

## **ROAD USE AND MAINTENANCE AGREEMENT**

This ROAD USE AND MAINTENANCE AGREEMENT (this “Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 202\_\_\_ by and between Carroll County, Arkansas (the “County”), and Nimbus Wind Farm, LLC, a Delaware limited liability company (“Nimbus” or “Developer”). The County and Developer are sometimes referred to individually as a “Party” and collectively as the “Parties.” The term “Developer’s Representative(s)” shall include Developer’s contractors, subcontractors, agents, employees, representatives, suppliers and designees.

WHEREAS, Developer is in the process of developing a 180 MW wind- energy generating facility in Carroll County, Arkansas, which will require construction of wind turbines, transmission facilities, substations, roads, O&M Building, overhead and underground collection lines, telecommunication facilities (including without limitation, fiber), and other ancillary facilities (collectively referred to in this Agreement as the “Project”) in the area depicted in **Exhibit A** (the “Project Area”), which includes private property and land outside of Counties control;

WHEREAS, the Parties desire to address certain issues relating to the roads within the Project Area and under the supervision of the County over which the County has oversight and control for purposes of this Agreement or otherwise (collectively, the “Roads”);

WHEREAS, in connection with the construction, operation and maintenance of the Project, Developer and Developer’s Representative(s) within the forty (40) foot road right-of-way (“ROW”) plan to: (i) transport heavy equipment and materials which may be in excess of local design limits; (ii) transport materials, such as concrete and gravel; (iii) make specific modifications and improvements to permit Project-related equipment and materials to pass; (iv) place electrical and communications cables (collectively “Cables”) for the Project adjacent to, along, under, or across Roads; (v) install approaches; and (vi) install permanent Project access roads, such roads and area are depicted in **Exhibit B**; and

WHEREAS, Developer and the County wish to set forth their understanding and agreement relating to the use, modification and maintenance of Roads during and after the construction and operation of the Project.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, the Parties, intending to be legally bound, agree as follows:

### **General Obligations of the Parties**

1. Developer Designated Representative. Developer agrees to designate a representative with authority to represent Developer in all matters related to this Agreement. Developer’s initial designated representative is Mark Wengierski. Developer may change the designated representative with prior written notice to the County.
2. County Designated Representative. The County agrees to designate a representative with authority to represent the County in all matters related to this Agreement, including review and approval of any proposals submitted by Developer under this Agreement. The

County's initial designated representative is County Judge. The County may change the designated representative with prior written notice to Developer.

3. Developer's Project Notification Obligations.

- a. Developer agrees to notify the County in writing of the date of commencement of construction of the Project at least seven (7) days before said date. For purposes of this Agreement, the phrase "the date of commencement of construction of the Project" shall be the date set forth in the notice required under this provision, and the term "construction" shall mean any excavation or other action that would affect the environment of the Project Area, and specifically the construction, modification or improvement of any Roads over which the County has supervision and oversight, but does not include geotechnical evaluation or other survey work.
- b. Developer agrees to notify the County in writing of the date upon which the Project has completed construction and is selling power through its grid interconnection (the "Commercial Operations Date" or "COD") within seven (7) days after said date. For purposes of this Agreement, the term "COD" shall be the date set forth in the notice required under this provision.
- c. Developer agrees to notify the County in writing of the date that the Project has been decommissioned within thirty (30) days after said date. For purposes of this Agreement, the phrase "the date the Project is scheduled to be decommissioned" shall be the date set forth in the notice required under this provision.

**Use, Improvement, Maintenance and Repair of Roads**

4. Transport of Equipment and Materials. Developer will restrict heavy weight delivery to specific Roads identified on **Exhibit B** of this Agreement. Developer shall submit to the County one or more maps identifying the Roads it proposes to use as haul roads at least thirty (30) days prior to the date of commencement of construction of the Project, which shall be attached as **Exhibit B** to this Agreement. **Exhibit B** may be amended by Developer at any time upon providing five (5) days' prior written notice to the County together with an updated **Exhibit B**, so long as Developer complies with the road inventory requirement set forth in Paragraph 5 below.

