpreted to mean (i) the main body of this Agreement, (ii) all exhibits, attachments, appendices, and schedules attached hereto (collectively, "**Exhibits**") which are incorporated herein by reference, and as such Exhibits may be amended from time to time in accordance with this Agreement, and (iii) documents incorporated in this Agreement by reference but not attached hereto; *provided*, that in the event of any conflict or inconsistency between or among the aforementioned constituents of this Agreement, such constituents shall prevail between and among themselves in the following order (from most to least authoritative): (1) Exhibits; (2) the main body of this Agreement; and (3) other documents incorporated herein by reference.

Section 14.9 Legal and engineering fees. The Wind Company shall reimburse the Township for all reasonable costs, fees and expenses paid to its legal advisors on a solicitor-client basis for the review, negotiation and revision of this Agreement and any ancillary agreements. The Wind Company shall also reimburse the Township for all reasonable fees incurred by the Township for the services of the Civil Engineer provided pursuant to this Agreement: subject to the provision of appropriate invoices and receipts. Notwithstanding anything contained in this Agreement to the contrary, with respect to the costs of the services of the Civil Engineer associated with the Pre- or Post- Construction Municipal Infrastructure Survey, the Civil Engineer shall provide to the Parties a detailed written estimate (each estimate being a "**Civil Engineer Estimate**") of the cost of its services associated with the aforementioned surveys for approval by Wind Company. In the event Wind Company does not approve the Civil Engineer Estimate within ten (10) days following receipt thereof, Wind Company may obtain up to three (3) further estimates from other independent Ontario licensed professional civil engineers selected by the Township (the "**Additional Estimates**"). Upon receipt of the Additional Estimates, the maximum amount of the costs of the services of the Civil Engineer associated with the Pre- or Post- Construction Municipal Infrastructure Survey shall be capped at the lower of (i) the Estimate; or (ii) the highest amount of the Additional Estimates. Further the Township's legal fees under this provision and in the Agreement shall be capped at \$32,000.00

Signatures Follow

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the date first written above.

**THE CORPORATION OF THE TOWNSHIP
OF NORTH STORMONT**

By: 

Name: Dennis Fife

Title: Mayor

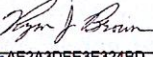
By: 

Name: Marc Chénier

Title: Chief Administrative Officer/Clerk

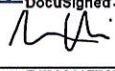
I have authority to bind the Corporation.

**NATION RISE WIND FARM LIMITED
PARTNERSHIP**

By: 

Name: Ryan J. Brown

Title: Executive Vice President, Eastern Regi
I have authority to bind the Limited Partnership.

By: 

Name: Miguel Angel Prado Balboa

Title: CEO

I have authority to bind the Limited Partnership.

EXHIBIT A
MAPS AND ROADWAY



Exhibit A Township of North Stormont Map of Roadways

Legend

- Highway
- County Road
- Township Road
- Private/Other Road
- Road Allowance / Seasonal Road
- Under Construction
- Railroad
- Settlement Area
- Township Boundary



1:100,000
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kilometres

Produced by The United Counties of Stormont, Dundas and Glengarry, Transportation and Planning Services, in cooperation with the Members of the Ontario Geospatial Data Exchange © October 2015.

