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# Freeborn County Development Agreement

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By and between  
Freeborn County, Minnesota  
and  
Freeborn Wind Energy LLC

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February 2019



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## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Development Agreement”) as entered into is effective as of 1<sup>st</sup> day of March, 2019 by and between Freeborn Wind Energy LLC, a Delaware limited liability company (“Developer”) and Freeborn County, Minnesota, (“County”). In this Development Agreement, Developer and County may be individually referred to as a “Party” and, collectively, as the “Parties.”

### RECITALS

- A. Developer plans to construct and operate the up to 200 megawatt ("MW") Freeborn Wind Farm to be located in Freeborn County, Minnesota, and Worth County, Iowa. In Minnesota, Developer plans to construct and operate an up to 84 MW large wind energy conversion system in Freeborn County. The remaining portion of the Freeborn Wind Farm will be permitted, built, and operated in Iowa.
- B. Developer plans to construct up to 42 2.0 MW wind energy turbines, associated facilities, and a 161 kilovolt ("kV") transmission line in parts of Freeborn County, Minnesota (the "Project"). A map outlining the Project Area and Project Facilities is included as Exhibit A. The Project Area includes the following:

Table 1: Project Area Location

County Name	Township Name	Township	Range	Sections
Freeborn	Hayward	102N	20W	12, 13, 14, 15, 22, 23, 24, 25, 26, 35, 36
Freeborn	London	101N	19W	13, 14, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33
Freeborn	Oakland	102N	19W	7, 8, 9, 16, 17, 18, 19, 20, 21
Freeborn	Shell Rock	101N	20W	1, 2, 8, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, 27, 28, 35, 36

- C. Developer has received a site permit for a large wind energy conversion system (“LWECS”) and a route permit for a high voltage transmission line from the Minnesota Public Utilities Commission (“MPUC”) pursuant to Minnesota Statutes Chapters 216F and 216E, respectively. The rules implementing these LWECS and transmission line permitting requirements are found in Minnesota Rules Chapter 7854 and Chapter 7850, respectively.
- D. Electricity from the Project will be transported via an underground collection system to the project substation where it will be stepped up to 161 kV. An approximately 7-mile 161 kV

transmission line will be constructed to deliver the electricity to the existing Glenworth Substation just southeast of Glenville, Minnesota.

- E. Developer entered into agreements with the owners of the real property within the Project Area, giving it control of this land for the purpose of, and authority to, develop the Project.
- F. Developer has entered into an agreement with Northern States Power Company d/b/a Xcel Energy (“Xcel Energy”) whereby Xcel Energy will acquire the Project after it is developed, and then subsequently construct, own, and operate it.
- G. This Development Agreement specifies the commitments made by the Parties for the purpose of ensuring that the Project is consistent with County’s existing applicable policies and ordinances, and to ensure that all final approvals will be in the best interests of area citizens.

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

## **DEVELOPMENT AGREEMENT**

### **1. Effective Date and Termination**

- 1.1. Effective Date. The “Effective Date” of this Development Agreement is the date first stated above.
- 1.2. Termination. This Development Agreement shall terminate five (5) years from the date of initial acceptance of all Public Drainage Tile and Public Roadway restoration as evidenced by issuance of the Certificate of Completion pursuant to Article 7.4 of the Development Agreement. This Development Agreement may be terminated by mutual written agreement of the Parties. If the Development Agreement is terminated, Developer shall comply with all provisions of this Development Agreement that apply to any work already performed on the Project.

### **2. Vesting**

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

### **3. Definitions**

**Authorized Designee.** Any person(s) legally authorized to make decisions on behalf of a County or Township.

**Certificate of Completion.** Document issued by County Engineer pursuant to Article 7.4 of this Development Agreement certifying that Developer has satisfactorily completed all items listed on the Final Punch List.

**Commercial Operation Date.** Date Developer notifies County Engineer in writing that it has begun generating energy from the Project.