5. Road Inventory.

- a. *Baseline Road Survey.* Prior to Developer modifying, improving, or transporting any Project-related equipment or materials over any of the Roads identified in **Exhibit B**, including any Roads identified in an amendment thereto, Developer shall engage an independent third-party firm to survey the condition of the Roads ("Baseline Road Survey"). The Baseline Road Survey will include pre and post Project development video surveys. Developer will provide the County with the name of the survey firm and the survey scope of work within five (5) days prior to the start of the Baseline Road Survey. The Baseline Road Survey shall be

conducted at Developer's expense, and Developer will provide a copy of the Baseline Road Survey to the County within thirty (30) days after receipt.

- b. *Post-Construction Road Survey.* No less than thirty (30) days prior to the COD, Developer shall retain a third-party firm to perform a post-construction inventory of the Roads identified in **Exhibit B**, including any Roads identified in an amendment thereto ("Post-Construction Road Survey"). Developer will provide the County with the name of the survey firm and the survey scope of work within five (5) days prior to the start of the Post-Construction Road Survey. The Post-Construction Road Survey shall be conducted at Developer's expense, and Developer will provide a copy of the Post-Construction Road Survey to the County.

6. Road Maintenance and Repair.

- a. *Routine and Regular Maintenance of Maintained Roads.* Throughout the term of this Agreement, the County agrees to continue to perform routine and regular maintenance of all Roads identified in **Exhibit B**, as determined by the County road supervisor. Routine and regular maintenance may include, but is not limited to: grading, snow removal, routine signage, and regularly scheduled maintenance and repair.
- b. *Improvement of Unmaintained County Roads.* Throughout the term of this Agreement, Developer may improve existing unmaintained County Roads at its sole cost and expense.
- c. *Post-Construction Repair – Timing.* Within ninety (90) days after either (i) the COD, or (ii) the date following the COD that weather conditions will reasonably allow for repair and restoration activities to begin, whichever is earlier, Developer shall commence to repair and restore to pre-construction condition, as depicted on the Baseline Road Survey, any Roads that are damaged by Developer during the construction of the Project. Such repair and restoration shall be completed within twelve (12) months after commencement.
- d. *Post-Construction Repair – Scope.* For each Road, the Baseline Road Survey and the Post-Construction Road Survey shall be compared and Developer shall make the repairs needed to return each Road to its pre-construction condition using the County road standards set out under Ordinance 2012-24 attached hereto as **Exhibit D**. For improvements on minimum maintenance roads, Developer shall repair roads to a condition that is equal to or better than road conditions prior to the start of construction. For avoidance of doubt, Developer shall not be required to improve minimum maintenance roads to the same standards and specifications applied to roads that are fully maintained for public use. After the COD, minimum maintenance roads will remain minimum maintenance roads subject to the County road supervisor's discretion.
- e. *Performance Bond.* Thirty days prior to the commencement of construction the Developer shall obtain and maintain in full force for the benefit of the County a

performance bond in the amount of \$1,000,000.00 with a surety or sureties reasonably acceptable to the County in its sole and absolute discretion. Once the bond is obtained it will be maintained at all times during the term of this Agreement.

