

EXHIBIT D: ROAD USE AND REPAIR AGREEMENT

This Road Use and Repair Agreement (the “Road Use and Repair Agreement”) is entered into by and between Freeborn Wind Energy LLC, a Delaware limited liability company (“Developer”) and Freeborn County, Minnesota, (“County”), as a part of that certain Development Agreement entered into by the Parties on the 1st day of March, 2019 (the “Development Agreement”). 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 Freeborn County, Minnesota.
- B. The Parties wish to incorporate into the Development Agreement, by this Road Use and Repair Agreement, the use and repair of Public Roadways under the jurisdiction of the Participating Road Authorities, 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 Parties to:
 - i. transport heavy equipment and materials over Designated Roads and Haul Roads 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 Designated Roads and make certain modifications and improvements (both temporary and permanent) to Designated 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 Transmission and Collection Systems for the Project adjacent to or under certain roads identified on Appendix D-3 of this Road Use and Repair Agreement for the purposes of carrying electrical current from the Project.

ROAD USE AND REPAIR 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 Roads. In connection with the development and construction of the Project, the County hereby acknowledges and agrees that the Developer Parties may use the Public Roadways at any time, seven (7) days a week, *provided, however,* that Developer Parties must obtain move permits as required for trips occurring on Public Roadways other than Designated Roads (“Haul Roads”). Permits for weekend moves must be obtained by Friday noon. Only Public Roadways under the jurisdiction of the Participating Road Authorities shall be considered for inclusion as Designated Roads in Appendix D-1. The Designated 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 within the Project Area. In addition to identifying the Designated Roads that will be used by the Developer Parties, Appendix D-1 identifies the delivery flow plan and routes over the Designated Roads and Haul Roads that will be used for: (i) transportation and delivery of wind turbine equipment and components and other materials and equipment into and within the Project Area; (ii) transportation leaving the Project Area following delivery of equipment and materials; (iii) movement of the assembled cranes; (iv) transportation and delivery of locally sourced materials, including concrete and gravel; and (v) transportation of other vehicles and items associated with construction of the Project (collectively, the “Hauling Activities”). The County agrees that, from time to time, the Developer may include additional roads as Designated Roads by first (A) submitting an updated version of Appendix D-1 to the County that includes such additional roads and (B) performing an Initial Evaluation, on such additional roads and submitting an amended Appendix D-2. Upon approval by the County Engineer, such updated versions of Appendices D-1 and D-2 to this Road Use and Repair Agreement shall be amended and restated as such updated versions of Appendices D-1 and D-2 without any further action required by either Party. The County Engineer’s approval of updates to Appendices D-1 and D-2 shall not be unreasonably withheld or delayed.
- 1.2. County Engineer to Enforce for Participating Road Authorities. For purposes of the Development Agreement and this Road Use and Repair Agreement, the Developer and the Participating Road Authorities have agreed that the County Engineer shall have the exclusive authority to enforce the Agreements as they relate to the Public Roadways identified on Appendix D-1, as may be amended from time to time. Resolutions authorizing the County Engineer to enforce the provisions of the Agreements as they relate to township roads shall be attached as Appendix D-4 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 Area, the Developer and the County Engineer shall meet from time to time upon the reasonable request of the Developer or County Engineer to discuss the expected use of the Designated Roads, including the construction schedule and the Designated Roads to be used. The County Engineer, or representative of the County Engineer, may also attend Plan of the Day meetings throughout the construction time periods. The County Engineer shall have authority to act on behalf of the County and Participating Townships on matters relating to use of Designated Roads.

1.4. Evaluation of Designated Roads.

a. Initial Evaluations. Prior to the commencement of Project construction and before delivery of materials and equipment to the Project Area, the Developer shall, at its own expense, hire a qualified independent engineer (“Qualified Engineer”) to inspect and structurally assess all Designated Roads and to provide a report (the “Initial Evaluation”). An enumeration of each Initial Evaluation for the Designated Roads shall be included as Appendix D-2 of this Road Use and Repair Agreement. The Initial Evaluation shall include or address the following:

- i. The Qualified Engineer shall determine if the Designated Roads have the structural capacity to carry the loads generated by the Developer Parties.
- ii. If the Qualified Engineer determines that the Designated Roads are insufficient to carry the loads generated by the Developer Parties, the Qualified Engineer shall provide a recommendation to the Developer and the County as to how the Designated Roads will be made sufficient. All cost associated with making the Designated Roads sufficient for the Developer Parties shall be the responsibility of the Developer.
- iii. In consultation with the County Engineer, the Qualified Engineer shall determine the number of ESALs generated by the Developer Parties for each segment of Designated Road.
- iv. For Designated Roads that are paved, the Qualified Engineer shall determine the road life consumed by the Developer Parties. The Qualified Engineer shall compare the ESALs generated by the Developer Parties to the 20 year design ESALs of the paved Designated Road. The Qualified Engineer shall compute the required Granular Equivalency (“GE”) for the paved Designated Road with and without the Developer Parties ESAL.
- v. If the additional ESALs generated by the Developer Parties increase the required GE for the paved Designated Road, it shall be the

responsibility of the Developer to make sure the paved Designated Road meets or exceeds the required GE prior to construction or reimburse the County for the cost of the GE prior to construction as set forth in the Master Permit Schedule (Exhibit C of the Development Agreement).

- vi. The reimbursement rate shall be \$5,200 per 0.1 inch per mile for paved Designated Roads.

- b. Updates to Appendix D-1. If the Developer submits an updated version of Appendix D-1 to the County pursuant to Article 1.1 of this Road Use and Repair Agreement, the County and the Developer shall perform an Initial Evaluation with respect to each additional road that the Developer has included in Appendix D-1 as a Designated 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. Preconstruction Road Conditions. Within 60 days of a request by Developer, County shall provide documentation on historical construction and maintenance information and cross sections for all Designated Roads and Haul Roads. Prior to commencement of the Project construction, the Developer shall, at its expense, provide the County Engineer with 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 Roads to be used during construction of the Project. This will be made available to the County Engineer to review for accuracy and clarity and will be considered as the record of the preconstruction condition of the roads unless the County Engineer provides Developer with a written objection seven (7) working days after receipt of such documenting material.

- d. Pavement Ride Quality Reports. As part of the Initial Evaluation and Final Checklist processes, Developer will provide pre-construction roadway condition reports including pavement condition index (PCI) conforming to the general requirements of ASTM D6433 - 11: Standard Practice for Roads and Parking Lots Pavement Condition Index Surveys and pavement ride quality meeting the general requirements of ASTM E1926 - 08 Standard Practice for Computing International Roughness Index of Roads from Longitudinal Profile Measurements (collectively, “Pavement Ride Quality Reports”) for all Designated Roads to be used during construction of the Project. The Developer shall provide a PCI rating from a 1/10th mile distance over a one mile section in one traffic lane. The Developer shall provide the County with IRI index from the right wheel path of each traffic lane in units of inches per mile, with one digit to the right of the decimal, in accordance with conventional rounding procedures. Ride can be measured

with equipment conforming to either ASTM E 950, Class 1 or an approved equal. Ride quality should be broken down in 1/10th mile increments for pre and post construction comparisons. Post-construction Pavement Ride Quality Reports shall also be performed for Designated Roads that Developer has not upgraded pursuant to this Road Use and Repair Agreement.

- 1.5. Haul Roads. Prior to commencing Project construction activities, the Developer agrees to consult with and receive input, and approval from the County Engineer regarding the Haul Roads to be used for the Project. Appendix D-1 shall indicate the Haul Roads to be used during the construction of the Project based on its consultations with the County Engineer. The Parties expect that Hauling Activities will occur both within and outside the Project Area. While Hauling Activities are in progress, the County shall maintain Haul Roads, based on the normal maintenance activities for similar roads within the County. If the condition of a Haul Road deteriorates as a result of the increased loading caused by the Project, despite the normal maintenance activities of the County, the County Engineer will determine the permissible weights of vehicles in accordance with Minn. Stat. § 169.87. If Haul Roads are damaged by the loads generated by the Project, the Developer and County Engineer shall meet to agree upon necessary repairs. Developer shall implement such repairs at its own cost, unless it requests the County make such repairs, in which case Developer shall reimburse the County for all reasonable costs for such repairs. The Developer may choose to include any Haul Road outside the Project Area as a Designated Road. If Developer elects to include a Haul Road as a Designated Road, the requirements of this Road Use and Repair Agreement pertaining to Designated Roads shall then apply to such roads.
- 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 *any time*, the Developer shall notify the Freeborn County Sheriff or his Authorized Designee and the County Engineer and her Authorized Designee immediately and make necessary accommodations for the traveling public and emergency vehicles. Maintenance of traffic shall be in conformance with the guidance of 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.