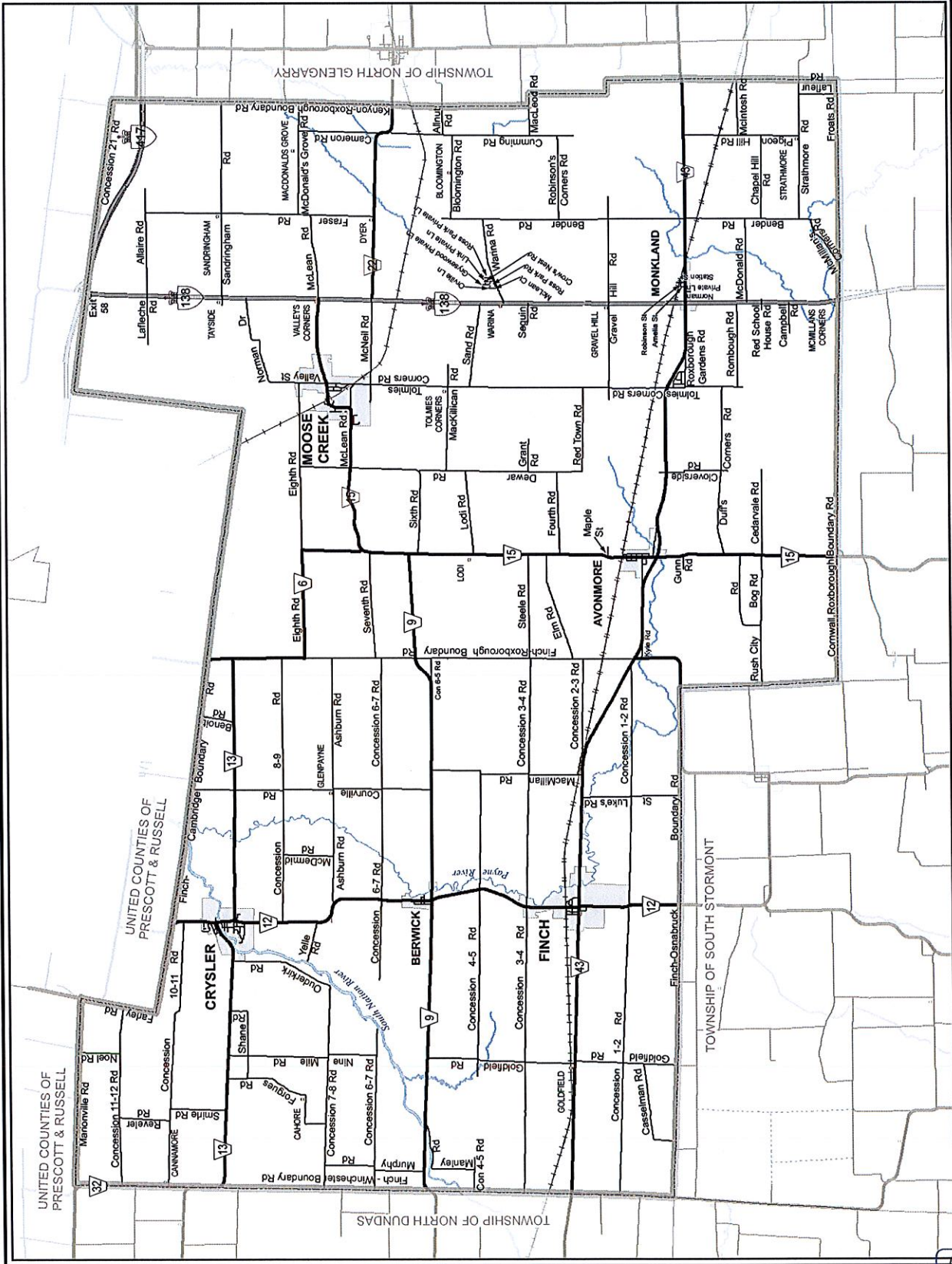
