

# Development Agreement

By and between

**Goodhue County, MN**

and

**AWA Goodhue, LLC**

# DEVELOPMENT AGREEMENT

## AWA Goodhue Project

**THIS DEVELOPMENT AGREEMENT** (“Agreement”) is entered into and effective this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by and between AWA Goodhue, LLC, their contractors and subcontractors (“Developer”) and Goodhue County, Minnesota (“County”).

### RECITALS

- A. The Developer desires and intends to develop an approximately 78 MW large wind energy conversion system in Goodhue County, Minnesota (the “Project”). The Project area covers approximately 33,000 acres within Belle Creek, Goodhue, Minneola, Vasa, and Zumbrota Townships in Goodhue County, MN and is comprised of primarily agricultural lands. A map outlining the location of the Project is included as Exhibit A.
- B. The Developer’s objective is to develop a wind energy facility with approximately 50 wind turbines. Each turbine will generate up to 1.6 MW per turbine and at completion the wind farm will have a nameplate capacity of approximately 78 MW of electrical energy. The towers will be approximately 262 feet, blades will be approximately 135 feet for an overall height of approximately 400 feet.
- C. A site permit for this Project is required and obtained through the State of Minnesota Public Utilities Commission as this Project is considered a Large Wind Energy Conversion System (“LWECS”). The rules to implement the permitting requirement for LWECS are found in Minnesota Rules Chapter 7854.
- D. Electricity from the Project will be delivered to the electrical grid at two points of interconnection. The first point of interconnection will be a new substation that will tap an existing 69 kV line near the intersection of 390<sup>th</sup> Street and 180<sup>th</sup> Avenue. The second point of interconnection will be on a 69 kV pole adjacent to Great River Energy’s substation at the intersection of County Road 51 and MN Highway 19.
- E. The Developer entered into agreements with the owners of the real property comprising the Project area, giving it control of this land for the purpose of, and authority to, develop the Project.
- F. This Agreement specifies the commitments made by the County and by the Developer for the purpose of ensuring that the Project is consistent with the existing policies and ordinances of Goodhue County.

NOW, THEREFORE, in consideration of the recitals (which are incorporated into the Agreement by this reference) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Developer agree as follows:

# AGREEMENT

## 1. Effective Date and Termination

1.1 Effective Date. The effective date of this Agreement is the date first stated above.

1.2 Termination. This Agreement shall terminate five (5) years from Project Completion or may be terminated by mutual written and executed agreement of the Parties to this Agreement, Developer shall have the option, in its sole discretion, to terminate the Project. If Developer elects to terminate this Project, Developer shall submit a Notice to this effect to the County and comply with all provisions of this Agreement that apply to any work already performed on the Project.

## 2. Vesting.

This Agreement vests the Project to applicable existing County ordinances and regulations effective as of the Effective Date of this Agreement to the extent such ordinances and regulations are not superseded or preempted by federal or state law or permit.

## 3. Definitions

### **Agreement**

This Development Agreement and all other agreements entered into between the County and Developer that are attached hereto as Exhibits and incorporated into this Agreement.

### **Developer**

AWA Goodhue, LLC, its employees, agents, successors and assigns, including, but not limited to, contractors and subcontractors engaged to do any of the work outlined in this Agreement.

### **Project Facilities**

Include all Project wind energy conversion systems and associated facilities as defined in Minn. R. part 7854.0100.

### **Public Roadway**

Roadways and appurtenance right-of-ways that are under the jurisdiction of a County or Township, and including without limitation roadway ditches.

### **Public Drainage Systems**

Those drainage systems established or under the jurisdiction of a Drainage Authority under Minnesota Statutes 103D or 103E.

### **Drainage Authority**

Drainage Authority means the County Board, Joint County Drainage Authority, Town Board or

	Watershed District having jurisdiction on or over systems or projects as defined by Minnesota Statutes 103D or 103E.
<b>Public/Private Drainage Tile</b>	Any artificial subsurface drainage system.
<b>Drainage Inspector</b>	Goodhue County Soil and Water Conservation District, County, or State personnel as designated by the Drainage Authority.
<b>Roadway Ditches</b>	Open ditches located adjacent to Public Roadways and within the public right-of-way.
<b>Project Completion</b>	<p>Project Completion is defined as when all of the following items are satisfied:</p> <ol style="list-style-type: none"> <li>1. Issuance of a Certificate of Occupancy for all building permits associated with the Project; and</li> <li>2. The Developer notifies the County in writing that it has begun generating energy, excluding trial energy, for sale under the terms of its power purchase agreements (the “Commercial Operation Date”); and</li> <li>3. In accordance with Exhibit F, repair of all road and drainage impacts documented by the County Engineer.</li> </ol>

#### **4. Development Standards.**

- 4.1 Fire Protection and Emergency Services. Prior to initiating construction activity related to the Project, Developer will communicate and coordinate with local fire districts, emergency services, and Goodhue County Emergency Management their needs and plans related to all aspects of the Project to assure adequate preparedness and response is executed in the event these services are required.
- 4.2 Building Code Compliance. Goodhue County has properly adopted and administers the Minnesota State Building Code (also “SBC,” “Building Code,” or simply “Code”). The Project is required to comply with the Minnesota State Building Code and all the referenced codes, standards, and practices. The Goodhue County Building Official represents the Authority Having Jurisdiction (“AHJ”) and administers and enforces the Code. The Building Official may render interpretations of the Code and may adopt policies and procedures to clarify its application. The powers and duties of the Building Official are outlined in Minnesota Rules, Chapter 1300.0110.

- 4.3 Building Permits. Each structure requires a building permit (see Exhibit C). Building permits shall be applied for on the County Building Permit Application form (See Exhibit B) and shall include the submittal of documents as required by the SBC and the AHJ/Building Official.
- 4.4 Plan Reviews. Permit applications and construction submittals are reviewed by the Building Official for compliance with the Code and with other pertinent laws or County ordinances. For each structure, the issued permit and the “Field Copy” of the reviewed plans is to be maintained, accessible, and available to the Building Official or an authorized representative on the site of the work.
- 4.5 Permit Fees. Plan review fees are a part of the total Building Permit Fee and are paid by the Developer. The Building permit fee must be paid prior to permit issuance and commencement of construction. See Exhibit D.
- 4.6 Inspections. All work for which a permit is required is subject to inspection by the Building Official. Work must remain exposed and accessible for inspection purposes until it has been approved by the Building Official. The Developer is required to cause the work to remain accessible and exposed for inspection purposes. Neither the Building Official nor the AHJ is liable for any expense for removal or replacement of material that may be required to allow for full and proper inspection. The Building Official must pass a Final Inspection and approve each structure prior to use and/or occupancy.
- 4.7 Wind Turbine Rural Identification Address. A rural address will be issued to each wind turbine included in the Project by the Goodhue County Office of Emergency Management. Details are outlined in Exhibit E.
- 4.8 Road Use and Repair. The use of the Public Roadways for the construction of the Project will exceed the normal anticipated use of the public roadways of Goodhue County and those particular Townships that have passed resolutions substantially in the form included in Appendix F-1 of Exhibit F. The conditions outlined for road use and repair are hereby incorporated into this Agreement by reference as they appear in the Road Use and Repair Agreement attached as Exhibit F.
- 4.9 Underground Drainage System Protection and Warranty. The parties recognize that the use of Public Roadways for the construction of the Project may impact drainage systems.
- a. If any drainage systems within the road right of way are damaged by the Project construction and its associated work, said drainage system will be repaired by the Developer at its expense; however, the Developer shall not be responsible for damage caused by others. All repairs to the drainage infrastructure will be completed in a manner approved by the Goodhue County Drainage Inspector and/or County Engineer to assure that said system

is in proper operating condition upon completion of the repair. Damage may not become evident until after Project Completion.

- b. If, within five (5) years following Project Completion, public or private surface drainage or drainage tile problems within the road right of way develop as a result of Project construction, the Developer will provide additional repair and services, or compensation (based upon the actual cost of restoration including the reasonable value of staff time if completed by the County, Township, Drainage Authority), within 45 days of receiving written notice from the Drainage Inspector and/or County Engineer.

4.10 Concrete batch plants. Concrete batch plants must comply with Goodhue County's Zoning Ordinance and receive a Land Use Permit from the County. Structures associated with concrete batch plants are subject to permits and inspections as provided for in the State Building Code. Permits must be issued prior to commencing construction or placement. Structures must pass a Final Inspection by the Building Official prior to being placed into service or use.

4.11 Mining. The extraction of minerals and associated mining activities occurring on parcels of land located within Goodhue County are regulated through Article 14 of the Goodhue County Zoning Ordinance.

- a. If mining material or activities are obtained or occur on Goodhue County sites, the sites must be registered according to said Article 14, and provide proof of a bond as outlined in Section 6, Subdivision 1 of the Article.
- b. The Developer must provide the County with a list of all mining locations contracted for the Project.
- c. Areas of excavations not exceeding 400 cubic yards that are exempt from Article 14, are required to obtain a Land Use Alteration Permit for grading which shall include existing and proposed two (2) foot contours and proposed erosion and sediment control methods.

4.12 Construction Practices. The following construction practices shall be observed by the Developer in constructing this Project:

- a. Storage of equipment and material during construction: All materials and equipment must be stored and parked within the bounds of the staging areas acquired by the Developer so that it will not interfere with public transportation, as determined by the County Engineer.
- b. Equipment and materials stored adjacent to Public Roadways must be stored outside of the road right-of-way. Equipment and materials may only be stored within the road right-of-way with the County Engineer's prior, written consent.

