Prairie County Board of Commissioners Meeting

January 8th, 2025

Prairie County Court House Commissioners Room

217 West Park St Terry, MT 59349

www.prairiecounty.org

Prairie County Board of Commissioners Todd Devlin, Christine Keltner and Dennis Teske met in regular session at 9:00 a.m. In attendance Administrative Assistant Harry McNall.

9:00 a.m. Pledge of Allegiance, call to order.

9:01 a.m. Public Comment:

Shelia Dixon and Shane Eaton joined the meeting.

Shelia Dixon, she is curious land planning board meeting today? Its at 3:00 p.m. in the courtroom.

Shane Eaton: 10:00 a.m. Discussion County objectives for potential development agreements. He ask that the county commissioner table any agreements, prior to the land planning board completing the Growth Policy. Owner operators' manuals for wind turbines, safety and operators manual. Substations, buildings and wind turbines. He also suggests asking NextEra representatives for references on other developments. Where will turbines be placed, GPS position would be good to know before negotiating. If setbacks are in place down the road, we need to know that they are within agreement distances. Decibels need to be measured by the county to make sure they are in compliance. Words in the agreement about participating lands vs nonparticipating and what it means.

Reene Pirtz ask when the agreement was given, and was it on the agenda? They should have been ask to come back during public comments. We are taxpayers and should have been told to come back at another time. NextEra should have been on the agenda, so the public could have come into it.

Commissioner Teske when we speak about a development agreement, and I have read signed leases from a landowners. When I looked at the development agreement proposal, it was just not good for our county. He gave his views on the agreements and leases. He wants what's best for our future generations, and the development agreement is not there.

Commissioner Devlin stated there has NOT been any consideration to sign the agreement.

Sheila pointed out that NextEra is connected to Pacific gas and electric transmission.

9:30 a.m. Discussion on legislative action towards Industrial Development, what can we do, what should we do? Other discussion on examples and details about developments. Discussion on how to make it work for both citizens that want leases and those who do not. In detail discussion on property rights on both sides of the current issues. Health, Safety and Welfare.

Arron Martinson and Barry Rakes came into the meeting.

10:00 a.m. Clerk & Recorder Shari Robertson joined the meeting to go over some old business. She is suggesting having another meeting with Dan Clark from MSU-Local Government Center on board meeting proceedings. The cost would be about $1000. This would be a step towards being more transparent with the public. Shari will look into more information such as how long it takes for the course and cement a date.

10:15 a.m. Shari presented the commissioners with information about the Airport Authority, as well as the letters for new appointments to boards. On the Airport Authority there should be two appointed by the Town of Terry, and three appointed by the County Commissioners. With the information provided to the commissioners Paul Eayrs will be on the airport authority,

Commissioner Devlin made a motion to follow resolution on the airport authority, seconded by Commissioner Teske, "all in favor" motion passed.

10:28 a.m. Barry Rakes made a suggestion about the possibility of voting on regulations for windmills. Conversation about what options there are to deal with the current issue. Aaron Martinson said he encountered a company called Evolve looking at leasing NextEra easements.

10:50 a.m. County Attorney Dan Rice joined the meeting. Updated commissioners on some litigation in other parts of Montana. Road agreement must be an agreement, the county can not impose one, but can get an agreement.

10:50 a.m. Commissioner Keltner read the minutes from the December 30th, 2024 Commissioners meeting.

11:05 a.m. Commissioner Teske made a motion to approve the minutes from the December 30th, 2024 Commissioners meeting as corrected, seconded by Commissioner Keltner, "all in favor" motion passed.

11:10 a.m. County Attorney Dan Rice stated the commissioners should look at the scoping letter before it goes out, there are many items that are not helpful, and would not be helpful in the future. Information needs to be science-based information for zoning purposes.

Commissioner Teske read a post off facebook about the Missoula Montana MACo annual meeting, and sponsorship of the meeting. Its about transparency, we should have MACo come to a meeting and talk to our citizens about this issue.