**County.** Freeborn County, Minnesota.

**County Engineer.** A person appointed by County as Freeborn County Engineer for the purposes of overseeing all Project-related activities affecting Public Roadways within the Project Area and to carry out the obligations and duties set forth in this Development Agreement.

**Designated Road.** The Public Roadways within the Project Area and set forth on Appendix D-1 of the Exhibit D: Road Use and Repair Agreement that will be used in connection with construction of the Project.

**Developer.** Freeborn Wind Energy LLC, its employees, agents, successors and assigns.

**Developer Parties.** Developer and its contractors, subcontractors, suppliers and each of their respective agents, employees, representatives, and permitted assigns engaged to do any of the work outlined in this Development Agreement.

**Development Agreement.** This Development Agreement, including Exhibit D: Road Use & Repair Agreement and Exhibit E: Public Drainage System Protection Agreement that are attached hereto as Exhibits and are hereby incorporated into this Development Agreement.

**Drainage Authority.** Drainage Authority means County Board having jurisdiction on or over systems or projects as defined by Minnesota Chapters 103D or 103E.

**Drainage Inspector.** A person appointed as such by County to oversee all Project-related activities affecting Public Drainage Systems within the Project Area and to carry out the obligations and duties set forth in this Development Agreement.

**Equivalent Single Axel Load (ESAL).** Output of a calculation method developed by the Minnesota Department of Transportation that equates various axle loads and configurations to the damage done by a number of 18,000 pound single axles with dual tires on pavements of specified strength over the design life of the pavement.

**Final Punch List.** Pursuant to Article 7.2, the list prepared after the Commercial Operation Date by Developer and agreed to by County Engineer evidencing repairs or restoration of Public Roadways or Public Drainage System required under Exhibit D: Road Use and Repair Agreement and Exhibit E: Public Drainage System Protection Agreement.

**Haul Roads.** Any Public Roadway outside the Project Area over which the Participating Road Authorities have jurisdiction over which material, supplies, or equipment are hauled into the Project Area for use in connection with construction of the Project.

**Master Permit Schedule.** The table of applicable permits and fees required for the Project pursuant to this Development Agreement and as set forth in Exhibit C.

**Participating Road Authorities.** County and Townships that have agreed to be bound by the terms of this Development Agreement, as evidenced by either executing a signature page to this Development Agreement or by adopting a resolution substantially in the form provided in Appendix D-4 to the Exhibit D: Road Use and Repair Agreement.

**Project Area.** The areas listed on Table 1 of this Development Agreement and shown on the map provided as Exhibit A.

**Project Facilities.** Include Developer's large wind energy conversion system and associated facilities as defined in Minnesota Rules Part 7854.0100 and high voltage transmission lines and associated facilities as defined in Minnesota Rules Part 7850.1000, subp. 9.

**Public Drainage Systems.** Those publicly-owned drainage systems established or under the jurisdiction of a Drainage Authority under Minnesota Chapters 103D or 103E, and including drainage right-of-way.

**Public Drainage Tile.** Any publicly-owned artificial subsurface drainage system.

**Public Right-of-Way.** The area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the local government unit has an interest, including other dedicated rights-of-way for travel purposes and utility easements of local government units.

**Public Roadway.** Roadways and appurtenant right-of-ways that are under the jurisdiction of the Participating Road Authorities, and including without limitation Roadway Ditches.

**Roadway Ditches.** Open ditches located adjacent to Public Roadways and within the public right-of-way.

**Transmission and Collection Systems.** Certain wires, cables, conduits and/or lines (and their associated poles and 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 Public Roadways, as identified in Exhibit D: Road Use and Repair Agreement, Appendix D-3.

**Working Day.** All days of the week excluding Sundays and National Holidays.

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

- 4.1. Fire Protection, Emergency Services and School Notification. Prior to initiating construction activity related to the Project, Developer will communicate and coordinate with local fire districts, emergency services, and County Sheriff, as necessary, to ensure adequate preparedness and response is executed in the event these services are required. Developer will also communicate and coordinate their plans related to the Project with local school districts to avoid conflicts with the schools ability to bus the children safely and timely to and from school.