- c. The Developer will work with the Goodhue County Soil and Water Conservation District (“SWCD”) to prevent erosion due to the construction of this Project. The Developer shall provide to the SWCD a copy of their Erosion Control Plan, the State of Minnesota National Pollution Discharge Elimination System Permit, and the Storm Water Pollution Prevention Plan prior to start of construction.
  - d. The SWCD will be the local contact agency for all erosion and sediment control inspections. If a reasonable method to control erosion cannot be reached after discussions between SWCD and Developer, the SWCD will direct enforcement actions to the MPCA to administer the NPDES permit.
- 4.13 Removal of Construction Debris. All construction related debris, material, and rocks larger than 4 inches in diameter which are not an integral part of the Project will be removed from the Right-of-Way of the Designated Haul Roads identified in the Road Use and Repair Agreement (Exhibit F). This is to include all litter generated by the construction crews.
- 4.14 Public Roadway Protection and Warranty. Following the completion of the Project construction, the Developer will restore Public Roadways to its original preconstruction surface condition, elevation, cross-section and repair any other damaged appurtenances as provided in the Road Use and Repair Agreement (Exhibit F). If, within three (3) years following Project Completion, uneven settling occurs or other damage is discovered as a result of Project construction, the Developer will provide additional repair and leveling services, or compensation (based upon the actual cost of restoration including the reasonable value of staff time if completed by the County or Township), within 45 days of receiving written notice from the Drainage Inspector and/or County Engineer; provided, however, that if the required work is not reasonably susceptible of being cured within such 45 day period, Developer will be allowed reasonable additional time to perform so long as Developer promptly commences such actions and thereafter diligently proceeds to complete the required work.
- 4.15 Site Plan. The Developer shall provide a site plan for the Project as outlined in Exhibit G.
- 4.16 Repair of Damaged Soil Conservation Practices. All soil conservation practices such as terraces, grassed waterways, etc. which are damaged by the Project construction, will be restored to their pre-construction condition. The Goodhue SWCD shall be the contact agency on the technical assistance for Best Management Practices restoration.
- 4.17 Pumping of Water from Open Trenches. In the event it becomes necessary to pump water from open trenches or Roadway Ditches the Developer shall provide the County Engineer with prior written notice and will pump the water in a manner that will avoid damaging adjacent Public Roadways and adjacent agricultural lands, crops and/or pasture. Such damages include, but are not

limited to, inundation of crops for more than 24 hours, deposition of sediment in Roadway Ditches and the deposition of gravel in Roadway Ditches. The Developer shall be required to repair all such damages or pay for any damaged crops resulting from this operation.

All pumping of water shall comply with existing drainage laws, local ordinances relating to such activities, State of Minnesota National Pollution Discharge Elimination System/Storm Water Permits and Federal Wetland Regulations and Laws.

- 4.18 Gopher State One Call. The Developer shall register all transmission and collection line locations associated with the Project, both in the road right of ways and across private property, and any other necessary information to the Gopher State One Call service. The Developer shall provide proof of Gopher State One Call membership to the County prior to Project Completion.
- 4.19 Responsibility for County Costs. The Developer shall pay all reasonable costs incurred by it or the County, including, but not limited to, legal, engineering, and inspection expenses (including Initial Evaluations and daily inspection of the Designated Haul Roads as defined in the Road Use and Repair Agreement (Exhibit F)), in connection with the Project; the review and approval of plans and permits relating to the Project; the preparation of this Agreement and other required agreements; the expenses for drafting and filing necessary documents; and all reasonable costs and expenses incurred by the County in monitoring and inspecting any and all phases of the Project.
- 4.20 Time of Payment. Developer shall pay in full all bills submitted by the County for obligations incurred under this Agreement within thirty (30) days of Developer's receipt of such bills, accompanied by reasonable supporting documentation. Bills not paid within thirty (30) days of Developer's receipt thereof shall accrue interest at a rate of one and one-half percent (1.5%) per month from the date of such receipt. Failure to remit payment within thirty (30) days shall constitute a default of this Agreement.

## **5. County Representatives.**

- 5.1 For items in Articles 4.8, 4.9, 4.12, 4.13, 4.14, 4.17, 6.2, 10.1, 10.2, 10.3

Contact: Goodhue County Engineer  
Goodhue County Department of Public Works  
(651) 385-3025



5.2 For items in Articles 4.2, 4.3, 4.4, 4.6, 4.7, 4.10, 4.11, 4.15

Contact: Goodhue County Land Use Management Director  
Goodhue County Land Use Management  
(651) 385- 3104

5.3 For items in Articles 1, 6, 7, 8, 9, 10, 11, 12

Contact: Goodhue County Attorney  
(651) 267-4950

5.4 For items in Article 4.16

Contact: Water Planner  
Goodhue County Soil and Water Conservation District  
(651) 923-5280

## **6. Amendments and Revisions.**

6.1 Amendments to Agreement. This Agreement may be amended by mutual agreement of the Developer and County. Amendments shall be effective only if in writing and signed by the parties.

6.2 Project Facility Repair, Maintenance and Replacement. Developer shall be permitted, without any further amendment to this Agreement, to repair, maintain and replace Project Facilities consistent with the terms of this Agreement, the permitting and inspection provisions of the Minnesota State Building Code and road over weight and oversize permitting requirements. Provided, however, that prior to beginning any construction to replace any Project Facilities or performing any construction within any portion of a public right-of-way or Public Drainage System, and prior to using any Public Roadway within the County to transport equipment or materials for the replacement of Project Facilities, the Developer shall (1) provide security in accordance with Article 10 of this Agreement; and (2) execute a new form of the Road Agreement relating to the Developer's use of Public Roadways intended to be used for the Project Facility replacement. This provision may be waived by the County Engineer in his/her sole discretion if the County Engineer determines that the Project Facilities replacement will not impact Public Roadways or drainage systems.

## **7. Assignments**

Developer may, within the terms of this Development Agreement, assign this Agreement to a successor or assign with the approval of the Goodhue County Board, which approval shall not be unreasonably withheld or delayed. The assignees shall then assume all responsibilities and duties pursuant to this Agreement. If such assignment is made, Goodhue County shall be provided within 30 days with a written copy of the assignment.

## 8. General Provisions.

- 8.1 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the Developer and County and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring all or any portion of the Project, any lot, parcel or any portion thereof within the Project Area, or any interest therein, whether by sale, operation of law, devise, or in any manner whatsoever.
- 8.2 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota, and hereto intend that Minnesota law shall apply to the interpretation hereof. For the purpose of resolving any dispute with respect to this Agreement, each party agrees that the venue for any legal action shall be in Goodhue County, Minnesota.
- 8.3 Severability. If any provisions of this Agreement are determined to be unenforceable, invalid or excessive, this Agreement can thereafter be modified, to implement the intent of the Developer and County to the maximum extent allowable under law and the remainder of this Agreement shall remain unaffected and in full force and effect.
- 8.4 Authority. The Developer and County represent and warrant that it has the respective power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to execute, deliver and perform its obligations under this Agreement.
- 8.5 No Third-Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Developer, and its successors and assigns, and the County and its participating Townships as identified in Exhibits, and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.
- 8.6 Agent for Service of Process. The Developer shall appoint an agent for service of process in Minnesota and shall provide written notice setting out the name, address and telephone number of said agent to the County, upon the final execution of this Agreement.
- 8.7 Duty to Act Reasonably and in Good Faith. Unless otherwise expressly provided, the Developer and County shall act reasonably in giving consent, approval, or taking any other action under this Agreement. The Developer and County agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement and each of them covenants that it will not at any time voluntarily engage in any actions which frustrate the purpose and intent of the Parties to develop the Project in conformity with the terms and conditions specified in this Agreement. The Developer and County understand and agree that

the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. The Developer and County agree to use best efforts to communicate regarding issues, changes, or problems that arise in the performance of the rights, duties and obligations hereunder as early as possible in the process, and not wait for explicit due dates or deadlines. Each party agrees to work cooperatively and in good faith toward resolution of any such issues.

- 8.8 Insurance. Before starting construction, Certificates of Insurance or self-insurance acceptable to the County shall be filed by the Developer for itself and all of its contractors, with the County Attorney and shall contain a provision that the policies will not be canceled or materially changed until at least ten days prior written notice has been given to the County Attorney. This insurance shall be written for not less than the following limits:

**Workers' Compensation**

**Contractor's Public Liability and Property Damage**

Bodily injury	\$500,000
Each person	\$500,000
Each Accident	\$5,000,000

**Property Damage**

Each Accident Aggregate	\$5,000,000
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**Automobile**

Public Liability and Property Damage	\$1,500,000
Bodily Insurance	\$5,000,000
Each Person	\$1,500,000
Each Accident	\$5,000,000
Property Damage	\$1,500,000
Each Accident Aggregate	\$5,000,000

- 8.9 Time of Essence. Time is of the essence in the performance of each and every obligation to be performed by the Developer and County hereto.
- 8.10 Obligations Surviving Termination. In addition to Developer's obligation to maintain security as provided in Article 10 and elsewhere, neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting

from any acts, omissions or events happening prior to the date of termination or expiration.

- 8.11 Subcontractors. The Developer shall be responsible to make certain all of its contractors, subcontractors, agents, employees and representatives comply with all terms of this Agreement.
- 8.12 Obligation to Obtain Easements. This Agreement is conditioned upon the Developer obtaining all easements or other title for all property needed for the Project before starting construction of the Project.
- 8.13 Entire Agreement. This Agreement, together with all exhibits hereto, constitutes the entire agreement between the Developer and County with respect to the subject matter of this Agreement. Agreement is specifically intended to supersede all prior agreements whether written or oral.

## **9. Notices.**

- 9.1 Written Notice. Either party may give notice to the other at the address for that party set forth below. Notices may be given by U.S. certified mail, personal delivery, or professional messenger.
- 9.2 Addresses. Written Notices shall be given to the Parties at their addresses set forth below.

*If to the County:*

Goodhue County Administration  
509 West 5<sup>th</sup> Street  
Red Wing, MN 55066  
Attn: Administrator

cc: Goodhue County Attorney  
454 West 6<sup>th</sup> Street  
Red Wing, MN 55066  
Attn: County Attorney

*If to Applicant:*

Mark Ward  
AWA Goodhue, LLC  
c/o American Wind Alliance, LLC  
Mesa Power Group LLC  
8117 Preston Road, Suite 200  
Dallas, Texas 75225  
Telephone: (214)365-9147  
Fax: (214) 750-9773

*With Copy to:*

Daniel A. Yarano  
Fredrikson & Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402-1425  
Telephone: (612) 492-7419  
Fax: (612) 492-7077

- 9.3 When Notice Effective. Unless otherwise provided in this Agreement, notice by U.S. certified mail, personal delivery, or professional messenger shall be effective upon receipt. Any party at any time by Notice to the other party may designate a different address or person to which such notice or communication shall be given.
- 9.4 Operational Communications. Notwithstanding Section 9.1 above, communications concerning the operational aspects of the construction may be given to the appropriate County Representative listed in Article 5, via e-mail, facsimile, or telephone if such communication is acknowledged as having been received.