- f. *Certificate of Completion.* Upon the Roads having been returned to their mutually agreed-upon pre-construction condition, the County agrees to issue to Developer a Certificate of Completion in substantially the form attached hereto as **Exhibit C**, which issuance shall not be unreasonably conditioned, delayed or denied.
- g. *Damages:* Developer shall be liable at all times for the repair, to the reasonable satisfaction of the County, of any damage to the Roads caused by the Developer's use. Any repairs undertaken shall restore the Road surface to the same condition it was in immediately prior to the use of the Road. Developer shall, providing that weather and weather-related conditions permit, complete these repairs within five (5) business days after being notified by the County of the need for such repairs. In the event that Developer is prevented by conditions beyond its control from completing the repairs within five (5) business days, the time period shall be extended provided that Developer continues to pursue such repairs with all reasonable diligence.
- h. *Emergencies:* The County may, in situations in which Road conditions present an immediate public safety concern, and acting reasonably, and without giving any prior notice to Developer as required elsewhere in this Agreement, take immediate and all action necessary to complete repairs to the Roads that the County deems necessary. Developer may, in such emergency situations, and acting reasonably, and without giving any prior notice to the County as required elsewhere in this Agreement, take immediate and all action necessary to move vehicles and equipment on the Roads that Developer deems necessary for public safety, to permit continued access, or to preserve the environment. Developer agrees that such vehicles and equipment will only be moved 100 yards or, if Developer determines it more efficient, as nearly as practical to a safe place. Developer further agrees that such vehicles and equipment will only be moved by a tow wrecker company on the sheriffs rotation lists or otherwise approved by County Judge. Developer will provide the County notice that an emergency situation has occurred within 48 hours of such occurrence.

7. **Road Modifications and/or Improvements.**

- a. (i) The County authorizes Developer to make modifications and/or improvements to the Roads identified in **Exhibit B**, including any Roads identified in an amendment thereto, that are reasonably necessary to accommodate transportation of Project-related equipment, materials and personnel on said Roads, including, but not limited to, (i) the strengthening and widening of Roads within a County Road right-of-way, (ii) the modification of corners on the Roads within a County Road right-of-way, and (iii) the strengthening, lengthening and/or spanning

of existing culverts and bridges within a County Road right-of-way, all in consultation with the County road supervisor or County Judge.

(ii) Prior to widening any Roads, Developer shall consult with the County in an effort to minimize disturbance to any existing County right-of-way located near or adjacent to the Roads and granted in favor of the County. Additionally, the County authorizes Developer to (i) remove any trees within three (3) feet of the existing Roads within any County right-of-way, and (ii) temporarily remove any fences located within any right-of-way located near or adjacent to Roads and granted in favor of the County; *provided*, Developer shall not remove any fence or tree without prior consent from the owner of property on which any such fence or trees are located. Developer will also obtain permission to remove trees within the County Right of Way from the landowner on whose side the tree is located. Further, Developer shall restore such fence to its condition as of the date of removal, to the extent reasonably practicable, or to a commercially reasonable condition such as 5-strand barbed wire fencing placed in a post every five feet, or otherwise approved by the landowner within the time period provided in Section 6(c). However, Developer agrees to put up temporary fencing that is commercially reasonable, such as panels, or something that is otherwise approved by the landowner in the interim prior to the time provided in Section 6(c).

b. With respect to modifications and/or improvements to any Roads identified in **Exhibit B**, including any amendments thereto, Developer shall consult with the County no less than thirty (30) days prior to COD of the Project regarding any existing modifications and/or improvements made by Developer to said Roads that the County desires Developer to remove or remain in place. Following such consultation, the County shall notify Developer in writing within thirty (15) days of the request of the Project of any modifications and/or improvements made by Developer to said Roads that the County desires to remain in place (“Improvement Notice”). All other modifications or improvements to said Roads made by Developer shall be removed by Developer, and said Roads shall be repaired in accordance with Paragraph 6. Upon Developer’s receipt of the County’s Improvement Notice, the County assumes all rights, responsibility and liability for the identified improvements.

c. Notwithstanding other provisions in this Agreement, Developer is authorized to leave in place for the life of the Project any upgrades to Roads that will serve as permanent access roads for the Project. The County assumes all rights, responsibility and liability for said Roads as of the COD, subject to Developer’s rights and obligations in Paragraph 6.a, provided that Developer has the right, but not the obligation, to conduct routine and regular maintenance on Project access roads to facilitate access to Project facilities, including but not limited to snow removal.

8. Access Points and Road Crossings. Developer shall submit to the County in writing and obtain prior approval from the County of all Project-related site access points and access

road crossings of the Roads; however, approval from the County shall not be unreasonably withheld or delayed. The County shall timely review and respond to all Project-related site access point and access Road crossing proposals that are submitted by Developer. In the event that no written comments are provided by the County to Developer within fourteen (14) days after Developer's submission of a site access point or access Road crossing proposal, said proposal shall be considered approved.