- 4.2. County Administrative Fee. In consideration of the administrative burden on Freeborn County staff associated with the project. Developer shall pay a County Administrative Fee as outlined in Exhibit C: Master Permit Schedule of the Development Agreement. The fee shall be due upon issuance of all necessary permits for the project, as listed on Exhibit C.
- 4.3. Wind Turbine Rural Address Application. A rural address will be issued to each access driveway included in the Project. The rural address applications shall be filed prior to the construction of the access. Developer shall pay the permit fee for a rural address as set forth in the Exhibit C: Master Permit Schedule. A map showing the access locations and tower identification numbers shall be included in Exhibit B: Access Location and Tower Identification Map.
- 4.4. Road Use and Repair. The use of the Public Roadway(s) for construction of the Project may exceed the normal anticipated use of the Public Roadways of the Participating Road Authorities. Developer shall, in conjunction with County Engineer, work cooperatively to maintain the integrity of road infrastructure at pre-development conditions in any and all cases. The conditions outlined in the Road Use and Repair Agreement are hereby incorporated into this Development Agreement by reference as they appear in Exhibit D. For purposes of this Development Agreement, Participating Road Authorities have agreed, through the passage of the resolutions included in Appendix D-4 of the Exhibit D: Road Use and Repair Agreement, that County Engineer shall have the authority to enforce this Development Agreement as it relates to the impact of the Project on the Participating Road Authorities' roads that may be identified as Designated Roads or Haul Roads pursuant to Exhibit D: Road Use and Repair Agreement.
- 4.5. Public Drainage System Protection. The Parties recognize that the use of Public Roadways for the construction of the Project may also impact associated Public Drainage Systems. If a portion of the Public Drainage System is damaged by the Project construction and its associated work, said Public Drainage System will be repaired at Developer's expense, as provided for in the Public Drainage System Protection Agreement attached as Exhibit E. The terms of the Public Drainage Protection Agreement are hereby incorporated into this Development Agreement by reference as they appear in Exhibit E: Public Drainage Agreement.
- 4.6. Concrete Batch Plants. Concrete batch plants shall be constructed in accordance with all federal, state and local laws, ordinances and policies, shall be restricted to on-site use and shall be removed when Project construction is complete.
- 4.7. Gravel Quarries. New gravel quarries on the site (if any) shall be for on-site use during Project construction only. Developer shall comply with any and all federal, state and local laws, ordinances and policies related to gravel pit reclamation.
- 4.8. Construction Practices. The following construction practices shall be observed by Developer in constructing this Project as it affects Public Roadways and Public Drainage Systems.