Discussion on setbacks, lights, heights and what comparable information we can use. What about small plane travel, for crop dusting etc, and what issues these wind turbines would cause. Aaron Martinson, visit with FAA about the ADLS system, that NextEra is considering.

Dan Rice: Going forward setbacks are going to be all encompassing, meaning setbacks for sounds, distance, etc all in one setback. These need to be determined now.

Dan Rice replied to NextEra draft proposal and said we want ½ mile set back for property lines, they replied that they would like Chip to provide references for this set back.

Aaron Martinson, we should get a veterinarian involved to get their assessment on setbacks concerning livestock.

12:00 p.m. Lunch Break

1:00 p.m. Will Conley with Ranger Review attend the meeting.

1:08 p.m. Deputy Clerk & Recorder Aria Walters provided commissioners with claims. Todd Devlin is on a zoom meeting and will return soon.

Prairie County Voucher # 1081 $25,570.13

Prairie County Voucher # 1082 $5,470.70

Clerk & Recorder Shari Robertson spoke to the commissioners about the four chairs that were reupholstered. Will need to be paid out of building maintenance account 1000/400.

Commissioner Teske made a motion to sign RM88 for records that have met their retention dates according to Montana Code 7-5-2132 for the elections office, seconded by Commissioner Keltner, "all in favor" motion passed.

1:45 p.m. Commissioner Devlin returned to the meeting.

2:30 p.m. County Attorney Dan Rice joined the meeting to discuss with commissioners the scoping survey the Land Planning Board is developing.

Lon Reukauf came into the meeting, and updated the commissioners on board activities, such as a secretary to take minutes. Can NextEra use eminent domain.

Dan Rice says yes that they could qualify as a public utility for eminent domain.

There was a back and forth on the survey questions and scoping letter between Dan and Lon.

Lon Reukauf can we proceed with these questions, and if they are not useful data, then okay. They will try to get the letter out in the next couple of days, with a return day of January 31st, 2025.

3:00 p.m. Public Comment.

Dan Rice suggested removing agenda and non-agenda items for public comment and make all public comment just for "public comment".

Sheriff Lewis said that he is very happy with 911.

Commissioners discussed setbacks and other wind turbine concerns.

3:40 p.m. Commissioner Teske made a motion to adjourn the meeting, seconded by Commissioner Keltner all in favor, motion passed.

Signed this 15th day of January 2025

Christine W. Keltner

Christine Keltner, Commissioner

ATTEST: Shari Robertson

Shari Robertson, Clerk & Recorder

Should sign County agreement

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this ___ day of _____, 2025 (the "Effective Date"), by and between the Board of County Commissioners ("Commissioners") for _____ County, Montana ("County") and Glendive Wind, LLC, a Delaware limited liability company ("Developer"). The County and Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, Developer proposes to construct and operate a wind turbine electrical generation facility project with an approximate size of 800 megawatts of installed nameplate capacity, commonly referred to as the Glendive Wind Project, to be located within Prairie, Dawson, McCone, Garfield, and Rosebud Counties, consisting of wind turbine generators, meteorological towers, substations, collection lines, access roads, temporary construction areas, operation and maintenance facilities, and other infrastructures relating thereto (the "Wind Project"); and

WHEREAS, Developer has or will enter into certain lease agreements, easement agreements, and forms of landowner consent documents (individually, a "Lease" and, collectively, the "Leases") with the participating landowners within the Wind Project area (the "Landowners"); and

WHEREAS, Developer, as a new member of the local business community, wishes to demonstrate good citizenship through this Agreement by (1) developing and operating the Wind Project pursuant to the terms of the Definitive Agreements, defined below, and (2) supporting local employment and businesses; and

WHEREAS, the County intends, through this Agreement, to address the orderly development, construction, operation, and maintenance of the Wind Project in the County, pursuant to the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and promises herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledge, the Parties agree as follows:

SECTION I. RECITALS

The recitals set forth above constitute a material part of this Agreement and are incorporated herein. The Parties confirm the accuracy, truth and validity of said recitals.

