

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) made and entered into this ____ day of _____ between **BOARD OF COUNTY COMMISSIONERS OF CHEYENNE COUNTY, COLORADO** (“County”) and _____ (“Developer”) for the new expanded wind energy project (“Wind Energy Project”) in Cheyenne County, Colorado.

RECITALS

- A. Developer is the Easement and/or legal holder of the real property located in Cheyenne County, Colorado, legally described on Exhibit “A” (“the Property”).
- B. County and Developer acknowledge and agree that the development of the Wind Energy Project will result in planning and economic benefits to the County and its resident by (i) requiring the development of the Wind Energy Project to be consistent with the existing County Policy, including zoning regulations in effect at the time of the approval of this Agreement, (ii) increasing tax and other revenues to County based upon, among other things, the construction of improvements on the Wind Energy Project and the use of the Property for renewable energy production purposes while continuing the agricultural purpose on the land, (iii) creating jobs through the development of the Wind Energy Project on the Property and through the continued maintenance of the facilities and structures on the Property, (iv) constructing connecting transmission lines to service this energy resource, and (v) providing a revenue stream for the underlying Property owners.
- County and Developer further acknowledge that the development of the Property pursuant to this Agreement will significantly benefit Developer by providing the ability to improve and expand a renewable energy resource facility within Cheyenne County that will benefit the citizenry within the State of Colorado with these enhanced resources.
- C. County has adopted regulations concerning development within its unincorporated limits, consisting of Zoning and Subdivision Regulations, Building Codes which are in effect at the time of execution of this Agreement or as may be amended by the Board of County Commissioners from time to time.
- D. Developer has expended and will continue to expend considerable amounts of time and money in planning for future development of the Property.
- E. County has approved, by Conditional Use Permit (please see Exhibit “B”) for the Property identified as “A” or “A-2” Agricultural Districts with Conditional Use Permit (CUP) on the ____ day of _____, _____.
- F. County has approved one or more Conditional Use Permits (CUPs) for the Wind Energy Project that encompasses an identified area for the location of all wind towers (please see map attached as Exhibit “C”). The identified area comprises one property for purposes of regulatory “setback” requirements and the boundary of the identified area is the “property line” for purposes of measuring setback compliance, regardless of the actual arrangement of interior property lines.
- G. The approval of the CUP for the identified property by County was made subject to the approval and recordation of a development agreement mutually agreeable to Developer and County.

H. The Wind Energy Project is proposed to be developed over a maximum time period of three (3) years. The foregoing development schedule is conceptual and subject to change in Developer's sole and absolute discretion, so long as any change is consistent and development is diligently pursued with the conditions established in the Cheyenne County CUP for this Wind Energy Project, and this Agreement, as may be amended.

I. County, through the approval of the Agreement, will limit costs to Developer by structuring the Cheyenne County Impact Fees for an individual project consisting of _____ wind turbines and towers instead of calculating fees for each tower as a separate structure. In lieu of the existing Cheyenne County Impact Fee schedule associated with the new Wind Energy Project, Developer will pay fees set forth in Exhibit "D" where the Project is calculated as one all encompassing structure. However, the individual towers will be issued a separate Building Permit Number for tracking and inspection purposes.

J. County shall accept the reduced Impact Fees in Exhibit "D" as the total amount of Impact Fees payable. Developer and not the landowner shall pay all Cheyenne County taxes and assessments caused as a result of the Wind Energy project such as but not limited to any and all personal and real property ad valorem taxes related to Wind Energy Project consisting of ____ wind towers.

K. Prior to the date of this Agreement, County has conducted public hearings on the Conditional Use Permit (CUP), for the Wind Energy Project Area. County has issued its approval of the CUP, zoning of the Property to "A" or "A-2" Agricultural Districts with CUP for Developer.

L. Developer and County desire to provide in this Agreement for (i) Developer's assurances to County that the Property and Infrastructure Improvements for the Wind Energy Project will be developed in accordance with the provisions of this Agreement, and (ii) County's assurances to Developer that it will be permitted to develop the Property in accordance with the provisions of this Agreement and the applicable permits, and that such approval shall be for the period of time set forth in this Agreement. Nothing in this Agreement shall restrict the authority of County to create, modify or amend any policies or regulations, and any new or amended Development Agreement between the parties shall be bound by the policies and regulations in effect at the time of execution of such new or amended agreement.