- 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 Developer so that it will not interfere with public transportation, as determined by County Engineer.
  - b. Equipment and materials stored adjacent to the Public Roadway must be stored outside of the road right-of-way. Equipment and materials may only be stored within the road right-of-way with County Engineer's prior, written consent.
- 4.9. Removal of Construction Debris. All Project construction-related debris, material, and rocks larger than 3 inches in diameter which are not an integral part of the Project will be removed from the right-of-way of the Designated Roads and associated Public Drainage Systems. This includes all litter generated by the construction crews.
- 4.10. Warranty of Repair. Following the completion of the Project construction, Developer will restore Public Roadways and Public Drainage Systems in conformance with Exhibit D: Road Use and Repair Agreement and Exhibit E: Drainage Agreement. If, within five (5) years following completion and acceptance of Developer's repair, as evidenced by the Certificate of Completion, uneven settling occurs or surface drainage problems develop as a result of Project construction, Developer will provide additional repair and leveling services within a reasonable period of days, considering the circumstances, including weather, harvest, planting, and similar conditions, after receiving written notice from a County of such problem; provided, however, that Developer shall not be responsible for damage caused by parties other than Developer Parties. In the event Developer fails to provide additional repair leveling services within a reasonable amount of time after receiving notice from County Engineer of such problem, and a County elects to address such problems, Developer shall provide County reasonable compensation for such repair services (based upon the actual cost of restoration, including the reasonable value of staff time if completed by County) as billed by County.
- 4.11. As-Built Plans. Developer shall, within 180 days of completion of installation of the Project, file with County Engineer, electronic copies, in pdf format, of as-built drawings of the Project and its appurtenant facilities. Electronic GPS locations of tower site location/site boundary, access roadways, easements, tile repairs and other data deemed appropriate by County Engineer must be provided within 60 days of completion of the Project.
- 4.12. Utility Permit. A Utility Permit for location of public utilities within Public Roadway right-of-way shall be obtained by Developer as required for any public utilities such as transmission or collection systems, generally as described in Exhibit D: Road Use and Repair Agreement, Article 3.3. Developer shall pay a utility permit fee as set forth on the Exhibit C: Master Permit Schedule.
- 4.13. Repair of Damaged Soil Conservation Practices. All soil conservation practices (such as terraces, grassed waterways, etc.) within the Roadway Ditches in the Public

Roadway right-of-way, and the Public Drainage Systems which are damaged by the Project construction, will be restored to their pre-construction condition.

- 4.14. Prevention of Soil Erosion. Developer will work with County Engineer and County Drainage Inspector to prevent excessive erosion on lands disturbed by the construction within the Roadway Ditches, Public Roadways and Public Drainage Systems. Developer shall provide to County Engineer and County Drainage Inspector, a copy of their Erosion Control Plan and State of Minnesota National Pollution Discharge Elimination System Permit prior to start of construction. Reasonable methods will be implemented to prevent erosion. If Developer and County Engineer cannot agree upon a reasonable method to prevent erosion on the Roadway Ditches within Public Roadway right-of-way or Public Drainage Systems, an independent engineer shall resolve the dispute as set forth in Articles 7.1 and 7.2 of this Development Agreement.
- 4.15. Pumping of Water from Open Trenches. In the event it becomes necessary to pump water from open trenches, Roadway Ditches and Public Drainage Systems, Developer shall provide County Engineer with prior written notice and will pump the water in a manner that will avoid damaging adjacent Roadway Ditches, Public Roadway or Public Drainage System and adjacent agricultural lands, crops and/or pasture. Such damage includes, but is not limited to, inundation of crops for more than 24 hours, deposition of sediment in Roadway Ditches, Public Roadway and Public Drainage Systems and the deposition of gravel in Roadway Ditches, Public Roadway and Public Drainage System. Water may not be pumped onto private property or to a location which will drain onto or cross private property without prior approval of the landowners. 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.
- 4.16. Time of Payment. Developer shall pay in full all bills submitted by County Engineer for obligations incurred under this Development Agreement within thirty (30) days of submission to Developer. Bills not paid within thirty (30) days shall accrue interest based upon a one percent (1%) annual interest rate. Failure to remit a payment within sixty (60) days after payment is due shall constitute grounds for drawing on the security, provided payment is not received within five days after receipt by Developer of written notice from County Engineer of intent to draw on the security.
- 4.17. Responsibility for County Costs. Developer shall pay all fees as outlined in this Development Agreement and included in Exhibit C: Master Permit Fee Schedule of the Development Agreement. Upon issuance of the Certificate of Completion, the Parties shall update the schedule and reconcile any differences between the fees paid and the actual work performed.

## **5. Consistency with Local Regulations.**

County hereby acknowledges that if the Project is developed consistent with this Development Agreement, Exhibits, and any amendments thereto and according to Federal, State and Local laws and regulations, then all of the following will be deemed true and accurate statements: (i) the public health, safety, and welfare will be adequately protected within the bounds of the law; (ii) the Project will be considered essential and desirable to the public; (iii) the initial construction of the Project will not be detrimental to the economic welfare of County; (iv) the Project will not create excessive public cost for public facilities and services; (v) the initial construction of the Project will be consistent with all County land use, zoning and noise regulations, and will not be considered a public nuisance.