**10. Security.**

- 10.1 Security Fund. Developer shall provide the County with reasonable security for Developer's performance of its obligations under this Agreement, including the obligations in the Road Use and Repair Agreement attached as Exhibit F. Upon execution of the Agreement, Developer shall deliver a cash deposit of \$10,000.00 with the County (the "Security Fund"). In the event the Developer fails to timely pay any and all bills submitted by the County for obligations incurred under this Agreement, the County may, in addition to other actions which may be available to the County, draw on the Security Fund pursuant to this Section 10.1. The Security Fund shall be maintained in effect until such time as the County has approved the repair and warranty obligations of Developer (including, without limitation, Developer's obligations under Sections 4.9, 4.12, 4.14, and 4.16 of this Development Agreement, Articles 1, 2 and 3 of the Road Use and Repair Agreement), and all financial obligations to the County under this Agreement have been satisfied. If the County draws on the Security Fund, the Developer shall replenish the account within twenty (20) days so that the balance of the account is maintained at \$10,000.00. If the Developer fails to timely replenish the account, the County may, upon five (5) days prior written notice to the Developer, draw on the Additional Security provided in Section 10.2 to maintain a balance of \$10,000.00 in the Security Fund. Upon confirmation from the County Engineer that all obligations under the Agreement have been satisfied, all amounts remaining in the Security Fund shall be refunded to the Developer.
- 10.2 Security. To guarantee compliance with the terms of this Agreement, payment of costs incurred by the County, or the remediation of any nuisance caused by Developer's failure to comply with the terms of this Agreement, Developer shall furnish or cause to be furnished to the County an irrevocable letter of credit, cash

escrow, or performance bond or such other security as is acceptable to the County or a combination thereof. The letter of credit or other acceptable security shall be in a form that automatically renews and shall be issued by an institution acceptable to the County. The security shall be in an amount equal to 125% of the County Engineer's estimated cost of the potential road and drainage impacts from the Project. The County Engineer's determination as to the amount of security shall be final.

10.3 Maintenance and Reduction of Security.

- a. At the discretion of the County Engineer, the security provided under Sections 10.1 and 10.2 shall remain in place throughout the term of this Agreement to ensure compliance with Developer's warranty obligations as provided in this Agreement.
- b. Upon confirmation by the County Engineer that substantial obligations under this Development Agreement have been satisfactorily completed, the County Engineer may approve a reduction in the amount of security provided under Sections 10.1 and 10.2. The decision of the County Engineer shall be final.

**11. Default and Remedies.**

11.1 Remedies. If Developer fails in any way to perform or observe any covenant, condition, or obligation contained in this Agreement and that failure is not cured within any applicable cure period; or if the Developer voluntarily commences bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings; or if insolvency, receivership, reorganization, bankruptcy, or a similar proceeding shall been commenced against the Developer and such proceeding remains undismissed or unstayed for a period of thirty (30) days, Developer agrees that during the continuation of such default the County may do any, all, or any combination of the following:

- (i) Halt all further approvals regarding improvements or issuance of building permits relating to the Project;
- (ii) Immediately suspend Developer's authority under this Agreement to use the Designated Haul Roads identified in the Road Use and Repair Agreement (Exhibit F) for purposes relating to the Project by providing written notice in the manner provided in Article 9;
- (iii) Draw on or utilize any funds or other security provided to the County pursuant to this Agreement and provide payment due and owing to the County or complete any work to be done under this Agreement, including, without limitation, the inspection, repair or replacement of any Designated Haul Road, or the remediation of any nuisance caused by Developer's failure to complete any of its obligations under this Agreement;

- (iv) Seek injunctive relief;
- (v) Suspend any work or improvement relating to the Project by issuing a stop work order; and/or
- (vi) Take any other action at law or in equity which may be available to the County.

11.2 Events of Default and Notice. Unless otherwise provided for in this Agreement, if the Developer fails to perform one or more of its obligations under the Agreement relating to the permitting of the Project, or fails to comply with its monetary obligations under the Agreement, the County shall give the Developer formal notice of the default and the Developer shall have thirty (30) days to cure the default. Unless otherwise provided for in the Agreement, if the Developer fails to comply with any of the road maintenance, repair and public safety obligations of Article 4 of this Development Agreement, or Articles 1, 2 and 3 of the Road Use and Repair Agreement (Exhibit F) or if the Developer undertakes or permits work or other activity in violation of the restrictions of set forth in the Agreement, the County shall give the Developer formal notice of the default and the Developer shall have 48 hours to cure the default. Unless written notice of a change of address or responsible individual is provided to the County, the County's notices shall be sufficient if personally delivered or sent by certified U.S. mail, postage prepaid or by overnight mail by a national carrier such as FedEx or UPS to the name and address provided in Article 9.

11.3 Failure to Cure Default. If the Developer does not cure the default within the required period or such longer period as may be necessary if the default may not reasonably be cured within the required period, provided the Developer pursues the cure with reasonable diligence, then the County may avail itself of any remedy afforded it by law and any of the above cumulative, non-exclusive remedies. Provided, however, that if Developer fails to comply with any such obligation of the Agreement and the County Engineer (or Building Official, or SWCD) reasonably determines that such failure has caused or is causing an immediate danger to public health and safety, the County may, in its sole reasonable discretion, immediately and without prior notice to Developer avail itself of any remedy afforded it by law and any of the above cumulative, non-exclusive remedies. The County will make reasonable efforts to notify the Developer prior to drawing on a letter of credit or other security, but the failure to provide such notice shall not invalidate the County's actions.

11.4 Failure to Provide or Renew Security. Notwithstanding anything else in this Article 11, if the Developer's default is the failure to obtain an extension or renewal of a letter of credit or a replacement letter of credit within thirty (30) days of the date an existing letter of credit will expire, the County may exercise the remedies provided in this Article 11 and draw on the letter of credit without prior notice to the Developer and without the Developer having the opportunity to cure the Developer's default. The County will make reasonable efforts to notify the

Developer prior to drawing on a letter of credit, but the failure to provide such notice shall not invalidate the County's actions.

- 11.5 Enforcement. Developer shall reimburse the County for costs incurred in the enforcement of this Agreement, including reasonable engineering and reasonable attorneys' fees, and all costs of collection.
- 11.6 No Additional Waiver Implied by One Waiver. If any condition, obligation or agreement contained in this Agreement is breached by the Developer and thereafter waived in writing by the County, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breaches hereunder. All waivers by the County must be in writing to be effective.
- 11.7 No Remedy Exclusive. No remedy herein conferred upon or reserved to the County shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

## **12. Indemnity.**

Anything to the contrary herein notwithstanding, the County, the Drainage Authority, their elected and appointed officials, their officers, agents, employees, and representatives shall not be liable or responsible in any manner to the Developer, contractor or subcontractors, materialmen, laborers, or to any other person or persons whomsoever, for any claims, demands, damages, actions, or causes of action of any kind or character whatsoever arising out of or by reason of the execution of this Agreement; the permitting or inspection of any work relating to the Project, and any and all work which is the Developer's obligation to perform pursuant to this Agreement; the grant by the County of any approval related to the Project; the failure by Developer to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement; the failure by the Developer to pay contractors, subcontractors, laborers, or materialmen; the failure by Developer to pay for materials; the failure by Developer to obtain necessary permits and authorization to construct the work described in this Agreement; or the County's exercise of any of its rights in the event of a default by Developer. Developer further agrees to indemnify, defend, and hold the County, the Drainage Authority, their elected and appointed officials, their officers, engineers, agents, employees and representatives harmless from all such claims, demands, damages, actions, or causes of action, and all costs, disbursements, and expenses resulting from such claims, including reasonable attorneys' fees.

*[Signatures follow on next page. ]*



**IN WITNESS WHEREOF**, the County and the Developer have caused this Agreement to be duly executed on the day and year first above written.

**GOODHUE COUNTY**

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County Board Chair

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County Administrator

**DEVELOPER**

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AWA Goodhue, LLC  
Mark Ward, Chief Manager

## Exhibit A: Project Map

### Project Overview:

Located northwest and south of the City of Goodhue, Minnesota, the proposed Goodhue Wind Project is planned to generate up to 78 megawatts (MW).

### Project Quick Information:

**Total Project Area:** 33,000 acres

**Direct Land Utilized:** 38 - 47 acres (includes turbines, meteorological towers, access roads, two substations, and one operations and maintenance building)

**Land Use:** Predominantly agricultural

**Operational Capacity:** 78 megawatts (MW)

**Turbines:** Up to 52 turbine sites currently planned as a mix of 15 GE 1.5xle turbines and 35 GE 1.6xle turbines.

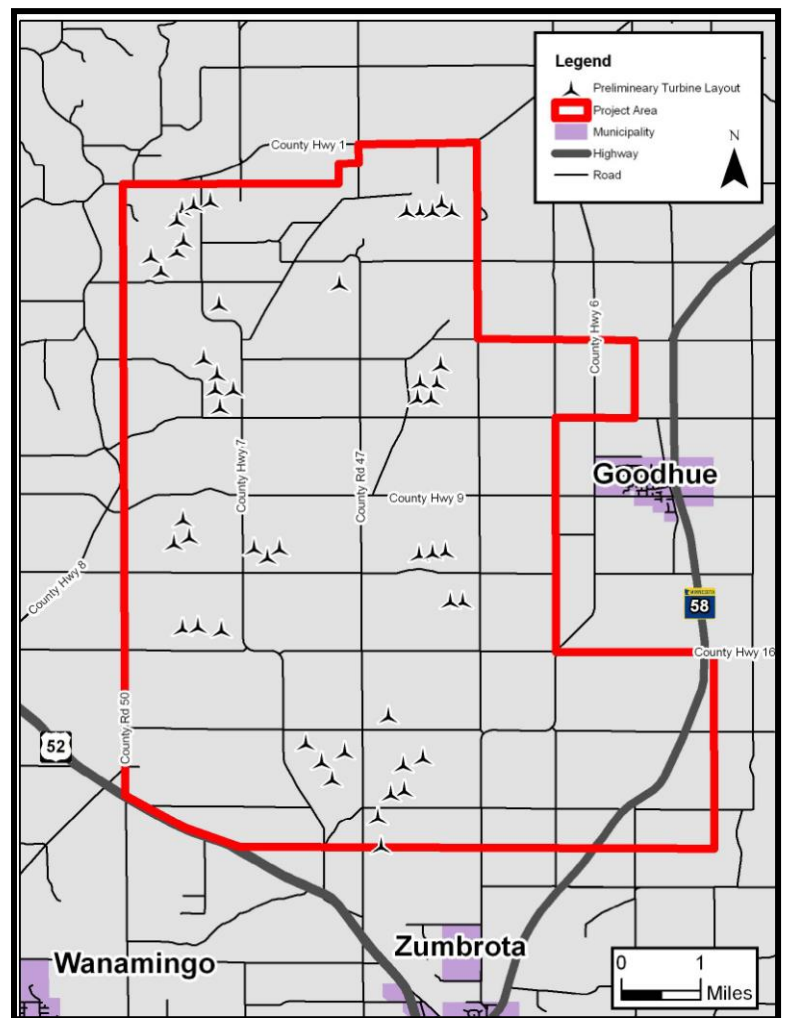
**Interconnection Points:** Goodhue Substation and Vasa Substation

