

APPENDIX B: PILOT AGREEMENT

PAYMENT IN LIEU OF TAXES AGREEMENT

This Payment in Lieu of Taxes (“**PILOT**”) Agreement (the “**Agreement**”) is made effective as of the 31ST day of December 2008, by and between Caney River Wind Project, LLC, a Kansas limited liability company (“**Caney River**”), and The Board of County Commissioners of Elk County, Kansas (“**County**”) (collectively referred to as the “**Parties**”).

RECITALS AND PURPOSE

WHEREAS, the County, pursuant to K.S.A. 19-101 *et. seq.* (the “**Home Rule Authority**”) and such other relevant statutory provisions, has the authority to promote the general and economic welfare of the County, to encourage private development in order to enhance the local tax base and the creation of employment opportunities, and to enter into contractual agreements with landowners and private parties to achieve those purposes; and

WHEREAS, the County is desirous of promoting the economic development of the County and the development of additional electrical power capacity and renewable energy sources within the County and State of Kansas; and

WHEREAS, Caney River has been and will continue to develop and construct a wind power project on certain real property located in Elk County, Kansas with a projected total size of approximately 200 megawatts (“**MWs**”) of installed capacity (“the **Project**”). The total size of the Project may be subject to change at the sole discretion of Caney River; and

WHEREAS, the Project will be located on privately owned rural farmland within the general area set forth on the site plan attached as **Exhibit A**; and

WHEREAS, the Project may be constructed in multiple phases over a period of years; and

WHEREAS, the first phase of the Project (“**Phase I**”) will be capable of providing up to 150 MWs of nameplate electric power capacity (out of the anticipated 200 MWs of the total Project), and Phase I is contemplated to be sufficient to provide power to approximately 45,000 Kansas homes; and

WHEREAS, it is anticipated that the first phase of the Project will be constructed in 2010, and that it will consist of approximately 100 wind turbine generators, as well as meteorological towers, a project substation, electric collection lines, access roads, temporary construction areas, an operations and maintenance facility, and other infrastructure and facilities necessary for the construction and operation of a wind project; and

WHEREAS, it is anticipated that the full Project will be completed in future phases of construction (“**Future Phases**”), potentially commencing construction as early as 2011; and

WHEREAS, the development and construction, over an extended period, of a phased project of this size, complexity, and level of capital investment will only be undertaken in a stable regulatory environment; and

WHEREAS, as of the date of this Agreement, the County has not enacted planning, zoning, or subdivision ordinances, resolutions or regulations, pursuant to K.S.A. 12-741 or any other state statute or Home Rule Authority (collectively “**County Zoning Regulations**”), that prohibit, limit, provide standards for, or burden the development, construction, or operation of the Project; and

WHEREAS, as of the date of this Agreement, the County has not enacted any other ordinances, resolutions, regulations, or policies (collectively “**County Laws**”) that would prohibit, limit, provide standards for, or burden the development, construction, or operation of the Project; and

WHEREAS, Caney River will undertake the Project if the County agrees that the County Zoning Regulations and County Laws will remain unchanged with respect to the Project during the development, construction, and operation of the Project; and

WHEREAS, the County is willing to enter into this Agreement as an inducement to Caney River (i) to undertake the development and construction of the Project, (ii) make payments in lieu of taxes (“**PILOT payments**”) to the County and easement payments to private landowners, (iii) create jobs, and (iv) provide significant positive economic impacts to the local community.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated by reference herein, and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt of and sufficiency of which are hereby acknowledged by Caney River and the County, Caney River and the County agree as follows:

1. Payments in Lieu of Taxes

Notwithstanding that K.S.A. 79-201 exempts wind energy and other renewable resource facilities from *ad valorem* taxation, Caney River agrees to voluntarily make PILOT payments to County. Such PILOT payments shall be paid by Caney River to the County, and the County may direct such payments to any general County fund or such specific fund or funds as may be established by the County from time to time, and the County shall be under no obligation to distribute such payments in the same manner as taxes are distributed; provided, however, that the County hereby acknowledges and agrees that (i) it is intended that this Agreement and the PILOT payments contemplated

hereunder to be made by Caney River constitute the only agreement relating to PILOT payments or similar payments that Caney River will enter into and for the benefit of Elk County or any government and quasi-government entities within Elk County, including such entities as school districts and hospitals, that would otherwise be entitled to tax revenues received by the County (“**County Entities**”), and (ii) it is the County’s intent to distribute the PILOT payments hereunder to such County Entities as the County determines may be in the best interests of the County.

Such PILOT payments shall be made by Caney River to the County for each phase of the Project as follows:

- a. The first PILOT payment (the “**Initial Payment**”) shall be made during the year in which the applicable phase of the Project is completed and has commenced commercial operation (projected to be 2010), due and payable on or before December 31 of such calendar year, and shall be in the amount of \$4,500.00 multiplied by the gross nameplate capacity as measured in megawatts actually installed as of the close of that particular calendar year in the applicable phase of the Project.
- b. For each of the succeeding nineteen (19) full calendar years in which the applicable phase of the Project is operational, PILOT payments in the corresponding amount set forth in the payment schedule attached hereto as **Exhibit B** shall be multiplied by the applicable phase of the Project’s gross nameplate capacity as measured in megawatts actually installed as of the close of that particular calendar year.
- c. After the twentieth (20th) PILOT payment for a particular phase of the Project, Caney River and the County will renegotiate and readjust the amount of such PILOT payment applicable to such phase of the Project to be an amount that is the then fair market value for PILOT payments based on comparable PILOT payments being made at similar-sized wind electricity generation projects located in the State of Kansas (“**Renegotiated Payment**”). On or before December 31 of the twentieth (20th) full calendar year after the completion of the applicable phase of the Project, the PILOT payments for the applicable phase of the Project shall be in the amount of the Renegotiated Payment, which payments shall continue through the remaining operational life of the Project.