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

- 6.1. Amendments to Development Agreement. This Development Agreement may be amended by mutual agreement of the Parties only if the amendment is in writing and signed by an authorized representative of each Party. County authorized representative will be County Board Chair or County Administrator. Developer authorized representatives will be as designated by Article 9.4 of Development Agreement.
- 6.2. Project Facility Repair, Maintenance and Replacement. Developer shall be permitted, as allowed under Minnesota law or by its agencies, without any further amendment to this Development Agreement, to repair, maintain and replace Project Facilities consistent with the terms of this Development Agreement; provided, however, that prior to beginning any construction to replace a Project Facility or any construction within any portion of the Roadway Ditches, Public Roadway and Public Drainage System, and prior to using any Public Roadway to transport oversize or over weight equipment or materials for the replacement of a Project Facility, Developer Parties shall (i) provide written notice to County Engineer and affected Participating Road Authority and (ii) obtain and comply with utility, overweight or oversize move, or Right of Way permits as required by law. This provision may be waived by County Engineer in his/her sole discretion if County Engineer determines that the Project Facility replacement will not impact Public Roadways or Public Drainage Systems.

## **7. Completion of Repairs and Restoration and Certificate of Completion**

- 7.1. Preliminary Punch List. At least fifteen (15) working days prior to the erection of the last turbine on the Project, Developer shall issue a preliminary punch list of items requiring restoration or repair under Exhibit D: Road Use and Repair Agreement and Exhibit E: Public Drainage System Protection Agreement. County Engineer shall review the preliminary punch list and provide comments to Developer within ten (10) working days of receipt of the preliminary punch list. Developer will proceed with correcting all punch list items upon which Developer and County Engineer agree. If there are items upon which Developer and County Engineer disagree or which County Engineer wishes to have added to the punch list, Developer and County

Engineer shall meet within 30 days to attempt to reach agreement on all such items. If agreement cannot be reached, Developer shall engage an independent engineer acceptable to County Engineer to review the items and this Development Agreement and determine whether the items in dispute should be part of the punch list. The determination of the independent engineer shall be final. Developer shall make timely repairs in accordance with the determination by the independent engineer.

- 7.2. Final Punch List. No later than fifteen (15) working days after the Commercial Operation Date, Developer shall issue a Final Punch List including items requiring repair or restoration under Exhibit D: Road Use and Repair Agreement and Exhibit E: Public Drainage System Protection Agreement. County Engineer shall review the Final Punch List and provide comments to Developer within five (5) working days of receipt of the Final Punch List. Developer will proceed with correcting all Final Punch List items upon which Developer and County Engineer agree. If there are items upon which Developer and County Engineer disagree or which County Engineer wishes to have added to the Final Punch List, Developer and County Engineer shall meet within 30 days to attempt to reach agreement on all such items. If agreement cannot be reached, Developer shall engage an independent engineer acceptable to County Engineer to review the items and this Development Agreement and determine whether the items in dispute should be part of the Final Punch List. The determination of the independent engineer shall be final. Developer shall make timely repairs in accordance with the determination by the independent engineer.
- 7.3. Completion of Final Punch List. Developer shall complete all Final Punch List items no later than thirty (30) days after agreement with County Engineer on the Final Punch List or, if punch list items have been in dispute, no later than thirty (30) days after a determination by the independent engineer.
- 7.4. Certificate of Completion. Upon Developer's completion of all items on the Final Punch List, County Engineer shall issue a Certificate of Completion to Developer certifying the date on which all Final Punch List items were completed.