**Expected In-Service Date:** Summer 2011

**Project Developer:** AWA Goodhue, LLC

**Contractor:** Carstensen Contracting

**Power Purchaser:** Xcel Energy



*Project area map*

## Exhibit B: Building Permit Application

**Goodhue County**  
Land Use Management Department  
**Building Permits and Inspections**  
Goodhue County Government Center ♦ Room 103  
509 West Fifth Street ♦ Red Wing ♦ Minnesota ♦ 55066  
Telephone: 651/385-3114 ♦ Fax: 651/385-3106  
[www.co.goodhue.mn.us](http://www.co.goodhue.mn.us)

# Application for Building Permit

### Applicant Information

Name of **Applicant** (Individual): \_\_\_\_\_ Telephone: \_\_\_\_\_  
Individual's Mailing Address: \_\_\_\_\_ Telephone: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_ E-Mail: \_\_\_\_\_  
Name of **Company** (if applicable): \_\_\_\_\_ **License Number:** \_\_\_\_\_  
Company's Mailing Address: \_\_\_\_\_ Qualifying Person: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_ Telephone: \_\_\_\_\_

### Property Information

**Site Address:** \_\_\_\_\_ **Parcel Number:** \_\_\_\_\_  
Size of the Parcel: \_\_\_\_\_ City or Township: \_\_\_\_\_  
Name of Property Owner: \_\_\_\_\_ Owner Waiver Included? \_\_\_\_\_  
Mailing Address: \_\_\_\_\_ Telephone: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_ Telephone: \_\_\_\_\_

### Project Information

Circle Type of Permit: **Residential** or **Non-Residential**. If not residential, specify: \_\_\_\_\_  
State the **Use** of Structure: \_\_\_\_\_ Size of Structure or Project: \_\_\_\_\_  
Circle Type of Work: New / Addition / Repair or Remodel / Re-Roof / Plumbing / Mechanical / Other? \_\_\_\_\_  
**Value** of Proposed Project or Work (Required by SBC): \_\_\_\_\_  
Describe Proposed Project and Scope of Work: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Professionals Involved

General Contractor: _____	License Number: _____	Telephone: _____
Plumbing Contractor: _____	License Number: _____	Telephone: _____
Mechanical Contractor: _____	State Bond: _____	Telephone: _____
Electrical Contractor: _____	License Number: _____	Telephone: _____
Design Professional: _____	License Number: _____	Telephone: _____
Other: _____	License Number: _____	Telephone: _____

### Applicant Statement and Acknowledgement

To avoid permit expiration, **begin work and call for first inspection within 180 days of permit issuance**. I certify that the information on this application is true, complete, and correct. All work done and all materials used will be in conformance with the approved plans and specifications and in compliance with the requirements of the Minnesota State Building Code and other applicable statutes, ordinances, rules, and regulations that govern building construction or use.

**X** Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### \*\*\*\*\* Items Below Are For County Building Official Use \*\*\*\*\*

Application _____	Construction Plans _____	Site Plan _____	Environmental Health Approval _____
Waiver(s) _____	Additional Plan Info _____	Other _____	Final Zoning Approval _____

### Building Official Approval

Comments/Conditions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### Fees

General Permit Fee: \$ _____	Valuation of Permit: \$ _____
Plan Check Fee: \$ _____	Occupancy Class: _____
State Surcharge: \$ _____	Construction Type: _____
Other Fee: \$ _____	Date Fee Paid: _____
Total Fee: \$ _____	Receipt Number: _____

**Permit Number:** \_\_\_\_\_  
**Issue Date:** \_\_\_\_\_

## **Exhibit C: Building Permits and Inspections**

### **Building Code Compliance**

Goodhue County has properly adopted and administers and enforces the Minnesota State Building Code (also “SBC,” “State Building Code,” “Building Code,” or simply “Code”). All projects in the county, therefore, are required to comply with the provisions of the State Building Code as well as with referenced codes, standards, practices and jurisdictional policies and procedures. The Goodhue County Building Official represents the Authority Having Jurisdiction (“AHJ”) and administers and enforces the Code. The Building Official may render interpretations of the Code and may adopt policies and procedures to clarify application of the Code. The powers and duties of the Building Official are outlined in Minnesota Rules, Chapter 1300.0110.

### **Purpose of the Building Code**

The purpose of the Building Code is to provide minimum standards to safeguard life and limb, health, property, and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location, and maintenance of all structures and equipment specifically covered by the Code within a jurisdiction that adopts and enforces the Code. (See Minnesota Rules 1300.0030.)

### **Scope of the Building Code**

The SBC applies to the construction, alteration, moving, demolition, repair, and use of any building, structure, or building service equipment. (Minnesota Rules 1300.0040.) In other words, the Code pertains to all structures and equipment, both permanent and temporary. For example, the Code pertains to the proposed turbines and to the maintenance/office building. The Code pertains to construction trailers and temporary concrete batch plants.

### **Building Permits**

The Building Code is administered by way of permits and inspections for structures and for equipment both permanent and temporary. Each structure requires a separate building permit. Structures include meteorological towers, turbines, substations, accessory structures, maintenance buildings, temporary facilities such as construction offices, concrete batching plants, and other items as required by the State Building Code. For work that is covered by the scope of the Building Code, the property owner or an authorized agent must make proper application and obtain the required building permit prior to commencing work. Building permits must be applied for on the County Building Permit Application form. Obtain the application form from the County Website at [www.co.goodhue.mn.us](http://www.co.goodhue.mn.us), at the Building Department Office (Goodhue County Government Center, 509 West Fifth Street, Red Wing, Minnesota 55066), or call the Building Department (651/385-3114 or 651/385-3104) to receive an application by fax, mail, or email. An application for a building permit includes the county application form and related submittals as required and as appropriate to each structure or project.

## **Permit Application Process**

The building permit application process involves a number of steps, multiple submittals, numerous levels of review, and a variety of approvals. Typically, the process begins by obtaining the applicable county and/or township zoning approvals or providing documentation that such approvals are not required. The application process entails additional and multiple reviews for compliance with other statutory requirements, regulations, local zoning concerns, etc. in accordance with the scope of the proposed project. The final building permit approval is granted by the Building Official.

## **Permit Submittals**

A building permit application to the county typically includes a number of project submittals:

- Final Zoning Approvals (Township and/or County as applicable) or documentation that the Project does not require such approvals;
- Copies of Access / Road Permits;
- Copies of Other Agency Permits and Approvals;
- Detailed Site Plan of the Proposed Project;
- Fully Completed County Building Permit Application; and
- Two Complete Sets of the Construction Documents.

The Code requires that plans and specifications be drawn to scale on substantial paper in sufficient clarity to indicate the location, nature, and extent of the proposed project and to show in detail that the project will conform to the building code and to other laws, ordinances, rules, and regulations. Depending on the scope of the particular proposed project, the construction documents will include:

- Plans and Blueprints;
- Shop Drawings;
- Detail Sheets;
- Architectural Code Analyses;
- Engineering Calculations;
- Site Evaluations and Soils Reports;
- Manufacturer Requirements and Specifications;
- Special Inspector Contact Information and Credentials;
- Special Inspection Statement and Schedule; and
- Other Items as Required or Requested.

## **Plan Reviews**

Permit submittals are reviewed by the county. Construction documents are specifically reviewed by the County Building Official for compliance with provisions and requirements of the Building Code and other pertinent laws and ordinances. Plan review fees are a part of the total Building Permit Fee. All fees must be paid prior to permit issuance and the permit must be issued prior to commencement of construction.

### **Permit Fees**

Building Permit Fees shall be in accordance with the Goodhue County Building Permit Fee Schedule. A building permit fee will be due on each building permit. The Total Fee for each permit includes the General Fee, the Plan Review Fee, and a State Surcharge. Building Permit Fees shall be based on valuation (MR 1300.0160). Permit value is set by the Building Official for the AHJ. A permit is not issued until after the fees have been paid.

Work that begins without the issuance of a required building permit shall be subject to a special investigation before a permit may be issued. In such cases, an investigation fee will be incurred in addition to the required permit fees.

### **Permit Issuance**

Building permits must be issued before construction begins. A permit is issued by the Building Official after the Building Official is satisfied that the proposed work conforms to the requirements of the Code and other applicable laws and ordinances. For each structure or project, the issued building permit and the "Field Copy" of the reviewed construction documents is to be maintained and available on the site of the work until the completion of the project.

### **Inspections**

Work for which a permit is required is subject to inspection by the Building Official. It is the responsibility of the permit applicant to cause the work to remain accessible and exposed for inspection purposes until it is approved by the Building Official. Neither the Building Official nor the AHJ is liable for any expense entailed in the removal or replacement of material required to allow for inspection. It is also the responsibility of the permit applicant to have the inspection record card maintained and available at the site until the final approval has been granted by the Building Official.

It is the responsibility of the person doing the work to notify the Building Official when work is ready for inspection and to provide access to and means for inspection of the work. Work is not to be done beyond the point indicated in each successive inspection without Building Official approval. Any work that is not approved at the inspection, is not satisfactory, or does not comply with the Code must be corrected and not covered or concealed until it passes re-inspection and/or is authorized by the Building Official.