M. County and Developer further acknowledge that the development of the Property pursuant to this Agreement will significantly benefit Developer by providing it with the ability to develop the Expanded Wind Energy Project in accordance with the conditions stipulated in the approved CUP on this identified property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, County and Developer state, confirm and agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** The foregoing recitals are incorporated into this Agreement by this reference.

2. **Definitions.** The following terms and phrases shall have the meaning set forth below:

(a) **Commencement of Construction:** That date upon which ground is broken in connection with the construction of an infrastructure improvement.

(b) **Equivalent Structure Unit (“ESU”)**: No residential structures. Industrial buildings-operation and maintenance facility, wind turbine generators (with towers), pad mount transformers, buried and overhead cable, substations, meteorological towers, relating equipment and structures, roads, rights-of-ways, transmission facilities, and other required facilities and uses as set forth in the approved Conditional Use Permit for these “A” or “A-2” Agricultural Districts.

(c) **Exhibits**: Attachments to this Agreement fully incorporated and made a part of this Agreement. A complete list of all Exhibits to this Agreement is found immediately after the signature pages.

(d) **Project Costs**: Includes the entire project development costs incurred by Developer, its successors and assigns including but not limited to all costs of planning, developing, erecting, constructing and preparing of the Wind Energy Project and shall include but are not limited to the costs of construction, construction materials, professionals, engineers, contractors, subcontractors, legal fees and consultant’s fees.

3. **Infrastructure.**

3.1 **Responsibility for Funding and Construction of Infrastructure Improvements.**

(a) Subject to the provisions herein contained, Developer agrees to assume and satisfy, at its own cost, all applicable development costs, and to construct or install, or cause to be constructed or installed, in accordance with County Codes and Regulations, all improvements described herein.

(b) Developer accepts responsibility for all engineering and surveying costs for all improvements for the Development, whether such improvements are constructed directly by Developer or by County.

(c) All improvements shall be designed and constructed in compliance with standards and specifications of Cheyenne County and applicable Federal and State agencies.

(d) Construction of improvements shall not commence until the plans and specifications for such improvements have been approved by County and State or Federal Agencies as applicable.

(e) Modification of Sequencing. The sequencing of the construction of Infrastructure Improvements may be modified by a formal written amendment to this Agreement if County and Developer so agree.

4. **Infrastructure Construction, Dedication; Operation; Maintenance.** All infrastructure improvements related to the Wind Energy Project constructed on public right-of-ways shall be constructed in a good and workmanlike manner and in accordance with all applicable laws, codes, regulations and design standards. Infrastructure improvements intended to become a part of County system shall, subject to inspection and acceptance by County in accordance with applicable laws, codes, rules and regulations, be dedicated to County. Under no wise or manner shall County be forced or required to accept an infrastructure improvement but such decision shall be left to its sole and complete discretion. Thereafter, County may accept the dedication and thereafter be solely responsible for the operation and maintenance of the infrastructure improvement, upon completion of the following:

(a) Receipt of certification from Developer’s Engineer that the infrastructure improvements were constructed in substantial compliance with the approved plans and specifications.

(b) Cheyenne County Road and Bridge Department recommends acceptance to the Board of Commissioners.

(c) Receipt of a reproducible set of record drawings (as built).

5. **Development rights.**

5.1 **Effect on the Zoning.** Developer and County acknowledge and agree that by zoning the property “A” or “A-2” Agricultural Districts with CUP to operate the Wind Energy Project, including wind turbine generators, pad mount transformers, buried and overhead cable, substations, meteorological towers, related equipment and structures, roads, rights-of-way, and other required facilities, County shall not, during the term of the Agreement, adopt by resolution or administrative directive or policy any land use regulation, rule, moratorium or other limitation on the density, intensity, rate, timing or sequencing of development permitted on the Wind Energy Project under the approved “A” or “A-2” Agricultural Districts Zoning with CUP, except as may be necessary to:

(a) Comply with any state or federal laws or regulations, provided that if any such state or federal law or regulation prevents or precludes compliance with any provision of the Agreement, such affected provision shall be modified as may be necessary in order to comply with such state or federal law or regulation;