## **8. Assignments.**

Developer may, within the terms of this Development Agreement, assign this Development Agreement to a successor or assign with the written approval of Freeborn County Board; *provided, however*, that approval is not required for assignment to Xcel Energy or an affiliate of Developer or assignment for collateral purposes to a financing party. When required, approval shall not be unreasonably withheld or delayed. The assignees shall then assume all responsibilities and duties pursuant to this Development Agreement.

## **9. General Provisions.**

- 9.1. Binding Effect. This Development Agreement shall be binding upon, and inure to the benefit of, 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.

- 9.2. Governing Law. This Development Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota. For the purposes of resolving any dispute with respect to this Development Agreement, each Party agrees that the venue for any legal action shall be in Freeborn County, Minnesota.
- 9.3. Severability. If any provisions of this Development Agreement are determined to be unenforceable, invalid or excessive by a court of competent jurisdiction, this Development Agreement can thereafter be modified in accord with Article 6.1 of this Development Agreement to implement the intent of Developer and County to the maximum extent allowable under law, and the remainder of this Development Agreement shall remain unaffected and in full force and effect.
- 9.4. Authority. The Parties each represent and warrant that it has the respective power and authority and is duly authorized to enter into this Development Agreement on the terms and conditions herein stated and to execute, deliver and perform its obligations under this Development Agreement. Developer shall provide County a list of officers authorized to act for Developer.
- 9.5. No Third-Party Beneficiary. This Development Agreement is made and entered into for the sole protection and benefit of Developer and the Participating Road Authorities and their successors and assigns. No other person shall have any right of action based upon any provision of this Development Agreement.
- 9.6. Agent for Service of Process. Developer shall appoint an agent for service of process in Minnesota and register such address with the Secretary of State and shall provide written notice setting out the name, address and telephone number of said agent to County and each Township that is Party to this Development Agreement within 30 days of the Effective Date.
- 9.7. Duty to Act Reasonably and in Good Faith. Unless otherwise expressly provided, the Parties shall act reasonably in giving consent, approval, or taking any other action under this Development Agreement. The Parties agree that each of them shall at all times act in good faith in order to carry out the terms of this Development 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 Development Agreement. The Parties understand and agree that the process described in this Development Agreement depends upon timely and open communication and cooperation between the Parties. The Parties 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.

- 9.8. Insurance. Before starting construction, Developer shall file with County Attorney, Certificates of Insurance or self-insurance acceptable to County, for itself and all of its contractors, which 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 County Attorney. This insurance shall be written for not less than the following limits:

**Workers' Compensation (per statute)**

**Contractors 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 Damage	\$1,500,000
Bodily Injury	\$5,000,000
Each Person	\$1,500,000
Each Accident	\$5,000,000
Property Damage	\$1,500,000
Each Accident Aggregate	\$5,000,000

- 9.9. Timely Performance. Time is important in the performance of each and every obligation to be performed by the Parties hereto.

- 9.10. Obligations Surviving Termination. In addition to Developer's obligation to maintain security as provided in Article 11 of this Development Agreement, neither termination nor expiration of this Development Agreement will release either Party from any liability or obligation under this Development Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration. Further, the rights and obligations in Article 6.2 of this Development Agreement as related to Project Facility repairs, maintenance

and replacement shall survive termination or expiration of this Development Agreement.

## 10. Notices.

10.1. 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.

10.2. Addresses. Notices shall be given to the Parties at their addresses set forth below.

<b>Freeborn County</b>	Patricia Martinson, Auditor/Treasurer 411 S. Broadway Albert Lea, MN 56007 E-mail: pat.martinson@co.freeborn.mn.us
<b>cc:</b>	David Walker, County Attorney 411 S. Broadway Albert Lea, MN 56007 E-mail: david.walker@co.freeborn.mn.us
<b>Developer</b>	Freeborn Wind Energy LLC Attn: Dan Litchfield, Project Manager 1 S Wacker Dr, Ste 1800 Chicago, IL 60606 Email: dlitchfield@invenergylc.com
<b>cc:</b>	Christina K. Brusven –Freeborn Wind Energy Attorney Fredrikson & Byron, P.A. 200 South Sixth Street Minneapolis, Minnesota 55402 E-mail: cbrusven@fredlaw.com FAX: (612) 492- 7077

10.3. When Notice Effective. Unless otherwise provided in this Development 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.