### **Inspection Requests.**

Within the constraints of time, staffing, and geography, the county makes concerted effort at timely response to inspection requests that work to the benefit and progress of the project. When work is ready for inspection, the person doing the work is to notify the Land Use Management Department at 651/385-3114 allowing ample time, typically a working day, for scheduling each inspection. The Building Official must pass a Final Inspection and approve each structure prior to service, use, or occupancy.

**Special Inspections.**

In addition to the inspections performed by the Building Official and as required by the Code, the project owner or a registered design professional acting as agent of the owner is required to employ qualified special inspectors to provide inspections throughout construction. The names, credentials, and type of work to be inspected shall be identified, listed, and submitted to the Building Official with the permit application. The special inspectors must maintain detailed records of inspections. Discrepancies between construction work and the approved construction documents must be corrected and reported per the SBC requirements.

A statement of special inspections as prepared by the registered design professional must be submitted with the permit application. The statement must identify what is to be inspected, the type and extent of the inspection, the type and extent of each test, any seismic and/or wind testing requirements, whether each inspection is to be continuous or periodic.

Special Inspection Reports shall be submitted to the Building Official per inspection or test. Each report must clearly identify the specific structure by permit number and site address. A Final Special Inspection Report for each structure must be submitted allowing ample time for review prior to the final inspection and issuance of a Certificate of Occupancy (C/O). A Certificate of Occupancy is required prior to service, use, or occupancy of any equipment, structure, or project.

**Final Inspection and Certificate of Occupancy.**

Final inspection approval and a Certificate of Occupancy issued by the Building Official are required prior to service, use, or occupancy. A number of items are considered with the final inspection including, but not limited to, the items below:

- Code compliance and correction of any deficiencies;
- Completion of the project including final site grading;
- Proper rural identification including obtaining rural addressing from the County Office of Emergency Management and proper posting of emergency numbers;
- The state electrical inspector's final project approval; and
- Receipt of all Special Inspection Final Reports.

## **Exhibit D: Fees**

### **Attorney Fees:**

These fees pertain to attorney staff time in the preparation, execution, maintenance, enforcement, and legal defense of the agreement.

Goodhue County Attorney:	\$124/hour
Outside Counsel:	Billed rate

### **Building Permit Fees:**

Building Permit Fees shall be in accordance with the Goodhue County Building Permit Fee Schedule. A building permit fee will be due on each building permit. The Total Fee for each permit includes the General Fee, the Plan Review Fee, and a State Surcharge. Permit value is set by the Building Official for the AHJ. A permit is not issued until after the fees have been paid.

Work that begins without the issuance of a required building permit shall be subject to a special investigation before a permit may be issued. In such cases, an investigation fee will be incurred in addition to the required permit fees.

### **Evaluation and Inspection of Designated Haul Roads:**

Equipment Operator:	\$40/hour
Technicians/Accountant:	\$50/hour
Supervisor:	\$60/hour
Professional Engineer:	\$90/hour
Outside Contractors/Consultants:	Billed rate

### **Highway Access Permit:**

This permit is required for the modification of the Right-of Way of Public Roadways covered by the Development Agreement relating to any change to an existing access point or the construction of a new access point. The construction of a temporary access point with geometric properties to accommodate the delivery of large pieces of equipment is considered one access project requiring the payment of the access fee and independent inspection by the County Engineer. The later modification of that temporary access to remove or to bring the access point into conformance with design criteria for permanent access points requires a new access permit and independent inspection by the County Engineer and, therefore, another permit including the payment of a permit fee.

\$100 per access permit

### **Right of Way Obstruction and/or Excavation Permit:**

This permit is required before any person can obstruct or perform excavation in the Right-of Way of a Roadway covered by the Development Agreement. All persons applying for said permit shall first be registered with the County.

Annual Registration fee:	\$25
Obstruction or Excavation Fee:	\$75 per site



**Rural Identification Address Fee:**

This fee pertains to the issuing and making of the Emergency Number signs and site visit (Exhibit E).

\$150 per number

**Site Permit Review Fee:**

This fee pertains to the staff time necessary to review the site plans listed in Exhibit G and two Land Use Staff site visits.

\$5,000

\$100/hour additional site visits

**SWCD Fee:**

This fee pertains to the staff time necessary to perform up to 3 visits per site which is anticipated to adequately address most of the required inspection items.

\$225

\$75.00/hour plus mileage for additional inspections

4809842

## **Exhibit E: Wind Turbine Rural Identification Address**

1. The Developer must apply for and receive a Goodhue County Emergency Number for each wind turbine.
2. Each Emergency Number sign must be purchased through the Goodhue County Office of Emergency Management.
3. The Developer shall display and maintain the number issued to them and have the number remain visible and legible.
4. A sign with the assigned number shall be displayed approximately three to five feet above ground and in two locations:
  - a. One sign shall be located at the concrete base of the tower and visible from the tower's access road
  - b. One sign shall be located four to ten feet from the roadway and existing access road

## **EXHIBIT F: ROAD USE AND REPAIR AGREEMENT**

This Road Use And Repair Agreement (the “Road Use and Repair Agreement”) is entered into by AWA Goodhue, LLC (“Developer”) and Goodhue County, Minnesota (“County”), as a part of that certain Development Agreement entered into by Developer and County on \_\_\_\_ day of \_\_\_\_\_ 2010 (the “Development Agreement”). This Road Use and Repair Agreement shall be binding not only on the parties, but also upon Developer’s contractors and subcontractors. Capitalized terms not otherwise defined herein shall have the meaning given them in the Development Agreement.

### **RECITALS**

- A. The Developer desires to construct the Project described in the Development Agreement in Goodhue County, Minnesota.
- B. The County and the Developer wish to incorporate into the Development Agreement by this Road Use and Repair Agreement, the use and repair of County Roads and County State Aid Highways under the jurisdiction of the County and roadways under the jurisdiction of those townships who have designated the County Engineer as the Road Authority for this Project, as indicated by passage of a resolution in the form attached hereto as Appendix F-4 of this Exhibit (the “Participating Townships”), all in accordance with the terms and conditions set forth herein.
- C. In connection with the development and construction of the Project, it will be necessary for the Developer and its contractors, subcontractors, suppliers and each of their respective agents, employees, representatives, and permitted assigns (the Developer and such other persons while in the performance of work for the Developer are referred to herein as the “Developer Parties”) to: (i) transport heavy equipment and materials over Designated Haul Routes located in the County, which may in certain cases be in excess of the design limits of such roads; (ii) transport certain locally sourced materials, such as concrete and gravel, on such roads; (iii) widen such roads and make certain modifications and improvements (both temporary and permanent) to such roads (including to certain culverts, bridges, traffic control devices, road shoulders and other related fixtures) to permit such equipment and materials to pass; and (iv) place certain electrical cables for the Project adjacent to or under certain roads identified on Appendix F-3 of this Exhibit for the purposes of carrying electrical current from the Project to the Project substation.

### **AGREEMENT**

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

## **1. Use of Roads.**

- 1.1 Use of Designated Haul Roads. In connection with the development and construction of the Project, the County hereby acknowledges and agrees that the Developer Parties may use the roads located in the County identified on Appendix F-1 hereto (the “Designated Haul Roads”) at any time, seven (7) days a week. Only County Roads and Township Roads under the jurisdiction of the Participating Townships shall be considered for inclusion in Appendix F-1. The Designated Haul Roads may be used by the Developer Parties in connection with the development and construction of the Project, including the transportation of heavy equipment and materials to and from the Project. In addition to identifying the Designated Haul Roads that will be used by the Developer, Appendix F-1 identifies the routes over the Designated Haul Roads that will be used for: (i) transportation and delivery of wind turbine equipment and components and other materials and equipment to be used in connection with the Project; (ii) truck transportation leaving the Project site following delivery of equipment and materials; (iii) movement of the assembled cranes; and (iv) transportation and delivery of locally sources materials, including concrete and gravel (collectively, the “Hauling Activities”). The County agrees that, from time to time, the Developer may request to include additional roads as Designated Haul Roads by first (A) submitting an updated version of Appendix F-1 to the County that includes such additional roads and (B) performing an Initial Evaluation, herein included by reference as Appendix F-2 on such additional roads. After submitting such updated version of Appendix F-1 to the County and performing the Initial Evaluation on the additional roads, Appendix F-1 to this Road Agreement shall be amended and restated as such updated version of Appendix F-1 once approved by the County Engineer.
- 1.2 County to Enforce for Road Authority. For purposes of the Development Agreement and this Road Use and Repair Agreement (collectively, the “Agreements”), the Developer and the Participating Townships have agreed that the County shall have the exclusive authority to enforce the Agreements as they relate to the Township Roads identified on Appendix F-1, as may be amended from time to time. Resolutions authorizing the County to enforce the provisions of the Agreements as they relate to Township Roads shall be attached as Appendices to this Road Use and Repair Agreement.
- 1.3 Construction Period Meetings. Beginning with commencement of construction of the Project and before delivery of materials and equipment to the Project site, the Developer and the County Engineer (or designee) shall meet from time to time upon the reasonable request of the Developer or County Engineer (or designee) to discuss the expected use of the Designated Haul Roads, including the construction schedule and the Designated Haul Roads to be used. The County Engineer shall have authority to act on behalf of the County and Participating Townships on matters relating to use of Designated Haul Roads.

1.4 Evaluation of Designated Haul Roads.

- a. As soon as practicable after the execution of the Development Agreement, but in any event prior to the commencement of construction at the Project site and before delivery of materials and equipment to the Project site, the County and the Developer shall agree on a method to evaluate the Designated Haul Roads (“Initial Evaluation”). An enumeration of each Initial Evaluation for the Designated Roads shall be included as Appendix F-2 of this Road Use and Repair Agreement. The Developer shall inspect and structurally assess all bridges or structures on Designated Haul Roads and provide documentation to the satisfaction of the County Engineer of acceptable use of said bridges or structures, also to enumerated in Appendix F-2 of this Road Use and Repair Agreement.
- b. If the Developer submits an updated version of Appendix F-1 to the County pursuant to Article 1.1, the County and the Developer shall perform an Initial Evaluation with respect to each additional road that the Developer has included in Appendix F-1 as a Designated Haul Road. The costs of each Initial Evaluation will be borne by the Developer. Additional evaluations shall be conducted only in the event the Parties mutually agree.
- c. Prior to commencement of the Project construction the Developer shall, at its expense, provide the County Engineer with videotape or other media and/or other documentation such as cross section surveys, centerline profile, culvert condition inventory, etc., (and other means to determine the ‘remaining life’ in paved roads before and after the Project to determine the road life used by Developer during the Project) documenting the preconstruction condition of all Designated Haul Roads to be used during construction of the Project. This will be made available and approved by the County Engineer for accuracy and clarity and will be considered as the record of the preconstruction condition of the roads.