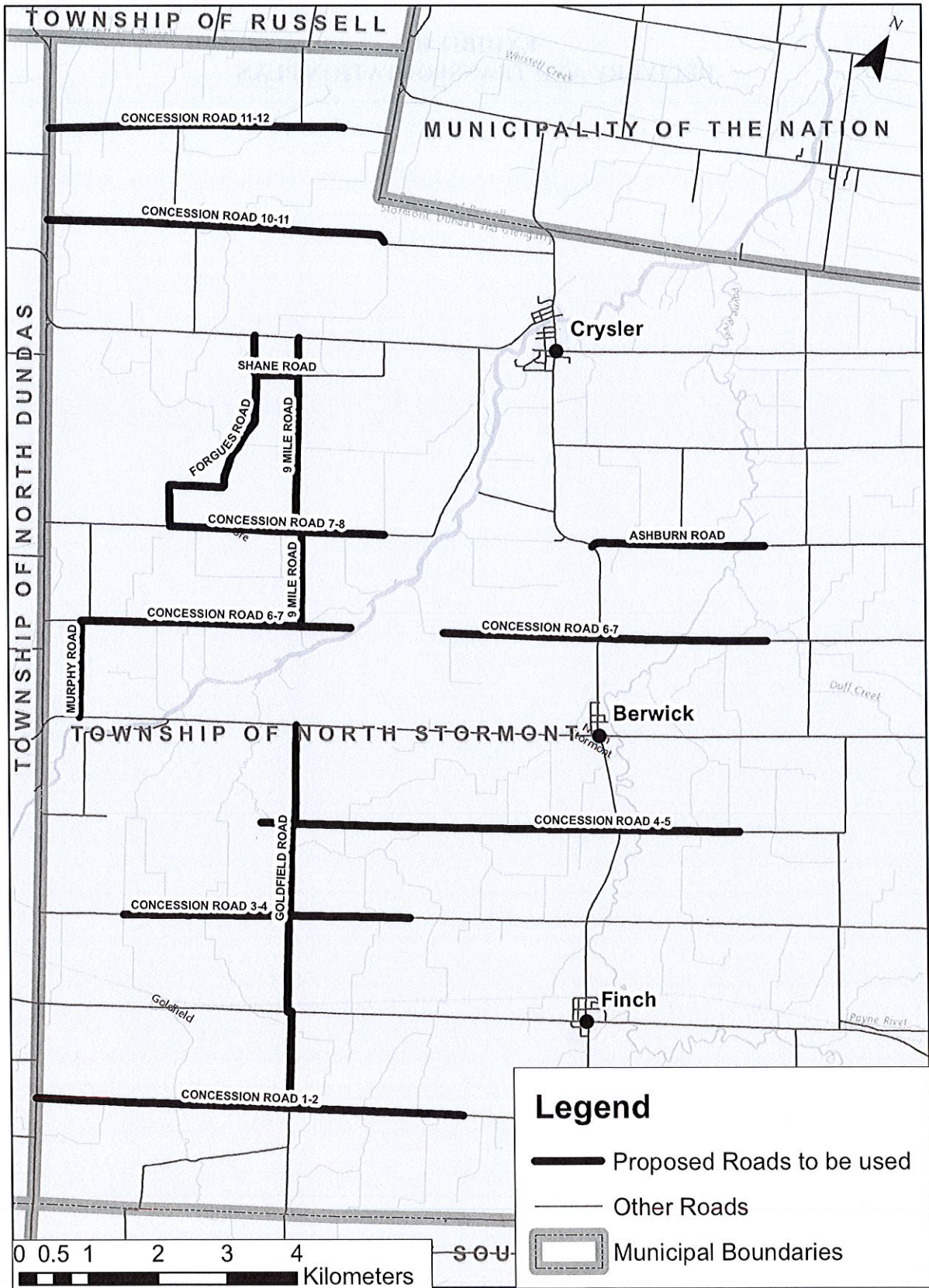