(b) Alleviate or otherwise contain a legitimate, bona fide threat to the health or safety of the general public, in which event any resolution, rule, or regulation to be imposed in an effort to contain or alleviate such threat may be imposed only after public hearing and comment and shall not, in any event be imposed arbitrarily. No public hearing and comment shall be required in those instances where the immediacy of such threat requires that such a hearing be dispensed with as determined in the sole discretion of said Board of County Commissioners. Notwithstanding the foregoing, meteorological towers or other structures which pose a hazard due to their height shall be equipped with aviation warning equipment including but not limited to appropriate striping on the masts or aviation marker balls installed upon the guy wires and marker sleeves on the bottom of the guy wires for visual recognition of such structures or other appropriate safety markings. In addition, Developer shall notify the Colorado Agricultural Aviation Association (website: www.coagav.org) as to the location (including longitude and latitude) of such meteorological towers or other structures.

(c) Adopt or enforce regular amendments to County’s building and fire safety codes. Nothing in this Agreement shall restrict the authority of County to modify or amend any current policies or regulations, and any future Development Agreement between the parties should be bound by the policies and regulations in effect at the time of execution of a new Development Agreement.

5.2 **Effect of Equivalent Structure Units (ESU’s) on the Development Design of the Wind Energy Project.** It is agreed and understood by Developer and County that the Wind Energy Project will be developed per the approved site plan for each CUP. Such approved site plan may show phasing of development. Within the phase Developer and County shall determine the number of ESU’s as approved in the CUP. This is to establish the infrastructure required to serve the property. Developer further agrees that all on/off site requirements established by regulation, code, design criteria or this Agreement shall be met and shall be controlling.

5.3 **Zoning Approval with CUP.** In accordance with the provisions of the Cheyenne County zoning regulation, Developer and County desire that County's approval of the CUP for the Wind Energy Project Expansion and its zoning category continue unabated so long as Developer continues to comply with each and every covenant, promise and condition required of it herein; in the event that Developer fails to perform under any material requirement herein or chronically fails to perform or act as herein required then and in that event County can and shall have the right to take whatever legal remedy it holds to either correct Developer's failure to perform or to terminate its approval herein.

6. **Representatives; Default; Cure Period.**

6.1 **Appointment of Representatives.** County and Developer each shall designate and appoint a representative to act as a liaison between County and its various departments and Developer. The initial representative for County shall be the Chairman of the Board of County Commissioners, and the initial representative for Developer shall be _____ pursuant to Paragraph 7.1. The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property.

6.2 **Default; Cure Period.** Failure by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice thereof from the other party, shall constitute a default under this Agreement; provided, however, that if an emergency exists such that it calls for an immediate remedy of the problem and the party in default fails to immediately cure or to otherwise undertake the necessary steps to cure said emergency, then and in that event the non-defaulting party shall have the discretion, but not the obligation to correct said default. Thereafter, the non-defaulting party shall so notify the defaulting party and, upon the discretion of the non-defaulting party, declare said Agreement in default and to declare said Agreement terminated. If the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within the thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the thirty (30) days, the non-defaulting party shall have all rights and remedies which may be available under law or equity including without limitation, the right to specifically enforce any term or provision hereof.

7. **Notices and filings.**

7.1 **Manner of Serving.** All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made and delivered or served if in writing and delivered personally or sent by certified United States mail, postage prepaid, return receipt requested, if to:

County: Chairman of the Board of County Commissioners
P.O. Box 567
51 S. 1st
Cheyenne Wells, CO 80810

Developer: _____

7.2 **Mailing Effective.** Notices, filings, consents, approvals and communication given by mail shall be deemed delivered upon deposit in the U.S. mail, postage prepaid and addressed as set forth above, whichever first occurs.

8. **General.**

8.1 **Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by County or Developer of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

8.2 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument.

8.3 **Captions.** The captions or descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

8.4 **Adoption or Agreement.** This Agreement shall be approved and adopted by the Board of County Commissioners of the County Cheyenne County, Colorado.

8.5 **Further Acts.** Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement. Without limiting the generality of the foregoing, County shall cooperate in good faith and process in a reasonably timely fashion any requests and applications for permit approvals or revisions, and other necessary approvals relating to the development of the Property by Developer or its successor.