1.5 Haul Routes. The term “Haul Route” means any of the Designated Haul Roads that will be used for the Hauling Activities. Prior to commencing Project construction activities, the Developer agrees to consult with and receive input, and approval from the County Engineer regarding the Haul Routes to be used for the Project.

- a. While Hauling Activities are in progress, the Developer shall maintain the Designated Haul Roads in a condition satisfactory to the County Engineer. This work shall include application of water, bituminous material, or calcium chloride to the road surface as may be necessary to alleviate dust nuisance and eliminate traffic hazards. When Hauling Activities over any Designated Haul Roads are completed, the Developer shall return said road back to conditions that existed prior to use of the Haul Route by any Developer Parties, to the satisfaction of the County Engineer, or reimburse the Road Authority for paved road life consumed during the Project, as determined by the County

Engineer; provided, however, that Developer shall not be responsible for damage caused by parties other than the Developer Parties.

- b. The Developer shall, at their own expense, prepare a map indicating the Haul Routes to be used in the construction and maintenance of the Project based on its consultation(s) with the County Engineer and shall provide a minimum of two (2) copies of such map to the County Engineer.

1.6 Maintenance of Traffic. The Developer shall, throughout construction of the Project, provide and maintain all traffic control devices as deemed necessary for the safe and efficient movement of the public. Emergency vehicles must have access to Public Roadways and special attention will be required for the maintenance of existing planned routes of school buses and mail carriers. Should any road become impassable at anytime, the Developer shall notify the Law Enforcement Center immediately and make necessary accommodations for the traveling public and emergency vehicles. Maintenance of traffic shall be in conformance with the Minnesota Manual of Uniform Traffic Control Devices (“MN MUTCD”); this includes, but is not limited to, the following:

- a. To advise, warn, and alert the traveling public of construction in advance of the Project termini and on all roads, streets, and public trails approaching or crossing the Project.
- b. To control and guide traffic through the Project; and if necessary to provide necessary flag persons and pilot vehicles.

1.7 Oversized Move Permits. Move permits must be obtained and complied with throughout the duration of the Project for Public Roadways under the County’s authority. Prior to the following week’s construction, permits shall be secured for all planned moves along with confirmation of the previous week’s moves as planned. If any move is to be altered, it must be approved by the County Engineer (or designee) and so noted in the weekly move permit log. Note:

- a. Equipment mounted on crawler tracks or steel-tired wheels shall not be operated on or across concrete or bituminous surfaces without specific authorization from the County Engineer. Special restrictions may be imposed with respect to speed, load distribution, surface protection, and other precautions considered necessary.
- b. The Developer shall comply with legal load restrictions whenever feasible. Overweight Permits will not be issued or valid during the Spring Road Restriction period, as determined by the County Engineer.
- c. Should construction operations necessitate the crossing of an existing pavement with equipment or loads that would otherwise be prohibited, methods of load distribution or bridging shall be approved by the County Engineer and shall be provided by the Developer.

- d. Neither by issuance of a special permit, nor by adherence to any other restrictions imposed, shall the Developer be relieved of liability for damages resulting from the operation and movement of construction equipment, materials or supplies by Developer Parties.

1.8 Protection of Bridges or Structures. The Developer shall, at its own expense, hire a Minnesota Professional Engineer approved by the County Engineer to inspect and structurally assess all bridges or structures on a Designated Haul Road or public drainage ditch crossings and provide documentation to the satisfaction of the County Engineer of acceptable fortification for use of said bridges or structures. The County Engineer reserves the right to have structures inspected, assessed and have the recommended fortifications reviewed by other engineers at the expense of the Developer.

1.9 Maintenance of Roads During Construction. The Developer shall maintain all Designated Haul Roads during construction in conformance with County standards, and to ensure the traveling public can use the roads at all time, and to the satisfaction of the County Engineer (or designee). Maintenance during construction shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces to the end that all roadways and structures are kept in satisfactory condition at all times. If, at any time, the Developer fails to comply with these provisions, the County Engineer will notify the Developer of the deficiencies. If the Developer fails to remedy unsatisfactory maintenance within 24 hours after receipt of written notice to do so, the County may immediately proceed to maintain the roadway at the expense of the Developer. Maintenance may include but not be limited to dust control, sweeping, blading of gravel surfaces, aggregate surfacing, bituminous surfacing, etc. The County may, in its discretion and as staff time permits, make inspections of the Designated Haul Roads to ensure compliance with the Developer's maintenance and safety obligations.

## **2. Repair of Designated Haul Roads.**

2.1 Obligation to Repair Roads. If the Designated Haul Roads or related appurtenances, including bridges, culverts, traffic control devices, and other road fixtures are damaged by Hauling Activities conducted by Developer Parties on such Designated Haul Roads, as determined by the County Engineer, the Developer shall repair (or cause to be repaired) such damage and restore such road to the condition they were in prior to the damage caused by Hauling Activities conducted by the Developer Parties (as near as is reasonably practicable having due regard for normal wear and tear). The Parties shall rely upon the Initial Evaluation conducted pursuant to Section 1.4 for purposes of determining whether the repair has been performed in accordance with the standard set forth in this Section 2.1. The Developer shall also be responsible to repair any non-designated road damaged by the Developer Parties. Since Initial Evaluations will not be available for these non-designated haul roads, the condition of similar roads under the same road jurisdiction shall be used as the pre-construction

condition for road restoration. Any repair and restoration shall be promptly performed at such times as the County Engineer may reasonably determine, having due regard for safety, the presence of emergency conditions and the costs of such repairs. Following completion of such repair, the County Engineer and the Developer jointly shall inspect the repair to determine that it has been completed satisfactorily. The County understands and agrees that the Developer is not responsible for any damage to the Designated Haul Roads or non-designated roads that is not caused by Developer Parties. Since the Developer's Hauling Activities will potentially consume a large portion a paved road's life capacity without evidence of visual damage, the Developer shall provide testing at its own expense to determine road life capacity used; and reimburse the Road Authority for road life capacity consumed by the Hauling Activities required for the Project, or shall reimburse the Road Authority at a predetermined cost per Equivalent Standard Axle Load ("ESAL").

2.2 Conditions Relating to Work within Right-of-Way. The Developer shall comply with the following conditions in connection with any repair, maintenance or other work to be conducted within any public right-of-way:

- a. Developer shall submit an 'Obstruction and/or Excavation Permit' to work in the road right of way and have an approved permit prior to commencing any repair to the road or other improvements to the road right of way, and agrees to meet the conditions of the permits. Permits will not be required for daily blading and the placement of new rock surfacing. Developer shall provide the County with written notice of any contractor(s) Developer intends to use to perform the work within the right-of-way. The County Engineer will have the right to approve the contractor and subcontractors who will complete the repair or maintenance. Notwithstanding the County's approval of a contractor or subcontractor, Developer will accept responsibility as the general contractor for the repair and maintenance. The County Engineer's approval of the contractor and/or subcontractors shall not be unreasonably withheld.
- b. If requested by the County Engineer, the Developer shall provide plans and specifications for the road repair or reconstruction to be completed. Thereafter, the Developer shall complete the repair or reconstruction according to the approved plans and specifications.
- c. Developer will be responsible for the costs of maintenance, repair or reconstruction of the roads, soil and erosion control measures, and related improvements as required under this Road Use and Repair Agreement and related permits.
- d. Following completion of the Project, the roads, soil and erosion control measures, and related improvements will be subject to the inspection and approval of the County Engineer. For work within a township right-of-way, such inspection and approval shall be directed by the County Engineer in consultation with the Participating Township. If any material or labor



supplied is rejected by the County Engineer, as defective or unsuitable, then such rejected material or labor shall be removed and replaced with approved material or labor, to the satisfaction and approval of the County Engineer, entirely at the cost and expense of the Developer. The approval of the County Engineer shall not be unreasonably withheld.

- e. The warranty period discussed in Article 4.14 of the Development Agreement begins once the Developer has completed all punch list items discovered during final inspections by the County and the County Engineer approves and accepts all repair work as complete.
- f. Following completion and acceptance of the work, the Developer will provide to the County Engineer an electronic file of the record plans or “as-built” in digital format (preferably in Microstation .DGN format, AutoCAD .DWG, or .DXF format) of all utilities and road construction plans. The files will be georeferenced in Goodhue County coordinates.
- g. Time is of the essence for the completion of any work within a public right-of-way, including any maintenance, repair or reconstruction of roads and associated improvements.

- 2.3 Failure to Repair. If the Developer fails on its own to repair Designated Haul Roads that are damaged by Hauling Activities conducted by the Developer Parties, the County Engineer may require in writing that the Developer repair such damage and return such roads to the condition such roads were in prior to such damage (as closely as is reasonably practicable having due regard for normal wear and tear). Such request for repair may include temporary repairs such as crack sealing and overlays to maintain the integrity of the roads for safe public travel until more permanent repair may be undertaken following completion of the Project. Prior to commencement of such repair, the County Engineer and the Developer shall meet to review the damage in relation to the Initial Evaluation or most recent subsequent evaluation, as applicable. After such review, the Developer shall repair (or cause to be repaired) such damage and restore the road to the standard set forth in Article 2.1, to the extent such damage was caused by Hauling Activities conducted by the Developer Parties. Any repair and restoration shall promptly be performed at such times as the County Engineer may reasonably determine, having due regard for safety, the presence of emergency conditions and the costs of such repairs. If the Developer fails to repair such roads within the agreed period, then, unless the Parties mutually agree otherwise, the County may make such repairs and shall invoice the Developer for the costs incurred in connection with the repair. Any such invoice shall be accompanied by reasonable supporting documentation sufficient to justify the amounts claimed due by the County. The Developer shall pay such invoiced amounts within twenty (20) days following Developer’s receipt of the invoice and supporting documentation.