- c. Developer shall respond as soon as practicable, but in no event later than one hour after any call from the County Engineer or her Authorized Designee concerning any request for improving or correcting safety related traffic control devices.
 - d. If, at any time, Developer fails to properly furnish, install, maintain or remove any required traffic control devices in a timely manner, the County reserves the right to properly correct the deficiency. All costs incurred by the County to correct the deficiency shall be paid by Developer.
- 1.7. Oversized and Overweight 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 and so noted in the weekly move permit log. Note:
- a. The oversized permit fee is set forth on the Master Permit Schedule (Exhibit C of the Development Agreement).
 - b. 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.
 - c. The Developer shall comply with legal load restrictions. Overweight Permits will not be issued or valid during the Spring Road Restriction period, as determined by the County Engineer.
 - d. 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.
 - e. 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 Road or Roadway Ditch crossings and provide documentation to the satisfaction of the County Engineer of acceptable fortification for use of said bridges or structures.

- 1.9. Crawler Crane Crossing. Should construction operations necessitate the crossing of an existing Public Roadway with equipment or loads that would otherwise be prohibited, the Developer shall:
- a. Provide the County Engineer with a detailed map showing the total number of crossings along with coordinates for each.
 - b. The Developer shall obtain two driveway permits for each crossing as set forth in the Master Permit Schedule (Exhibit C of the Development Agreement).
 - c. The Developer shall supply a traffic control plan for the crane crossings detailing how the traffic shall be handled during each of the crossings, the time frame for all road closures, and detail how the closure shall be handled with the Freeborn County Sheriff or his Authorized Designee and the County Engineer and her Authorized Designee.
 - d. No roadway shall be closed without giving 24 hour notice to the Freeborn County Sheriff or his Authorized Designee and the County Engineer and her Authorized Designee. No roadway shall be closed on a weekend or holiday.
 - e. The Developer shall provide typical crossing methods illustrating how the weight of the crane will be bridged over the road way. The detail shall include the existing weight and pounds per square foot for each crane to cross the roadway. It shall give the length, width and depth of the crossing along with the material to be used to bridge the roadway. The detail shall also show what the final and decreased pounds per square foot there is to the roadway for each crane. The detail shall be signed by a registered engineer and approved by the County Engineer prior to any moves.
 - f. The material used to bridge the roadway shall be removed immediately after the crane crosses the roadway. The roadway shall be inspected for any Damage. If no Major Damage has occurred the roadway shall be reopened to the traveling public. If Major Damage has occurred the County Engineer shall be notified immediately. The County Engineer shall assess the Major Damage to determine what course of action needs to be taken. The Developer shall pay the County for all reasonable, documented costs paid by the County as a result of the roadway closure due to Major Damages caused by Developer.
 - g. The Developer shall not move any crawler cranes longitudinal along any roadway under the jurisdiction of the County.
 - h. "Damage" for Crawler Cranes crossings shall be defined as any deviation from the existing surface of ½ inch or less. The Developer shall repair the Damage on paved roads by milling and overlaying to the approval of the

County Engineer. Repairs shall only be performed on the damaged section of road.

- i. “Major Damage” for Crawler Cranes crossings shall be defined as any deviation from the existing surface of greater than ½ inch or any other damage that would result in an unsafe condition for the traveling public. Major Damage will require the Developer to perform a full depth replacement of the pavement to the approval of the County Engineer. Repairs shall only be performed on the damaged section of road, with any subcut repairs requiring an 8-to-1 taper.
- j. Contractor shall be liable for all costs to repair all Damages to the roadway and shall make such repairs as directed by the County Engineer.