8.6 **Successors.** All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto as covenants running with the land. Developer and County expressly acknowledge and agree that Developer may sell all or some of the Wind Energy Project prior to the development of same by Developer. In the event of such sale, Developer shall continue along with any assignee all its obligations hereunder with respect to the portion of the Wind Energy Project so sold. Developer and any assignee of any interest in any portion of the Wind Energy project shall diligently pursue development of said Energy project and failure to diligently pursue the same shall be cause for County to declare said Agreement terminated pursuant to paragraph 6.2, *supra*.

8.7 **Term.** The term of this Agreement shall commence on the date of execution by both parties hereto and shall automatically terminate on the third (3rd) annual anniversary of such date, provided, however, that the Board of Commissioners shall have the right to extend the term hereof for one additional period of up to five (5) years upon written notice delivered to Board of Commissioners at least three (3) months prior to the expiration hereof.

8.8 **No Partnership.** It is not intended by this Agreement to, and nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between Developer and County.

8.9 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

8.10 **Amendment.** No change or addition is to be made to this Agreement except by a written amendment executed by the parties hereto. Within ten (10) days after any amendments to this Agreement, Developer, at Developer's expense, shall cause to be recorded such amendment with the County Clerk and Recorder, Cheyenne County, Colorado.

8.11 **Good standing; authority.** Each of the parties represents and warrants to the other that:

- (a) it is duly formed and validly existing under the laws of its state of formation,
- (b) it is duly qualified to do business in the State of Colorado and is in good standing under applicable state laws, and
- (c) the individuals executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.

8.12 **Governing Law.** This Agreement shall be construed and interpreted under the laws of Colorado.

8.13 **Recordation and effect.** Developer, at Developer's expense, shall cause to be recorded this Development Agreement in its entirety with the County Clerk and Recorder, Cheyenne County, Colorado, not later than ten (10) days after its execution. This Agreement shall constitute covenants that run with the land and are binding on successors in interest, subject to Paragraph 8.6, Exhibits "A," "B," "C," and "D," which are too voluminous and/or not in an appropriate form for recording, shall be available for review and inspection during normal business hour.

8.14 **No Developer Representations.** Nothing contained in this Agreement shall be deemed to obligate County or Developer to complete any part or all of the development of the Property.

8.15 **Termination for conflict.** County may terminate this Agreement without penalty or further obligation, within two (2) years after its execution, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of County is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of Developer in any capacity or consultant Developer with respect to the subject matter of the Agreement.

8.16 **Construction of Agreement.** This Agreement has been arrived at by negotiation and shall not be construed against either party to it or against the party who prepared the last draft.

8.17 **Exhibits.** The exhibits listed on the page immediately following the signature page are attached hereto and shall be deemed to have been incorporated herein by this reference with the same force and effect as is fully set forth in the body hereof.

COUNTY OF CHEYENNE COUNTY, COLORADO

CHAIRMAN, Board of County Commissioners

COMMISSIONER

COMMISSIONER

ATTEST:

COUNTY CLERK & RECORDER OR DEPUTY

DEVELOPER:

Signature

ACKNOWLEDGEMENT

STATE OF COLORADO)
)ss.
COUNTY OF CHEYENNE)

We, _____, Chairman of the Board of County Commissioners,
_____, Commissioner, and _____, Commissioner,
together with _____, County Clerk and Recorder or Deputy of County of
Cheyenne, Colorado acknowledge this instrument before me on this _____ day of _____,
_____.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

[illegible]

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____, _____, _____, a _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

LISTING OF EXHIBITS

EXHIBIT A- LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B- CONDITIONAL USE PERMIT

EXHIBIT C- MAP OF WIND PROJECT AREA

EXHIBIT D- CHEYENNE COUNTY IMPACT FEE SCHEDULE

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

CONDITIONAL USE PERMIT

EXHIBIT C

MAP OF WIND PROJECT AREA

EXHIBIT D

CHEYENNE COUNTY IMPACT FEE SCHEDULE

Cheyenne County charges **0.89%** of total project cost for impact fees.

Total Project Cost = _____

Total Impact Fees = _____