SECTION II. COUNTY APPROVAL AND FUTURE COOPERATION

A. COUNTY CONSENTS AND APPROVALS. Unless otherwise provided herein, whenever the consents or approvals of the County, or any of its employees, consultants, attorneys, officers, agents, or representatives are required to be secured or obtained by Developer under the provisions of this Agreement, the same shall not be unreasonably conditioned, withheld, or delayed unless otherwise set forth in the Definitive Agreements. The County will reasonably cooperate with Developer in the development, construction, operation, maintenance, and decommissioning of the Wind Project and issue all permits, approvals, and authorizations required by local regulations or other law, if any, provided Developer files compliant applications, pays all applicable fees, and complies with all the requirements specified in this Agreement and is not otherwise in default under the terms of the Definitive Agreements.

B. FUTURE COOPERATION. The Parties shall cooperate with one another on an ongoing basis and shall make every reasonable effort (including the holding of hearings or meetings and the adoption of such resolutions as may be necessary) to further the implementation of this Agreement and the Definitive Agreements (as defined below) and the intentions of the Parties as reflected by the provisions of this Agreement and the Definitive Agreements. Without limiting the foregoing, in the event that the County adopts any zoning or other laws after the Effective Date that would make the development, construction, operation, repair, replacement, and maintenance of the Wind Project a nonconforming use under such zoning or other laws, or that would otherwise materially interfere with such development, construction, operation, repair, replacement, and maintenance of the Wind Project, or the decommissioning of the Wind Project, the County agrees that it will take such actions, adopt such ordinances and do such other things as are necessary to exempt or exclude the Wind Project from such zoning or other laws.

SECTION III. DEVELOPMENT REQUIREMENTS

A. DEFINITIVE AGREEMENTS. In connection with this Agreement, Developer shall enter into the following agreements with the County (collectively, the "Definitive Agreements"):

Developer sign county road policy

1. A Road Use Agreement ("Road Use Agreement") in the form of Exhibit A. where is exibit "A"
2. A Decommissioning Agreement ("Decommissioning Agreement") in the form of Exhibit B. where is exibit B expound on exibit B. what is hauled in & how hauled out
3. A Contribution Agreement ("Contribution Agreement") in the form of Exhibit C.
4. An Impact Fee Agreement ("Impact Fee Agreement") in the form of Exhibit D.

B. LANDOWNER PARTICIPATION.

1. All wind turbines and related structures within the County shall be located on public rights of way or property that is owned by Developer, or an affiliate thereof, or property for which Developer or its affiliate has or will have executed a lease, easement, right of way, or other agreement with the applicable landowner.

what is the offer

2. Prior to construction, Developer shall make commercially reasonable efforts to enter into good-neighbor agreements with non-participating landowners that own property adjacent to Landowners' property on which assets of the Wind Project are located.

C. SITING, SETBACKS, AND EXCLUSION ZONES.

1. Siting. Developer shall site, and the County hereby approves, wind turbines not closer than:

2 miles 10,560'

a. 5,280 feet -- from an occupied residential non-participating dwelling currently in existence in the County unless otherwise agreed to by the non-participating landowner;

3000'

b. A distance equal to the height of the wind turbine, including tower, turbine and blades (i.e. its "Tip Height"), multiplied by 1.1 -- from a non-participating property line currently in existence in the County, unless otherwise agreed to by the non-participating landowner;

3000'

c. A distance equal to the blade length plus ten (10) meters -- from a property line currently in existence in the County which separates a Landowner's property from a second, different Landowner's property, unless otherwise agreed to by both Landowners.

what about ice or blade throw?

d. A distance set at the Landowner's discretion – from property line(s) separating multiple contiguous parcels owned by the same Landowner, provided, however, that a wind turbine's foundation may never overlap across a property line.

3000'

2. Public Roads. All wind turbines shall be set back at least 1.1 multiplied by Tip Height from public roads, as measured from the base of the tower to the nearest point on any County, Township, State or Federal road currently in existence in the County. For the avoidance of doubt, this provision shall not apply to private roads (including private roads constructed by Developer to access wind turbines).