1.10. Rough Terrain (“RT”) Cranes. The Developer shall be permitted to drive the RT Cranes down the Public Roadways as per the specifications below:

- a. Prior to the start of construction, the Developer shall provide to the County Engineer: (i) the total weight per axel for each RT model that will be used; ii) a detailed map showing which segments of Public Roadways the RT cranes are expected to travel on; and (iii) an estimated number of RT crane trips per segment of Public Roadway (collectively, the “RT Crane Move Plan”). The RT Crane Move Plan will be added to Appendix D-1 upon receipt.
- b. Based on the RT Crane Move Plan, Developer shall pay the County a one-time fee for anticipated damage to the paved roads caused by the RT cranes (the “RT Crane Move Fee”) as set forth on the Master Permit Schedule. The RT Crane Move Fee shall be calculated using \$6.50 per ESAL / per mile. The ESAL for each Crane will be computed by the County Engineer. (Note: a 50 ton RT Crane is equal to 58 ESALs.) The fee only applies to paved roadways.
- c. The Developer shall not drive a RT crane down any Public Roadway unless it is a route identified in the RT Crane Move Plan or an amendment to that Plan approved by the County Engineer, and the fee has been paid prior to use of said route. If the Developer violates these terms, Developer shall pay the County for all reasonable, documented costs paid by the County as a result of the driving a RT crane on a non-approved roadway.
- 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.

1.11. Maintenance of Roads During Construction. The County and Developer shall coordinate maintenance activities on Designated Roads during construction. The County shall continue regular maintenance activities on Designated Roads with

little or no active Hauling Activities. The Developer shall perform maintenance activities on Designated Roads with active Hauling Activities to ensure the safe passage of the travelling public during construction. The Developer's road maintenance activities 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 such reasonably satisfactory condition at all times, as determined by the County Engineer.

- a. 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 Engineer may immediately proceed to maintain the roadway and shall invoice the Developer for the costs incurred in connection with the maintenance. Maintenance may include but not be limited to dust control, sweeping, blading of gravel surfaces, aggregate surfacing, bituminous surfacing, etc. The County Engineer may, in its discretion and as staff time permits, make inspections of the Designated Roads to ensure compliance with the Developer's maintenance and safety obligations.
- b. There may be times when immediate action may be required to protect the public safety. When this need arises, the Developer will be verbally notified of the problem and instructed to take immediate action to correct the problem. If the problem is not corrected immediately, the County Engineer shall arrange to have the correction done by others.
- c. Developer shall provide dust control measures for all gravel roads used for the Project.
- d. Developer shall blade all gravel Designated Roads as needed to provide the safe travel of automobiles.
- e. When a Public Roadway is not passable for safe travel by automobiles due to rutting, potholes or other deformation of the roadway, corrective action shall be taken. The materials, placement and workmanship shall be in accordance with the Minnesota Department of Transportation's Standard Specifications for Construction 2018 edition.

2. Repair of Designated Roads.

- 2.1. Obligation to Repair Roads. Following the procedures set forth in Article 7 of the Development Agreement, if the Designated 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 Roads, 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 Article 1.4 of this Road Use and Repair Agreement for purposes of determining whether the repair has been performed in accordance with the standard set forth in this Section 2.1. The County understands and agrees that the Developer is not responsible for any damage to the Designated Roads that is not caused by Developer Parties. Since the Developer's Hauling Activities will potentially consume a large portion of a paved road's life capacity without evidence of visual damage, the Developer shall provide testing of the paved Designated Roads, at Developer's expense, to determine road life capacity used; and, in Developer's sole discretion, repair the Designated Roads, reimburse the County for road life capacity consumed by the Hauling Activities required for the Project, or reimburse the County at a predetermined cost per ESAL. Developer shall repair roads to standards described in Appendix D-2.

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 provide the County Engineer with written notice of intent to work within the right-of-way at least five (5) days before beginning work.
- b. Developer shall not begin any work within the right-of-way until it receives written notice to proceed from the County Engineer, which notice shall be given as soon as can reasonably be issued accounting for safety concerns, but in no event later than three (3) days after receipt of Developer's notice.
- c. Developer shall provide the County Engineer with written notice of the identity of any contractor 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 Engineer'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.
- d. If requested by the County Engineer and not previously provided under this Road Use and Repair Agreement, the Developer shall provide plans and specifications to the County Engineer for the road repair or reconstruction consistent with the restoration criteria and the Initial Evaluation (the "Plans and Specifications"). The County Engineer shall review, provide reasonable comments on and approve the Plans and Specifications within 14 days of receipt. Thereafter, the Developer shall complete the repair or reconstruction according to the approved Plans and Specifications.
- e. Developer will be responsible for all costs relating to the maintenance, repair or reconstruction of the Designated Roads and Haul Roads, soil and

erosion control measures, and related improvements, if required by this Road Use and Repair Agreement.