9. Utility Encroachments. The County represents that it has the authority to grant Developer the right to utilize Road rights-of-way for Cables or electric lines serving and benefiting the Project. Developer agrees to obtain any required permits or approvals for such placement as authorized by Arkansas law. To the extent any new Cables or electric lines serving and benefitting the Project are required to be placed under ground, the Developer agrees that it will place them at least at least two (2) feet deep in the ditch and with set backs of four (4) feet on either side of the ditch for beginning and ending of boring under the road. In addition, Developer understands that there may be utilities already buried in the ground while working on the Project and will take common business practices to identify them.
10. Oversize/Overweight Permits. To the extent permitted by Arkansas Law, and only to the extent authority is provided to County under Arkansas law, the County agrees to issue master overweight and oversize permits (if applicable and authorized to do so) in a timely manner consistent with normal County practice, not to exceed 30 days. Developer agrees to transport or cause to be transported the tower segments and other oversize loads in accordance with good industry practice to reasonably minimize, where possible, adverse impact on the local traffic.
11. Dust Abatement. Developer shall be responsible for Dust Abatement created by Developer's activities pertaining to the haul roads. When requested by the County, Developer shall reasonably address or make commercially reasonable efforts to minimize dust resulting from Developer's activities using water, calcium chloride, or other appropriate commercially available reasonable means in Developer's reasonable discretion. Such Dust Abatement shall only occur on gravel roads utilized by Developer and shall comply with all environmental rules and regulations.
12. Materials Used for Maintenance and Restoration of Improved County Roads. At completion of construction of the Project, Developer shall return the gravel depth on roads utilized by Developer to an average depth equal to, or greater than what is identified in the Baseline Road Survey or as identified in **Exhibit D.**
13. Road Use Contingency Fund. To more fully implement the terms of subsection (c) of this agreement, Developer agrees to establish a fund (to be called the Road Use Contingency Fund) in an amount equal to \$150,000.00 prior to the commencement of significant construction activities for the project, to be placed on escrow with the County Treasurer of Carroll County, Arkansas. For purposes of this Agreement, significant construction activities shall mean any vehicular traffic carrying loads in excess of 54,000 pounds. This fund shall be available to be applied to any costs incurred by Carroll County for the repair

of designated roads in the Project Area identified in **Exhibit A** and bridges, culverts or other road infrastructure due to damage caused by the activities of Developer in the Project Area. The County will first give notice to Developer of the damage claimed, and Developer will have thirty (30) days in which to cure any claimed damage. Failure to cure the claimed damage will authorize the County to access the Road Use Contingency Fund to the extent of the actual costs of repairs incurred by the County, as documented by actual receipts for material, labor or equipment use rates, as based on FEMA publications, as noted above. Upon any withdrawal from the Road Use Contingency Fund, the County shall provide notice to Developer of such withdrawal and Developer shall promptly replenish the fund to the extent of any drawdown pursuant to this section. Failure to establish this fund, or to replenish said fund when and if necessary, in each case within thirty (30) days after notice from the County of such failure, shall constitute a material breach of the Agreement. Within twelve (12) months after COD, any remaining balance in said contingency fund shall be remitted to Developer within thirty (30) days after the date of completion of any required repairs based on the post-construction survey pursuant to Section 5(b) of this Agreement.