### **3. Modifications to Designated Haul Roads.**

- 3.1 Modifications to Designated Haul Roads. The County hereby acknowledges, agrees to consider reasonable modifications by the Developer Parties to the Designated Haul Roads as are reasonably necessary to accommodate the use of the Designated Haul Roads by the Developer Parties, including the widening of certain roads, the strengthening and/or spanning of existing culverts and bridges, and other modifications reasonably necessary to accommodate the heavy equipment and materials to be transported on the Designated Haul Roads.
- a. The Developer shall obtain access permits for any new or modified access serving the Project. The Developer agrees to meet the conditions of the permit for drainage requirements, geometric design, and location. Removal of existing access and relocation of a new access serving the parcel will be required where modification of existing access is not possible. The County's adopted access permit application fee is set in Exhibit D to the Development Agreement.
  - b. Temporary intersection modifications to accommodate turning radii must include extension of all drainage conveyance with 6:1 side slopes wherever possible.
  - c. Drainage intakes located in the road right of way shall be protected from siltation or relocated with approval of the County Engineer and/or the County Drainage Inspector.
  - d. All traffic control shall be maintained per the Minnesota Manual of Uniform Traffic Control Devices. Deviations without documentation shall not be permitted.
- 3.2 Compliance with Law. The Developer agrees that all road modifications shall comply with all applicable laws except to the extent provided for in this Road Use and Repair Agreement.
- 3.3 Collection System. The County grants the County Engineer the authority to allow the placement of the collection system related to this Project in road right of way or County property owned in Fee Title by Goodhue County or on or across those County Roads where the County has Highway Easement if Developer provides documentation (satisfactory to the County) that the underlying property owners have granted permission to Developer for said installation. "Collection System" means certain wires, cables, conduits and/or lines (and their associated equipment) related to the transmission of electricity and data from the Project above or below ground at a location adjacent to or under (including across) certain County Roads, as identified in Appendix F-3. The County Engineer agrees to consider an application to install the Collection System on or across those County Roads where the County owns the Right of Way in Fee Title. The County Engineer further agrees to consider an application to install the Collection

System on or across those County Roads where the County has Highway Easement if Developer provides documentation (satisfactory to the County) that the underlying property owners have granted permission to Developer for said installation. The Developer shall obtain an 'Obstruction and/or Excavation Permit' to work in the Road Right of Way for the installation of any underground or overhead conduit placed in the public right of way. The Developer agrees to meet the conditions of the permit. The County's adopted utility permit application fee is set in Exhibit D to the Development Agreement.

#### **4. General Provisions.**

- 4.1 Cooperation. Developer and County agree to communicate and cooperate in good faith concerning the safe implementation of the Project and work together to prevent or correct any hazardous road conditions that may be created by the Project.
- 4.2 Amendment or Waiver. No waiver and no modification or amendment of any provision of this Road Use and Repair Agreement shall be effective unless specifically made in writing and duly agreed to by the parties. Waiver by any party of any breach or failure to comply with any provision or term of this Road Use and Repair Agreement by another party shall not be construed as, or constitute, a continuing waiver, or a waiver of any breach of, or failure to comply with, any other provision of this Road Use and Repair Agreement.
- 4.3 Governing Law. This Road Use and Repair Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota, and hereto intend that Minnesota law shall apply to the interpretation hereof. For the purpose of resolving any dispute with respect to this Road Use and Repair Agreement, each party agrees that the venue for any legal action shall be in Goodhue County, Minnesota.
- 4.4 Severability. If any provisions of this Road Use and Repair Agreement are determined to be unenforceable, invalid or excessive, this Road Use and Repair Agreement can thereafter be modified, to implement the intent of the Developer and County to the maximum extent allowable under law and the remainder of this Road Use and Repair Agreement shall remain unaffected and in full force and effect.
- 4.5 Letter of Credit and other Security. The Developer's obligations regarding security for performance of its obligations under this Road Use and Repair Agreement shall be governed by Article 10 of the Development Agreement, which are incorporated herein by reference. The County's obligations regarding reduction, use and return of the security given by Developer also shall be governed by the provisions of Article 10 of the Development Agreement.

- 4.6 Events of Default and Remedies. The parties' obligations and conduct relating to default, notice and remedies shall be governed by Article 11 of the Development Agreement, which is incorporated herein by reference.

*[Signatures follow on next page.]*

IN WITNESS WHEREOF, the County and the Developer have caused this Road Use and Repair Agreement to be duly executed on the day and year first above written.

GOODHUE COUNTY

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County Board Chair

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County Administrator

DEVELOPER

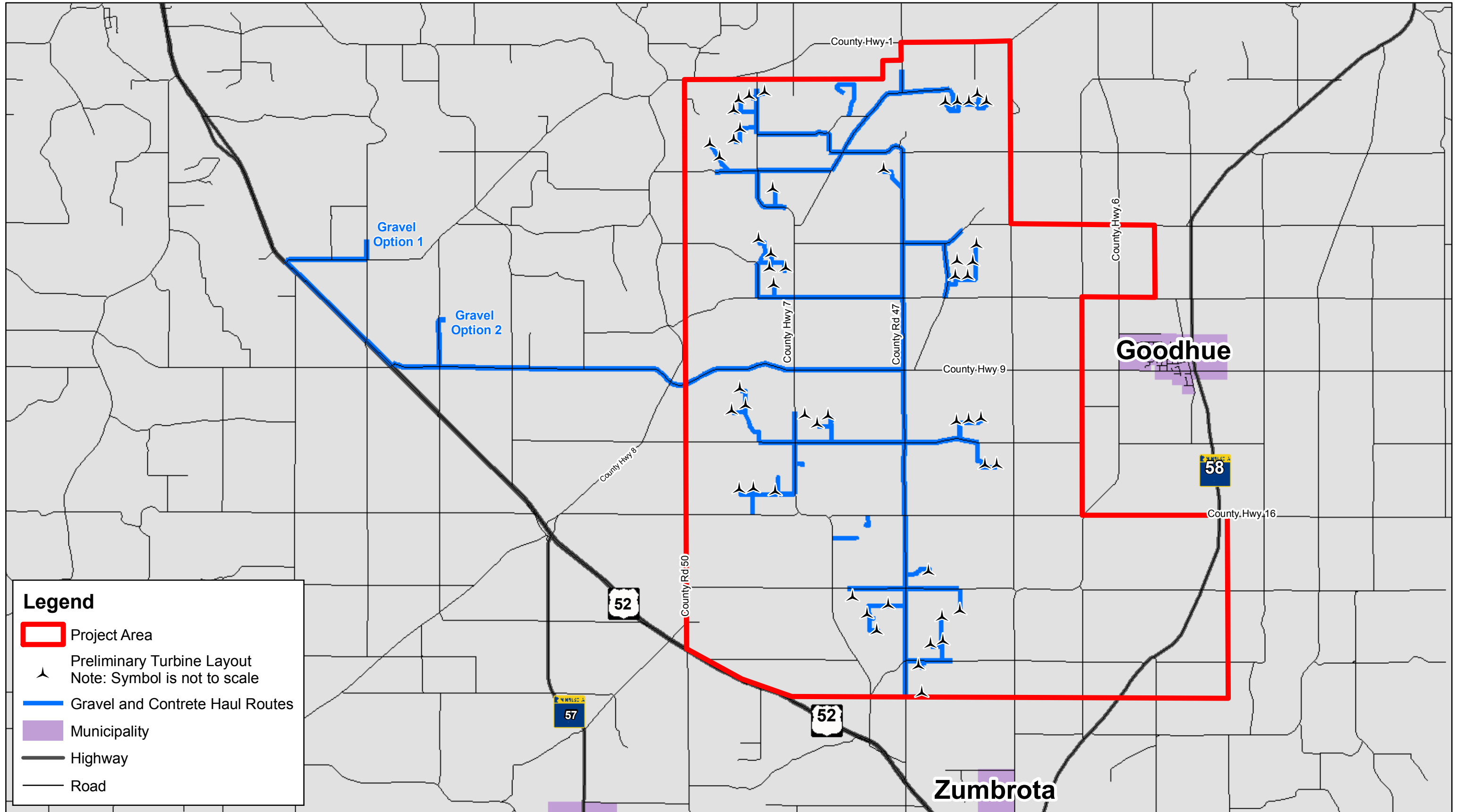
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Mark Ward, Chief Manager  
AWA Goodhue, LLC

**EXHIBIT F: ROAD USE AND REPAIR**

**APPENDIX F-1  
DESIGNATED HAUL ROADS**

**(See Map on Next Page)**



### Legend

- Project Area
- Preliminary Turbine Layout  
Note: Symbol is not to scale
- Gravel and Contrete Haul Routes
- Municipality
- Highway
- Road

Data Source(s): MNDOT (2009); AWA Goodhue (2010); ESRI (2010); Westwood (2010).



Westwood Professional Services, Inc.  
7699 Anagram Drive  
Eden Prairie, MN 55344

PHONE 952-937-5150  
FAX 952-937-5822  
TOLL FREE 1-888-937-5150

www.westwoodps.com



0 1.25 Miles

## AWA Goodhue, LLC Wind Project

Goodhue County, Minnesota

Gravel and Concrete Haul Routes  
**PRELIMINARY AND SUBJECT TO APPROVAL**

APPENDIX F-1

## **EXHIBIT F: ROAD USE AND REPAIR**

### **APPENDIX F-2 INITIAL EVALUATION**

#### **Gravel Road Initial Evaluation:**

1. Cross sections, Right of Way limit to Right of Way limit, at 8 locations per mile
2. Determine gravel depth at 8 locations per mile
3. Determine road centerline elevation every 50 feet for the length of the road.
4. Video tape the length of the haul road.

#### **Paved Road Initial Evaluation:**

1. Cross sections, ditch bottom to ditch bottom, at 8 locations per mile.
2. Determine road centerline elevation every 50 feet for the length of the road.
3. Determine road centerline elevation every 5 feet for twice the width of the crane at crane crossing locations.
4. Video tape the length of the haul road.