- f. Following completion of the work by Developer, the roads, soil and erosion control measures, and related improvements will be subject to the inspection and reasonable approval of the County Engineer. If any material or repair supplied does not conform to the restoration criteria and is reasonably rejected by the County Engineer as defective or unsuitable, then such rejected material or repair shall be removed and replaced with approved material or repair to meet the restoration criteria and the reasonable 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 or delayed.
- g. 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” of all utilities and road construction plans.
- h. 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 any Designated Road that is 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). 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 Section 2.1 of this Road Use and Repair Agreement, 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 Engineer 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 thirty (30) days following Developer’s receipt of the invoice and supporting documentation. If Developer fails to make timely payment for amounts owed under this Section, the County may access the security provided under Article 12 of the Development Agreement.

3. Modifications to Designated Haul Roads.

- 3.1. Modifications to Designated Roads. The County hereby acknowledges, agrees and consents to reasonable modifications by the Developer Parties to the Designated Roads as are reasonably necessary to accommodate the use of the Designated Roads by the Developer Parties, including the widening of certain roads, the strengthening, lengthening 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 Roads.
- a. The Developer shall obtain driveway permits for any new or modified driveway serving the Project; locations included in this Road Use and Repair Agreement as Appendix D-3. The Developer agrees to meet the conditions of the permit for drainage requirements, geometric design, and location. The Developer shall be responsible for Driveway permit fees as set forth on the Master Permit Schedule (Exhibit C of the Development Agreement).
 - b. Temporary intersection modifications to accommodate turning radii will require a Radius Extension Permit; locations included in this Road Use and Repair Agreement as Appendix D-3. The Developer agrees to meet the conditions of the permit for drainage requirements, geometric design, and location. The Developer shall be responsible for the Radius Extension permit fees as set forth on the Master Permit Schedule (Exhibit C of the Development Agreement).
 - c. All intersections and driveways temporarily modified to accommodate turning radii must be restored to their permanent widths prior to Project Completion.
 - d. Drainage intakes located in the Public Right of Way shall be protected from siltation or relocated with approval of the County Engineer and/or Drainage Supervisor.
 - e. All traffic control shall be maintained per the Minnesota Manual of Uniform Traffic Control Devices. Deviations without documentation shall not be permitted.
 - f. The Road Authority will remove and replace all regulatory signs within the right-of-way. The Developer will be responsible for costs associated with removal and replacement of regulatory signs.
 - g. The Developer will be responsible for installing additional temporary regulatory signs on crash tested portable supports to supplement the permanent signs on intersections that are widened.

- 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. Transmission and Collection Systems. The Participating Road Authorities grant an easement for the placement of Transmission and Collection Systems related to this Project in Public Right of Way, subject to the approval of the County Engineer of the location of the Transmission and Collection Systems. The Developer shall file a 'Utility Permit' application to document the location of the Transmission and Collection Systems, included in this Road Use and Repair Agreement as Appendix D-3. The Developer agrees to meet the conditions of the Utility Permit with respect to such installations. Utility permit fees are set forth in the Exhibit C: Master Permit Schedule of the Development Agreement. The parties will execute a memorandum of the easement in recordable form if requested by Developer.

4. Expense Reimbursement for Inspections.

- 4.1 Reimbursement. The County Engineer, or her designated representative, shall conduct on-site inspections and continuous monitoring of the Public Roadways during construction. The Developer will reimburse the County for the reasonable cost of the personnel necessary to do the above inspections. The rates for such inspections are provided in Appendix D-5.

5. General Provisions.

- 5.1. Cooperation. The Parties 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.
- 5.2. 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.
- 5.3. 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 Freeborn County, Minnesota.
- 5.4. 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 in accordance with Article 5.2 of this Road

Use and Repair Agreement, to implement the intent of the Developer and the 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.

- 5.5. Security. The Developer's obligations regarding security for performance of its obligations under this Road Use and Repair Agreement shall be governed by Article 11 of the Development Agreement. The County's obligations regarding reduction, use and return of the security given by Developer also shall be governed by the provisions of Article 11 of the Development Agreement.
- 5.6. Events of Default and Remedies. The Parties' obligations and conduct relating to default, notice and remedies shall be governed by Article 12 of the Development Agreement.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the Parties have caused this Road Use and Repair Agreement to be duly executed.