### **Miscellaneous**

14. **Limitations of Liability.** In no event shall Developer or any of its members, officers, directors or employees or the County or any of its boards, officers or employees be liable (in contract or in tort, involving negligence, strict liability, or otherwise) to any other person, excluding private landowners within the Project Area identified in **Exhibit A**, for indirect, incidental, consequential or punitive damages resulting from performance, non-performance or delay in performance under this Agreement.
15. **Remedies and Enforcement.** Any failure by a Party to this Agreement to perform a material obligation which is not remedied within thirty (30) days after receipt by the defaulting party of written notice of such failure shall be deemed a default under this Agreement and allow the non-defaulting party to seek any remedies available at law or equity. Notwithstanding the foregoing, so long as the defaulting party has initiated and is diligently attempting to affect a cure, the defaulting party's cure period shall extend for a time period reasonably sufficient for the default to be remedied, but in no event shall the cure period exceed 180 days. Parties agree to meet and confer at 90 days to discuss efforts being made and ensure that diligent attempts are being undertaken to remedy any default. The time period prior to a third-party engineer issuing a decision pursuant to Section 5(b) is not included in the 180 day cure period.
16. **Due Authorization.** Developer represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of Developer. The County represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of the County.
17. **Severability.** If any provision of this Agreement is determined to be illegal, invalid, or unenforceable by a court of competent jurisdiction, said provision may thereafter be modified to implement the intent of the Parties to the maximum extent allowable under the

law, and the remainder of this Agreement shall remain unaffected and in full force and effect.

18. Amendments. Except as otherwise stated in this Agreement, no amendment or modification to this Agreement or waiver of a Party's rights is binding unless in writing and signed by both Parties to this Agreement.
19. Calculation of Time Periods. Except as otherwise specifically provided for herein, all references to number of days shall be deemed to mean calendar days, without respect to weekend days or official holidays.
20. Notices. All written notices under this Agreement shall be sent to the Parties at the address (or to such other address designated by a Party in writing to the other Party at any time) via registered or certified mail.

Developer: Nimbus Wind Farm, LLC  
Scout Clean Energy LLC  
c/o Colton Sorrells  
5775 Flatiron Parkway, Suite 120  
Boulder, CO 80301

County: Carroll County Road Foreman  
c/o County Judge  
93 Homestyle Drive  
Berryville, AR 72716

21. Assignment. Neither Party shall assign this Agreement, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, after written notice to the County, Developer in its sole discretion may (i) assign this Agreement to a financial partner, related company, or wholly owned subsidiary of Developer, or (ii) make a collateral assignment of this Agreement to a lender or tax credit investor. The County acknowledges and agrees that a lender or tax credit investor may request and receive notices of default from the County affording it an opportunity to cure any default under this Agreement.
22. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.
23. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arkansas.
24. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto, their respective successors and assignees.
25. Termination. Developer may terminate this Agreement any time in the event that Developer decides to abandon the Project and provides the County at least fifteen (15) days prior written notice of its decision to terminate the Agreement. If Developer abandons the



Project, Developer shall restore all Roads to the condition determined in the Baseline Road Survey and outlined in **Exhibit D**.

26. Entire Agreement. It is mutually understood and agreed that this Agreement constitutes the entire agreement between the Parties and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representations or statements, verbal and written, have been made that modify, amend, qualify or affect the terms of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective the day and year written above.