2 miles

3. Incorporated Municipal Boundaries. All wind turbines shall be setback at least 1 mile from incorporated municipal boundaries currently in existence in the County.

4. Measuring Distances. All setback distances identified in this Agreement shall be measured from the base of the tower to the nearest point of the structure or boundary,

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as applicable.

5. Above-ground Collection Lines and Developer-Owned Transmission Line Tower Setbacks.

a. Above-ground collection lines and Developer-owned transmission line towers shall be setback at least 1.1 times the height of the transmission line tower measured from base of the tower to the nearest outside wall of such structure from any non-participating occupied residential dwelling currently in existence in the County and may not be located in a County right of way, but above-ground transmission line wires may cross (and be located in) County right of ways as set forth in the Road Use Agreement or other crossing agreement.

ND

b. Collection lines will be located within Leases or easements on Landowner's property, or located underground on public right of way crossings as approved by the County in compliance with the Road Use Agreement or other crossing agreement.

c. The setbacks and height requirements set forth in this Agreement can be modified with written consent of the County. public hearings by resolution

6. Footings. Prior to construction, a structural professional engineer licensed in the State of Montana agreed upon by both Parties shall certify that the footing designs to be used to erect the wind turbines meet applicable industry safety standards.

Absolute must Tower cannot be any higher then FFA (ADLS) allows Permit prior to construct

7. ADLS. Towers will be lighted in accordance with the requirements of the Federal Aviation Administration ("FAA"). Developer shall submit and diligently pursue FAA approval of an application for the implementation of an aircraft detection lighting system ("ADLS") for the Project. If approved by the FAA, Developer will install and utilize an ADLS for the Wind Project in compliance with FAA guidance and instructions.

8. Sound Levels and Ice Throw.

a. Unless otherwise agreed to by the landowner, sound levels are not to exceed 50 dBa Leq, measured at the nearest outside wall of a non-participating occupied residential dwelling currently in existence in the County.

non-participations 0-25 dBa

b. Unless otherwise agreed to by the Landowner, sound levels are not to exceed 55 dBa Leq at the nearest external wall of a Landowner's occupied residential dwelling currently in existence in the County.

c. Developer will collect meteorological data from on-site permanent meteorological towers, in-site anemometers, and other relevant

meteorological sources that will be used to determine if ice accumulation is occurring. Developer will ensure that this control measure will either automatically shut down the wind turbine(s) in icing conditions or Developer will manually shut down the wind turbine(s) if icing conditions are identified. Developer will not return the wind turbine(s) to normal operation until control measures no longer detect an imbalance or when weather conditions either remove icing on the blades or indicate icing is no longer a concern.

d. Upon a complaint related to shadow flicker or sound filed under the Complaint Resolution Agreement by a citizen of the County whose ~~primary occupied~~ residence is located within one mile of the nearest Wind Project turbine, Developer will produce a shadow flicker report and/or and sound report to the complaining County resident.

2 miles

9. Shadow Flicker, Advertising, and Color.

Zero Shadow Ficker at non-part

a. Unless otherwise agreed to by the landowner, shadow flicker shall not exceed a cumulative 30 hours/year at non-participating occupied dwellings currently in existence in the County.

b. No logo or advertisement shall be located on turbines unless approved in advance by the County.

c. Turbine coloring shall conform to aviation safety regulations and shall have a non-reflective matte finish.

d. No fiberglass shedding (ever) Developer will construct tower that cannot shed

10. Insurance. Prior to the commencement of construction, Developer shall provide proof of insurance coverage.

Developer is Respondsible to have equipment on site with personel in the event of a fire or an emergency water tanks etc

11. Emergency Services, Fire Protection, and Hazardous Materials.

a. Developer or its affiliate ~~will work in cooperation with the County~~ be responsible for all emergency management authorities to establish standards for fire protection and emergency response.

b. Developer or its affiliate ~~will work in cooperation with the County emergency~~ management authorities to establish standards for the proper storage and handling of hazardous materials, if any, used in the construction or operation of the Wind Project.

c. Developer or its affiliate will work in cooperation with the County to establish

911 addresses for each wind turbine.

d. Developer will maintain additional emergency procedures as set forth in the Road Use Agreement.

required every 1 year analysis accounting for inflation

Prior to construction, Developer shall enter into an additional development agreement with the Eastern Plains Economic Development Corporation ("EPEDC") that includes Developer making a contribution to be used for the benefit of the County's emergency management services in a manner determined by the Commissioners (e.g., county EMS, fire, law enforcement).