FREEBORN WIND ENERGY LLC

By: _____

Date: _____

FREEBORN COUNTY

By: _____
Christopher N. Shoff, Chairperson

Date: _____

ATTEST

And: _____
Thomas E. Jensen, County Administrator

Date: _____

RECOMMENDED FOR

By: _____
Susan G. Miller, County Engineer

Date: _____

APPROVAL AS TO FORM AND EXECUTION

By: _____
David Walker, County Attorney

Date: _____

EXHIBIT D: ROAD USE AND REPAIR AGREEMENT

**APPENDIX D-1
DESIGNATED ROADS
HAUL ROADS
RT CRANE MOVE PLAN**

EXHIBIT D: ROAD USE AND REPAIR AGREEMENT

APPENDIX D-2

INITIAL EVALUATION TESTING PROTOCOL AND RESTORATION CRITERIA

A. Geotechnical Testing

1. Perform Ground Penetrating Radar Survey of each of the haul roads. The GPR survey will be done using GSSI Roadscan equipment or equivalent and will provide data collection at approximately 20 miles per hour. The data collection will be done at 1 foot intervals to provide a complete picture of the pavement structure along the entire haul road. GPR data will be collected in both roadway directions so that any differences in structure in lanes will be determined.
2. Perform Falling Weight Deflectometer (FWD) testing on the haul roads. Testing will be done at 1/10th mile intervals using the standard 7 sensor Strategic Highway Research Program (SHRP) spacing and will be done at 6,000 and 9,000 lbs. force. On gravel roads, the 6,000 lbs. force will be used because the deflections caused from the 9,000 lbs. force is higher than the equipment will measure accurately.
3. Perform one flight auger boring or GeoProbe at approximately ½ mile intervals along roadways. The borings will be 4 feet in depth and will measure the asphalt pavement thickness to the closest ¼ inch, the aggregate base thickness to the nearest ½ inch and classify the subgrade soils at each major soil type.

B. Survey and Inventory

1. Perform continuous (50' intervals) centerline survey along the length of all haul routes to determine pre-construction elevation at each location. Interval will be reduced to 5' at all proposed crane crossing locations for 100'.
2. Survey road cross sections at 500 foot intervals at both ditch bottoms, both edges of pavement and the road centerlines.
3. Collect digital video of all roadways. The video will be taken with a digital video camera which will have the coordinates linked with GPS and will show pavement condition as well as a geographic benchmarks such as road signs and intersections which will assist in determining the location of the video.
4. Condition inspection, inventory and assessment of all pipes over 24 inch diameter, all structures and all bridges on haul roads.

C. Engineering

1. Develop traffic forecast and associated ESALs for major construction items (aggregate, concrete, turbine components, and equipment) along the proposed haul routes.

2. Engineer structural improvements/upgrades to existing bridges and culverts required to support construction loading and deliveries.

D. Restoration Criteria

1. Gravel roadways shall have a centerline crown with a 3% downslope on each side of centerline on tangent sections.
2. Gravel roadways shall have a surface aggregate thickness equal to or greater than the pre-construction thickness.
3. The PCI of the restored roads shall be equal to or greater than the pre-construction PCI for gravel roads.
4. Surfacing aggregates shall meet the requirements of MnDOT 3138.2 Class 2.
5. Do not use 3" rock to stabilize road base.
6. Gravel Roads that are widened due to construction traffic can be left at up to 20 feet overall width, subject to County Engineer's review to ensure functioning drainage.
7. Side slopes to ditch bottoms shall have 1:3 slope for first 7 feet.
8. Gravel road repairs shall meet County standards.

EXHIBIT D: ROAD USE AND REPAIR AGREEMENT

**APPENDIX D-3
UTILITY MAPS & PERMIT SCHEDULE
ACCESS PERMIT SCHEDULE
RADI EXTENSION PERMIT SCHEDULE**

SEE ATTACHED

EXHIBIT D: ROAD USE AND REPAIR AGREEMENT

**APPENDIX D-4
TOWNSHIP RESOLUTIONS
Hayward Township
Shell Rock Township**

SEE ATTACHED

EXHIBIT D: ROAD USE AND REPAIR AGREEMENT

**APPENDIX D-5
REIMBURSEMENT RATE FOR INSPECTIONS**

Actual time incurred doing inspections by County Engineer or her designated inspector shall be reimbursed at a rate of \$55/hour plus mileage on County vehicle, invoiced monthly.