10.4. Operational Communications. Notwithstanding Article 10.1 above, communications concerning the operational aspects of the construction may be given to County Engineer via e-mail or telephone if such communication is acknowledged as having been received.

## **11. Security.**

11.1. Security. To guarantee compliance with the terms of this Development Agreement, payment of costs incurred by County in accordance with this Development Agreement, or the remediation of any damage caused by Developer's failure to comply with the terms of this Development Agreement, Developer shall furnish to County security initially in the form of an irrevocable letter of credit. The letter of credit shall remain in an amount equal to \$350,000, subject to allowable draws by County.

After issuance of the Certificate of Completion, the security shall be reduced to an amount equal to \$100,000 in the form of a letter of credit or other form of security determined by mutual agreement, or shall remain as a letter of credit if the Parties cannot agree, to complete any outstanding obligation of Developer under this Development Agreement. The security shall remain in place throughout the term of this Development Agreement to ensure compliance with Developer's warranty obligations as provided in Article 4.10 of this Development Agreement and as provided in the Exhibit D: Road Use and Repair Agreement and the Exhibit E: Public Drainage System Protection Agreement.

## **12. Default and Remedies.**

12.1. Remedies. If Developer defaults as described in Article 12.2 and that default is not cured within any applicable cure period; or if Developer 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 Developer and such proceeding remains un-dismissed or un-stayed for a period of ninety (90) days, Developer agrees that during the continuation of such default County may do any, all, or any combination of the following:

- a. Halt all further approvals regarding improvements and permits relating to the Project;
- b. Immediately suspend Developer's authority under this Development Agreement to use the Designated Roads for purposes relating to the Project by providing written notice in the manner provided in Article 10.1;
- c. Draw on or utilize any funds or other security provided to County pursuant to this Development Agreement to the extent reasonably necessary and provide payment due and owing to County or complete any work to be done under this Development Agreement, including, without limitation, the inspection, repair or replacement of any Designated Road, or the remediation of any nuisance caused by Developer's failure to complete any of its obligations under this Development Agreement;
- d. Seek injunctive relief;



- e. Suspend any work or improvement relating to the Project by issuing a stop work order; and/or
  - f. Take any other action at law or in equity which may be available to County.
- 12.2. Events of Default and Notice. Unless otherwise provided for in this Development Agreement, if Developer fails to perform one or more of its obligations under the Development Agreement, or fails to comply with its monetary obligations under the Development Agreement, County shall give Developer formal notice in accord with Article 10.1 of the Development Agreement of the default and Developer shall have thirty (30) days to cure the default. Notwithstanding the foregoing, if Developer fails to comply with any of the road maintenance, repair and public safety obligations of Article 4 of this Development Agreement, or Exhibit D: Road Use and Repair Agreement, Articles 1, 2, and 3, or Exhibit E: Public Drainage System Protection Agreement Articles 1, 2, 3, and 4, or if Developer undertakes or permits work or other activity in violation of the restrictions of set forth in the Development Agreement and County reasonably determines that expedited action by Developer is required, County shall give Developer formal notice in accord with Article 10.1 of the Development Agreement of the default and Developer shall have 48 hours to cure the default.
- 12.3. Failure to Cure Default. If 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 Developer pursues the cure with reasonable diligence, then County may avail themselves 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 obligation of the Development Agreement and County Engineer reasonably determines that such failure has caused or is causing an immediate danger to public health and safety, County may, in its 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. County will make reasonable efforts to notify Developer prior to drawing on the security, but the failure to provide such notice shall not invalidate County actions.
- 12.4. Failure to Provide or Renew Security. Notwithstanding anything else in this Article 12, if Developer's default is the failure to obtain an extension or renewal of security within ten (10) days of the date the existing security will expire, County may exercise the remedies provided in this Article 12 and draw on the security for any claims it has or are reasonably anticipated without prior notice to Developer and without Developer having the opportunity to cure Developer's default. County will make reasonable efforts to notify Developer prior to drawing on security, but the failure to provide such notice shall not invalidate County's actions.
- 12.5. No Additional Waiver Implied by One Waiver. If any condition, obligation or agreement contained in this Development Agreement is breached by either party and thereafter waived in writing by the opposite party, 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 must be in writing to be effective.