CARROLL COUNTY ROAD FOREMAN

By: \_\_\_\_\_

Name: \_\_\_\_\_,

CARROLL COUNTY JUDGE

By: \_\_\_\_\_

Name: \_\_\_\_\_,

NIMBUS WIND FARM, LLC

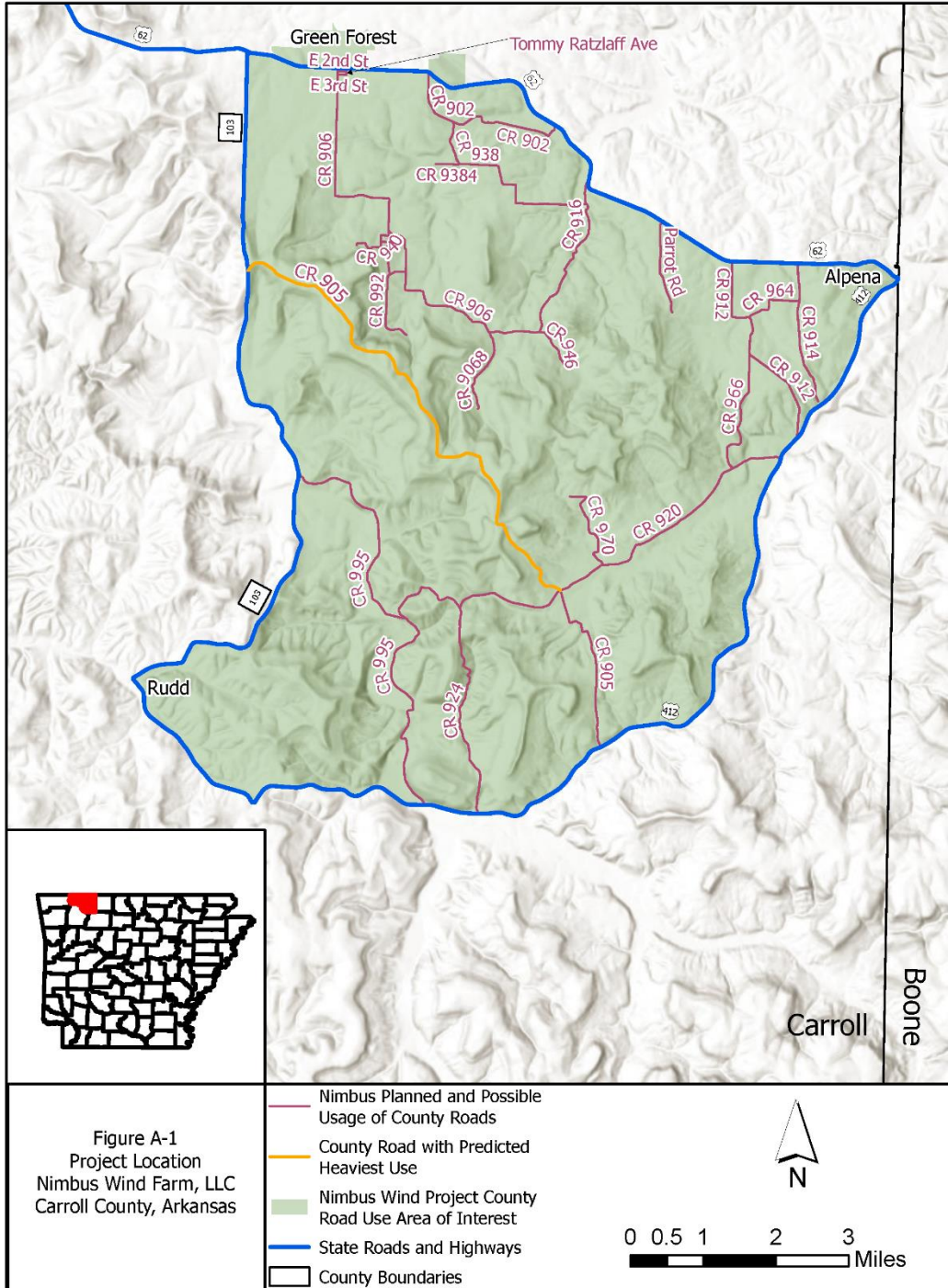
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

# EXHIBIT A

## Project Area



**EXHIBIT B**

**Haul Road Map(s)**

**EXHIBIT C**

**Certificate of Completion**

Pursuant to Section 6(e) of the Road Use and Maintenance Agreement (“Agreement”) made and entered into on \_\_\_\_\_, 2023 by and between Carroll County, Arkansas (the “County”), and Scout Clean Energy, LLC, a Delaware limited liability company (“Scout”), the County hereby attests that Scout has returned the Roads (as defined in the Agreement) to their agreed-upon pre-construction condition as of \_\_\_\_\_, 20\_\_.

CARROLL COUNTY BOARD OF  
COMMISSIONERS CARROLL COUNTY,  
ARKANSAS

By \_\_\_\_\_

Its \_\_\_\_\_, Chairman

ATTEST:

\_\_\_\_\_

\_\_\_\_\_, Clerk

**EXHIBIT D**  
**COUNTY ROAD STANDARDS**