12. Sponsorship Fund. In addition to the contribution to the EPEDC, Developer shall establish a sponsorship fund as set forth in the Contribution Agreement by which Developer shall make an annual contribution of ~~$10,000~~ 100,000 to be used for the benefit of County residents in a manner determined by the County's residents.

13. Disclosure of Environmental Studies. Developer will provide to the County ~~(upon written request)~~ shall provide yearly auto copies of any non-confidential and publicly available environmental summaries conducted on the Wind Project area.

14. Updates to County Residents. From the Effective Date of this Agreement until the Wind Project begins commercial operations, Developer shall provide a quarterly update to County residents. Such update shall be provided at a regularly scheduled meeting of the Commissioners on a date to be determined in coordination with the Commissioners. During the periods between updates, Developer shall maintain a point of contact to which County residents may direct questions and concerns. Developer shall make commercially reasonable efforts to promptly respond to questions and address concerns.

NO ABATEMENT Developer may not apply to the State of MT. for that abatement

15. New and Expanding Industry Tax Abatement. Developer has previously submitted an application to the County for abatement of certain property taxes pursuant to Mont. Code Ann. §§ 15-24-1401, 1402. The County acknowledges and agrees that, contemporaneously with the execution of this Agreement and the Definitive Agreements, the County has approved Developer's application for tax abatement by a duly authorized and executed resolution of the Commissioners.

$5.3 million per year. $15.9 million

16. Impact Fee. Developer acknowledges that the County has subjected the Wind Project to an impact fee as set forth in the Impact Fee Agreement, pursuant to Mont. Code Ann. § 15-24-3004, *et seq*.

17. Manufacturer and Interconnection Specifications.

This must be in the agreement

a. All wind turbines and related structures within the County shall be installed

Developer testified to the commissioners and a room full of people the County shall receive $8.2 million per year P.P

in material compliance with manufacturer recommended specifications.

b. The maximum Tip Height of all wind turbines in the Wind Project for the Term shall be ~~600 feet~~ 30. Developer may replace wind turbines as required or in the ordinary course, but any replacement wind turbine shall comply with the height limitation as set forth in this paragraph.

18. Compliance with Laws. Developer and its affiliates shall comply with all federal and state laws and regulations applicable to the construction and operation of the Wind Project, including:

a. Federal Aviation Administration and Department of Defense statutes and regulations, including those pertaining to wind turbine lighting and the review of the impact of siting or modification of wind turbines and other structures for air navigation;

b. Occupational Safety and Health Administration statutes and regulations;

c. United States Fish and Wildlife Service statutes and regulations, including those pertaining to impacts on endangered or threatened species or habitats;

d. U.S. Army Corps of Engineers statutes and regulations, including those pertaining to impacts on wetlands;

e. Environmental Protection Agency statutes and regulations, including those pertaining to environmental impacts;

f. Federal Communication Commission statutes and regulations, including those pertaining to wireless communications impacts;

g. Consultations with the Montana Department of Natural Resources and Conservation, including those pertaining to impacts on endangered or threatened species or habitats;

h. Consultations with the Montana Department of Environmental Quality, including those pertaining to environmental impacts and decommissioning;

i. Consultations with the Montana Department of Public Health and Human Services, including those pertaining to any environmental impacts;

j. Consultations with the Montana Historical Society pertaining to surveys of any historical sites that may be located within the Wind Project area;

k. Consultations with the Montana Department of Transportation, including those pertaining to road use and transportation; and

l. Any other applicable regulations promulgated by these and any other federal and state agencies.