#### **Life Lost in Paved Roads Calculations:**

1. Contractor develops a spread sheet showing where each load of materials, equipment, etc. will travel.
2. The number of ESALs (no. of standard truck loads) is generated per paved road from the spread sheet.
3. Calculate the standard 20 year GE (which determines pavement thickness) based off the ESALs from the current traffic on the road (without the project loads).
4. Recalculate the GE that would be required from both the current traffic plus the project traffic ESALs.
5. Determine the difference in the GEs from 3 vs. 4 above to determine the extra pavement thickness required for the project traffic.
6. Convert the pavement thickness to the number of tons of pavement for each paved road.
7. Multiply that tonnage by our current contracted costs per ton to determine a Pavement Life Lost payment value.
8. Or, other testing required by other means to determine pavement life lost by the project's hauling activity that is mutually agreeable to the County and the Developer.

#### **Structures:**

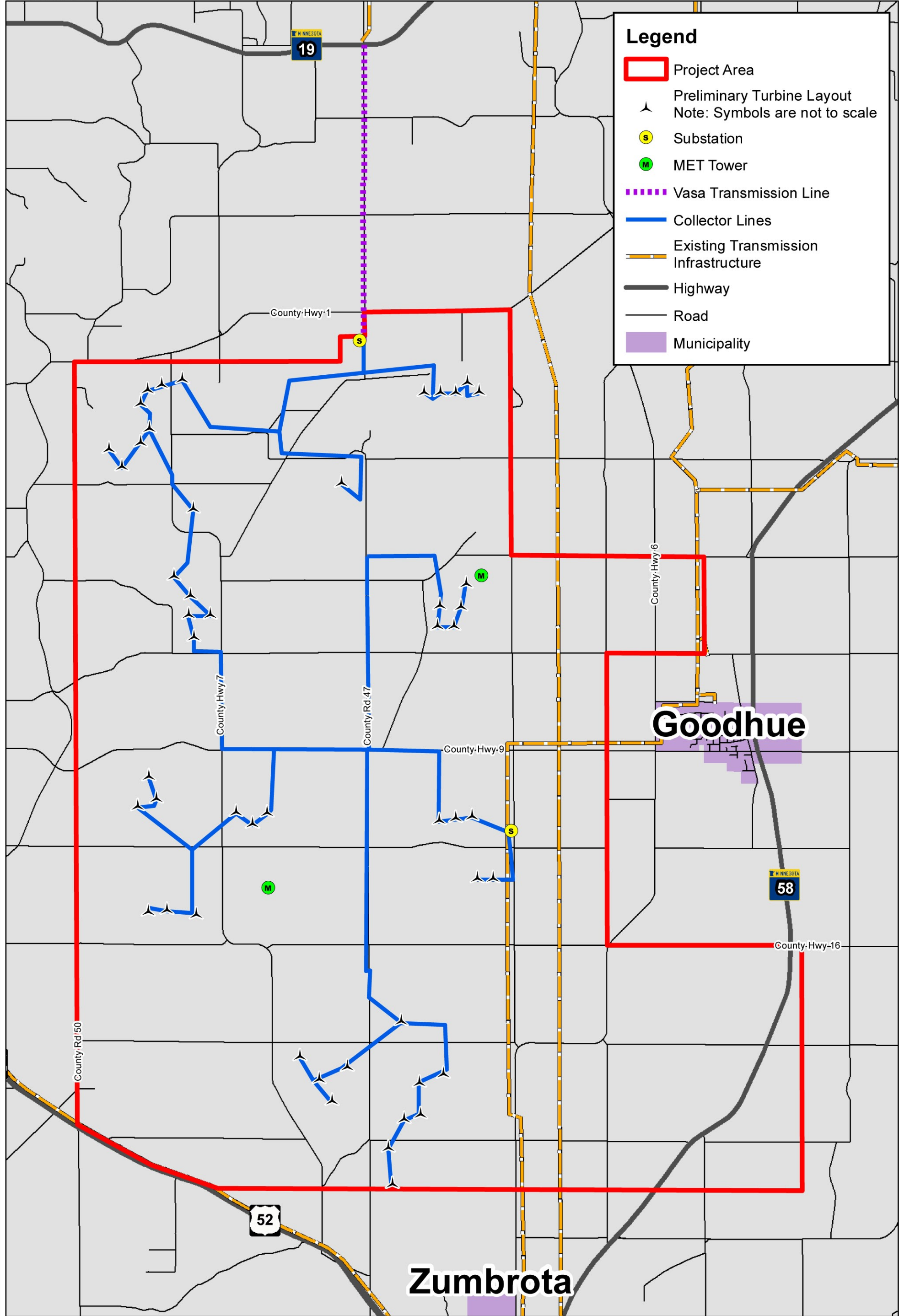
1. Condition inspection, inventory and assessment of all pipes over 24 inch diameter, all structures and all bridges on haul roads.
2. Recommended fortifications for all structures and bridges that require fortification based on their assessment.



**EXHIBIT F: ROAD USE AND REPAIR**

**APPENDIX F-3  
COLLECTION LINE CROSSING**

**(See Map on Next Page)**



**Legend**

- Project Area
- Preliminary Turbine Layout  
Note: Symbols are not to scale
- Substation
- MET Tower
- Vasa Transmission Line
- Collector Lines
- Existing Transmission Infrastructure
- Highway
- Road
- Municipality

Data Source(s): MNDOT (2009); LMIC (2008); AWA Goodhue (2010); ESRI (2010); Westwood (2010).

**AWA Goodhue, LLC Wind Project**

Goodhue County, Minnesota

Project Associated Facilities

**PRELIMINARY AND SUBJECT TO APPROVAL**

APPENDIX F-3

## EXHIBIT F: ROAD USE AND REPAIR

### APPENDIX F-4 TOWNSHIP RESOLUTION FORM

#### RESOLUTION

WHEREAS, AWA Goodhue, LLC entered into a Development Agreement with Goodhue County, Minnesota on \_\_\_\_\_, 2010 related to the installation of up to 52 wind turbines in Goodhue County; and

WHEREAS, the Development Agreement and its related exhibits address use of the public rights-of-way, drainage system repairs, permitting and required maintenance and restoration of the public roadways used for transportation purposes during the wind turbine construction; and

WHEREAS, \_\_\_\_\_ Township desires to be part of and covered by the Development Agreement as it pertains to use of the public right-of-way and the maintenance and restoration of the township roads and drainage systems; and

WHEREAS, \_\_\_\_\_ Township has reviewed a form of Development Agreement currently being negotiated between AWA Goodhue and Goodhue County; and

WHEREAS, \_\_\_\_\_ Township agrees to have the Goodhue County Engineer represent them in the negotiation and enforcement of the provisions of the Development Agreement to ensure proper siting of infrastructure within the public right-of-way and proper maintenance and restoration of the roadways; and

WHEREAS, \_\_\_\_\_ Township agrees to grant the Goodhue County Engineer the authority to allow the placement of the collection system related to this Project on or across road right of way where the Township has Easement interest if AWA Goodhue provides recorded documentation that the underlying property owners have granted permission to AWA Goodhue for said placement; and

NOW, THEREFORE, BE IT RESOLVED, by the Township Board of \_\_\_\_\_ Township, Goodhue County Minnesota, that \_\_\_\_\_ Township agrees to be a party to the conditions and provisions of the Development Agreement; and

BE IT FURTHER RESOLVED, that \_\_\_\_\_ Township authorizes the Goodhue County Engineer to act on its behalf to negotiate and execute a final Development Agreement with AWA Goodhue, to act on its behalf as provided for in the Development Agreement and to make the final determination that the provisions of the Development Agreement have in all things been met.

#### CERTIFICATION

STATE OF MINNESOTA) (SS  
COUNTY OF GOODHUE)

TOWNSHIP OF \_\_\_\_\_)

I, \_\_\_\_\_, Clerk of said township of \_\_\_\_\_, do hereby certify that I have compared the foregoing copy with the original resolution adopted by the \_\_\_\_\_ Township Board on \_\_\_\_\_, 2010 and now remaining on file and of record and that the same is a correct transcript there from and of the whole of such original.  
Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2010.

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

Township of \_\_\_\_\_ Goodhue County, Minnesota

## Exhibit G: Site Plans

These Site Plans are required and shall show the following information:

1. **Project Site Plan:** This map shall be drawn to scale and show the overall project depicting the following information:
  - a. Project boundary
  - b. Public roads, names of the roads, and Gross Vehicle Weight limits and Spring Road Restrictions
  - c. Tower locations
  - d. Section, Township, Range numbers
  - e. Transmission line and associated structure locations
2. **Preliminary Site Plans:** These maps shall be drawn to an acceptable engineering scale, using the Goodhue County Coordinate System, and show the existing conditions and proposed locations of the following information:
  - a. Property lines
  - b. Property owner name and parcel number
  - c. Existing planimetric data including: roads, existing land cover (woods, crops, bluff, water), structures
  - d. 2 foot contours
  - e. Distance from proposed tower base to residences within 2000 feet
  - f. Proposed location of staging areas
  - g. Proposed location of tower, concrete base, and other associated structures or equipment, both permanent and temporary
  - h. Proposed location of access and maintenance roads to be built or used
  - i. Location of any wells or septic systems on the property
  - j. Proposed location of foundation excavation material
3. **Grading Plans:** These maps shall be drawn to an acceptable engineering scale and show the following information:
  - a. Existing and proposed grading for the access/maintenance roads, tower and base locations, and staging areas
  - b. 2 foot contours showing existing and proposed grades of access roads and tower sites
  - c. Identify where fill from the tower base will be placed and stabilized
  - d. Location and type of temporary and permanent erosion and sediment control measures
  - e. Provide a copy of the Storm Water Pollution Prevention Plan (SWPPP)
  - f. Road repair plans that may be required under paragraph 2.2(f) of Exhibit F
4. **As-Built Plans:** These maps shall be drawn to an acceptable engineering scale. Two maps for each site must be submitted 1) showing red-lined revisions of the original submittals and 2) showing the final plan without the red-lines. The maps shall show the following post-construction information:
  - a. Location of tower and Goodhue County coordinate for each tower
  - b. Location of concrete bases, and other associated structures or equipment
  - c. Location of access and maintenance roads
  - d. Location and document numbers of recorded wind and access easements
  - e. Final grade