12.6. No Remedy Exclusive. No remedy herein conferred upon or reserved to 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 Development 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.

12.7. Enforcement. Developer shall reimburse County for costs incurred in the enforcement of this Development Agreement, including reasonable engineering and attorneys' fees.

### **13. Indemnity.**

Anything to the contrary herein notwithstanding, the Participant Road Authorities, their elected and appointed officials, their officers, agents, employees, representatives and volunteers shall not be liable or responsible in any manner to 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, and any and all work which is Developer's obligation to perform pursuant to this Development Agreement; the failure by Developer to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Development Agreement; the failure by Developer to pay contractors, subcontractors, laborers, or materialmen; the failure by Developer to pay for materials or; the failure by Developer to obtain necessary permits and authorization to construct the work described in this Development Agreement. Developer further agrees to indemnify, defend, and hold the Participating Road Authorities, their elected and appointed officials, their officers, engineers, agents, employees' representatives and volunteers 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 and costs. Notwithstanding the foregoing, Developer's obligations under this Article 13 shall not apply to the extent any such losses, damages, claims or injuries arise out of a court of competent jurisdiction's finding of negligence or willful misconduct of County or its commissioners, administrators, employees or representatives.

### **14. Entire Development Agreement.**

This Development Agreement, together with all exhibits hereto, constitutes the entire agreement between the Parties with respect to the subject matter of this Development Agreement. The Development Agreement is specifically intended to supersede all prior agreements whether written or oral.

*[Signatures follow on the next page.]*

IN TESTIMONY WHEREOF, the parties hereto have caused this Development Agreement to be executed by their respective duly authorized officers.

**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 A TO DEVELOPMENT AGREEMENT**

### **Project Area Map**

*(See attached map)*

## **EXHIBIT B TO DEVELOPMENT AGREEMENT**

### **Access Location and Tower Identification Map**

*(See attached map)*

## EXHIBIT C TO DEVELOPMENT AGREEMENT

### Master Permit Schedule

(including Hayward and Shell Rock Townships)

Category	Quantity	Unit Cost	Total Cost
Access for Turbines	23	\$200	\$4,600
Driveways for Crane Crossings (2 per Crossing)	44	\$200	\$8,800
Radius Extensions	20	\$100	\$2,000
Under Ground Utility Crossings	46	\$100	\$4,600
Above Ground Utility Crossings	7	\$100	\$700
911 Addresses	42	\$150	\$6,300
Road Life Consumed (ESALS)*			\$236,652
RT Crane Moves**	250	\$377	\$94,250
County Administrative Fee (Lump Sum)	1	\$150,000	\$150,000
Totals			\$513,002
* Includes Haul Roads that are outside project boundary (in addition to those inside that are Designated Roads). If additional roads are used, the same fee structure shall be applied.			
** Estimated at 58 ESALs x \$6.50/mile x 250 miles. Distance is estimated. Actual ESALS/mileage used will be reconciled at the end of the project.			

**EXHIBIT D TO DEVELOPMENT AGREEMENT**

**Road Use and Repair Agreement**

*(See attached)*

**EXHIBIT E TO DEVELOPMENT AGREEMENT**

**Public Drainage System Protection Agreement**

*(See attached)*