19. Compliance with Warranties. All wind turbines shall be installed and operated so as to maintain applicable turbine manufacturer warranties.

20. Notices. All notices, requests and other communications provided for herein (including any modifications, or waivers or consents under this Agreement) shall be given or made in writing (including by electronic mail) delivered to the intended recipient at the address set forth below or, as to any Party, at such other address as shall be designated by such Party in a notice to the other Party. Except as otherwise provided herein, all notices and communications shall be deemed to have been duly given when transmitted by electronic mail with confirmation of receipt received, personally delivered, or in the case of a mailed notice, upon receipt, in each case given or addressed as provided herein.

To Developer:
Glendive Wind, LLC
Attn: Ross Feehan
700 Universe Boulevard,
Juno Beach, FL 33408
Phone: (561) 608-4030
Email: ross.feehan@nexteraenergy.com

With copy, which shall not constitute notice, to:
Crowley Fleck PLLP
Attn: Lucas H. Forcella
P.O. Box 2529
Billings, MT 59103
Phone: (406) 255-7211
Email: lforcella@crowleyfleck.com

To County:
_____ County, Montana
Attn: County Attorney
_____
_____, MT _____
Phone: (406) _____
Email: _____

21. Term. Unless extended by mutual agreement of the Parties, earlier terminated, or the Wind Project ceases to be in commercial operation, the terms set forth in this Agreement and all County approvals relating thereto shall extend for a period of 30 years from the commercial operation date of the Wind Project, at which point the Parties shall enter into good faith negotiations to extend the terms of this Agreement.

Wait and see how you operate

SECTION IV. REPRESENTATIONS AND WARRANTIES

A. COUNTY. The County represents and warrants that:

1. the County has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder; public hearings & resolution

2. upon execution and delivery by the County and Developer, this Agreement shall be a valid, legal, binding and enforceable obligation of the County enforceable against the County in accordance with its terms, subject to any applicable laws of bankruptcy, insolvency or reorganization, laws affecting the enforcement of creditors' rights generally, and general principals of equity;

3. no approval or consent from any other person or entity is required for the County's execution of this Agreement; and

4. this Agreement is executed by duly authorized representatives of the County who are fully authorized to execute this Agreement on behalf of the County.

B. DEVELOPER. Developer represents and warrants that:

1. Developer has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder;

2. upon execution and delivery by Developer and the County, this Agreement shall be a valid, legal, binding and enforceable obligation of Developer enforceable against Developer in accordance with its terms, subject to any applicable laws of bankruptcy, insolvency or reorganization, laws affecting the enforcement of creditors' rights generally, and general principals of equity;

3. no approval or consent from any other person or entity is required for Developer's execution of this Agreement; and

4. this Agreement is executed by a duly authorized representative of Developer, who is fully authorized to execute this Agreement on behalf of Developer.

SECTION V. DEFAULT PROVISIONS

A. If ~~either Party~~ developers fails to observe or perform any material condition or provision of this Agreement for sixty (60) days after receiving written notice of such failure from the other Party (the "Cure Period"), then the aggrieved Party shall have the right to terminate this Agreement upon thirty (30) days prior notice to the other Party and to pursue any remedy available to it at law or in equity; provided however, that for so long as the delinquent Party is diligently attempting to cure such failure and the failure is, in the aggrieved Party's discretion, reasonably capable of being cured, a default under this Section V shall not be deemed to have occurred.

B. Notwithstanding the foregoing, a ~~Party's~~ Developer failure to observe or perform any material condition or provision of this Agreement due to an Excusable Delay shall not constitute a breach of this Agreement. For purposes of this Agreement, "Excusable Delay" means any casualty to property or persons, inclement weather, inability to secure materials, strikes or labor disputes, acts of God, acts of the public enemy or hostile or terrorist action, civil commotion, and/or governmental actions, restrictions, regulations or controls, including, without limitation, any failure or refusal of any governmental authority to timely issue any required permit or approval for development of the Wind Project or any legal action or proceeding involving any such required permit or approval (whether arising out of any existing laws or changes in laws, including any such laws relating to annexation, zoning, platting, building or other codes or ordinances applicable to development and construction of the Wind Project), or any other cause beyond the reasonable control of that Party (other than financial inability) which affects development, construction, maintenance, operation, repair, replacement or decommissioning of the Wind Project (including, without limitation, any of the foregoing which affect a Party's contractors or subcontractors).