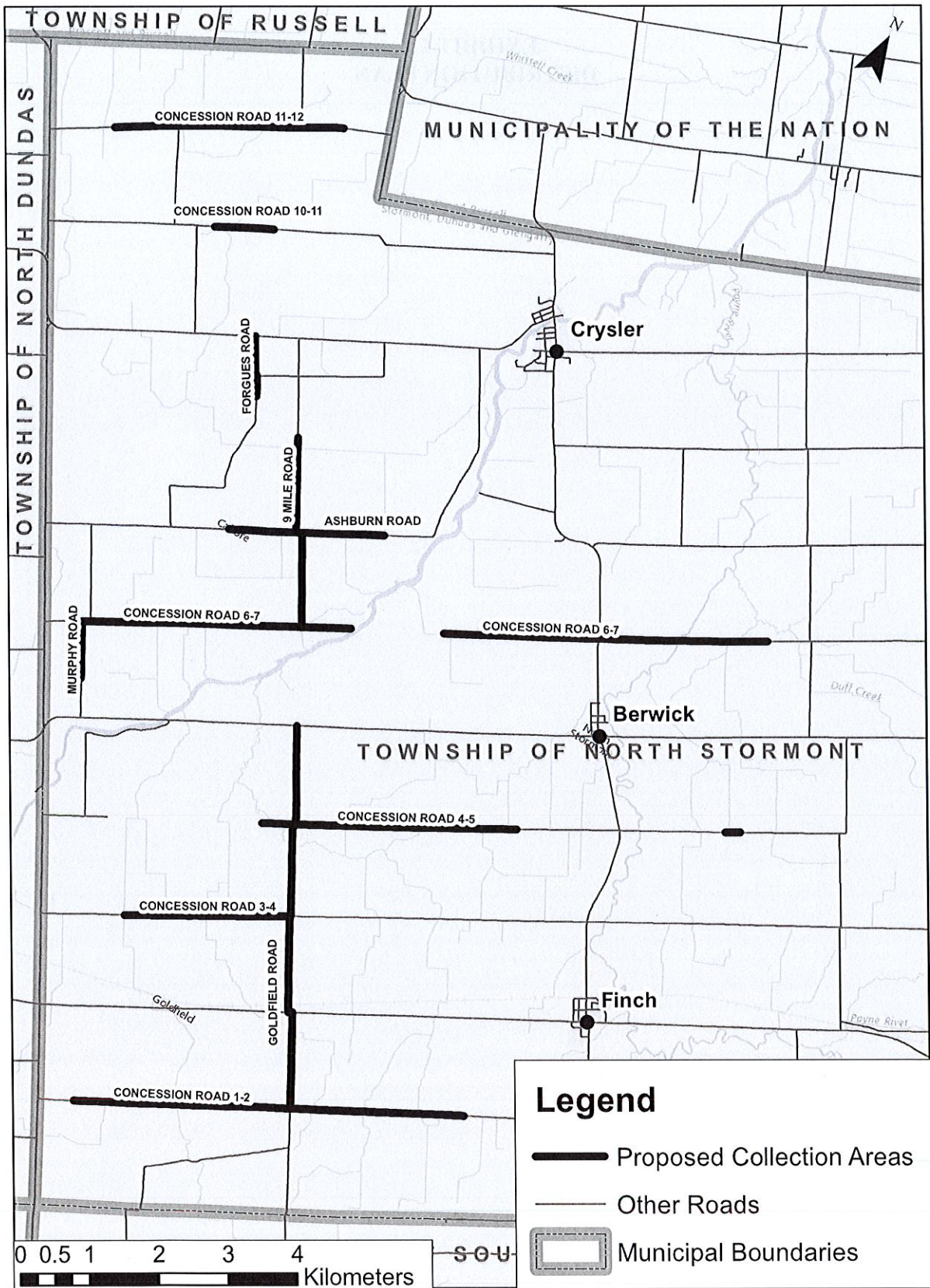
EXHIBIT B
DELIVERY AND TRANSPORTATION PLAN

EXHIBIT B: DELIVERY AND TRANSPORTATION PLAN



**EXHIBIT C
DISTRIBUTION PLAN**

EXHIBIT C: DISTRIBUTION PLAN



**EXHIBIT D
UPGRADES**

To be attached by amendment if Upgrades are required.

**EXHIBIT E
PERMITS**

Wind Company and Township to review and confirm the Permits required for the work, and associated fees

DESCRIPTION OF PERMIT

FEES

e.g. Moving Permits

Single Trip Oversize Load/Weight Permit

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