C. ~~Notwithstanding the foregoing, upon termination of this Agreement for default as defined above, the~~ Developer ~~Development Requirements in Section III~~ and the Road Use Agreement shall continue in full force and effect until final and complete cessation and decommissioning of the Project.

D. A default under any Definitive Agreement is a default under this Agreement and all other Definitive Agreements. The County may exercise any remedy allowed under any Definitive Agreement if a default exists that is not in a Cure Period.

SECTION VI. MISCELLANEOUS

A. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana without regard to the conflict of law principles thereof.

B. NO WAIVER. The failure of ~~either Party~~ developer to insist in any one or more instances on the performance of any of the obligations required by the other under this Agreement shall not be construed as a waiver or relinquishment of such obligation or right with respect to future

performance.

C. HEADINGS. The headings used in this Agreement are for ease of reference only and shall not in any way be construed to limit or alter the meanings of any provision hereof.

D. AMENDMENTS. This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each Party. Any oral or verbal agreements between the Parties different from or in conflict with the provisions of this Agreement shall be null and void and of no force or effect where they are in conflict with the written provisions of this document.

E. ATTORNEY FEES: Should either Party hereto retain counsel for the purpose of enforcing or preventing the breach of any provision hereof, including but not limited to instituting any action or proceeding to enforce any provision hereof, for damages by reason of any alleged breach of any provision of this Agreement, for a declaration of such Party's rights or obligations hereunder or for any other judicial remedy, then the prevailing Party shall be entitled to be reimbursed by the other Party for all costs and expenses incurred in connection therewith, including but not limited to reasonable attorney fees for the services rendered to such prevailing Party.

F. ASSIGNMENT. This Agreement may be assigned only upon written consent of the Parties, except Developer may, upon notice to County, but without County's consent or approval, assign this Agreement to an affiliate, or mortgage, charge, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement. Notwithstanding anything to the contrary, Developer may only assign this Agreement if the assignee agrees and acknowledges in writing that such assignee shall be bound by terms and obligations of this Agreement. Upon such assignment all of Developer's rights and obligations shall inure to the benefit of and shall be binding upon Developer's assignee and its respective successors, assignees and legal representative.

G. INTERPRETATION. This Agreement was prepared with substantial input from both Parties and their respective legal counsel; no phrase, sentence, clause, provision or section of this Agreement shall be construed against a Party as a result of such Party's legal counsel having acted as the primary drafter thereof.

H. SEVERABILITY. In the event that any term or provision of this Agreement is deemed to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement. Upon a determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

I. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure

to the benefit of the successors, assigns, trustees and/or receivers of the Parties hereto.

J. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

K. TIME IS OF THE ESSENCE. Time is of the essence of this Agreement, and of each and every provision hereof, and the Parties shall make every reasonable effort to expedite the subject matters hereof and to perform their respective obligations.

[*signature pages follow*]

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed in their respective names by their duly authorized officers and dated their signatures as shown below.

DEVELOPER:

GLENDIVE WIND, LLC,
a Delaware limited liability company

_____

By: _____, its _____

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed in their respective names by their duly authorized officers and dated their signatures as shown below.

THE COUNTY:

THE BOARD OF COUNTY COMMISSIONERS OF _____ COUNTY, MONTANA

_____

Name: _____, County Commissioner

_____

Name: _____, County Commissioner

_____

Name: _____, County Commissioner

ATTEST:

_____

Name: _____, County Clerk

Reviewed and approved by:

_____

Name: _____, County Attorney

EXHIBIT A

[*forthcoming*]

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