It is also agreed between the Parties, that Caney River, or its successors and assigns, will also make PILOT payments for Future Phases of the Project to the County, and such PILOT payments will be in the amounts described above in subsections (a), (b) and (c), based on installed MWs completed for each additional phase, commencing, for each additional phase, when such additional phase is completed and has commenced commercial operation.

2. County Zoning Regulations and County Laws

The County shall not enact County Zoning Regulations or County Laws that prohibit, limit, provide standards for, or burden the development, construction, or

operation of the Project in any way, including all phases of the Project, and including, without limitation, any such County Zoning Regulations or County Laws applicable to or requiring building permits for construction of wind turbine generators, meteorological towers, substations, electronic collection lines, access roads, temporary construction areas, operations and maintenance facilities, and other infrastructures relating to the Project. To the extent the County enacts any such County Zoning Regulations or County Laws, any and all such County Zoning Regulations or County Laws shall specifically exempt the Project from compliance therewith in the project area as referenced in **Exhibit A** attached hereto and incorporated by reference.

3. Road Repair

See Road Maintenance Agreement incorporated herein by reference.

4. Mutual Communication and Cooperation

Caney River and the County agree to communicate and cooperate in good faith concerning the Project construction and operation. To the extent any appropriate state or federal authority issues rules or regulations applicable to the Project that have the effect of requiring specific measures to safeguard the Project from domestic sabotage or terrorist attack, such as increased security patrols, Caney River agrees to assume responsibility for responding and implementing any required measures. Costs of the County to provide extraordinary law enforcement patrol, if required and personnel is available for said service, will be promptly reimbursed by Caney River, not to exceed thirty (30) days.

5. Event of Default

An "Event of Default" shall occur upon failure by either party to observe and perform any material covenant, condition or agreement required of such party under this Agreement for a period of sixty (60) days after written notice of such default has been given to the defaulting party by the non-defaulting party during which time such default is neither cured by the defaulting party nor waived in writing by the non-defaulting party, provided that, the defaulting party shall not have been in default if the failure stated in the notice cannot be corrected within said sixty (60) day period and the corrective action is instituted within the sixty (60) day period and diligently pursued to completion.

6. Remedies on Default

- a. Whenever any Event of Default by Caney River shall have occurred and be continuing, the County may terminate this Agreement and retain all past PILOT payments made to the County.
- b. Whenever any Event of Default by County shall have occurred, Caney River may take any one or more of the following remedial steps: (i) be

relieved of all obligations hereunder to make future PILOT payments; and
(ii) have available to it all remedies at law and in equity.

7. Assignment

Caney River may assign or partially assign its rights, obligations and interests pursuant to this Agreement without the County's consent upon written notice to the County. To the extent Caney River assigns or partially assigns the rights, obligations and interests of this Agreement as they relate to one or more Future Phases, the County agrees to look solely to (i) the owner of Phase I with respect to the payment of Phase I PILOT payments, and shall release the owner of any Future Phases from any and all liability with respect to the Phase I PILOT payments, and (ii) any owner of any of the Future Phases with respect to the PILOT payments for the applicable Future Phases, and shall release the owner of Phase I from any and all liability with respect to the PILOT payments for the Future Phases. To the extent of an occurrence and continuance of a default caused by the owner of any one phase under the PILOT Agreement, the County acknowledges and agrees that the County shall have the right to partially exercise its remedies under the PILOT Agreement with respect only to that phase of the Project under which a default has occurred and is continuing, and the non-defaulting phase or phases and the respective developer or developers thereof shall not be subject to any such remedies and the PILOT Agreement with respect to such non-defaulting phases shall remain in full force and effect.

8. Notices

All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended, or upon facsimile transmission to the fax numbers set forth herein, or after deposit with a nationally recognized overnight commercial courier service, air bill prepaid, or after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party as follows:

To Caney River:

Caney River Wind Project, LLC
C/o TradeWind Energy, LLC
Attn: Rob H. Freeman
16105 West 113th Street, Suite 105
Lenexa, Kansas 66219
(913) 322-7415 telephone
(913) 888-0390 facsimile

To Elk County:

Elk County Commission
Attn: Elk County Clerk
P.O. Box 606
Howard, Ks.
67349

The Parties acknowledge that Elk County meets in regular session on a bi-weekly basis and any time sensitive requests shall be sent to the Elk County Clerk.

9. Severability of Provisions

Except as set forth below, if any of the terms or conditions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement shall not be affected and shall remain in full force and effect and shall be valid and enforceable to the full extent permitted by law, except that as to any such provisions or conditions declared invalid and unenforceable the Parties agree to negotiate in good faith a comparable substitute provision.

10. Captions

The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define or limit the scope or intent of the various provisions, terms or conditions of this Agreement.

11. Binding Effect

The provisions of this Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

12. Modification

This Agreement may be modified or amended only by written instrument signed by both Parties.

13. Governing Law

This Agreement shall be governed in accordance with the laws of the State of Kansas.

14. No Commitment to Construct Project

Nothing contained in this Agreement shall be construed to obligate Caney River to commence or complete construction of the Project. The determination to commence, complete or abandon all or part of the Project shall be in the sole and absolute discretion of Caney River.

If Caney River should decide to not pursue the project, Caney River will be obligated to provide written notice to the County and the Parties agree that the contract herein shall terminate by agreement.

15. Repeal or Amendment of K.S.A. 79-201; Reduction of PILOT Payments

In the event K.S.A. 79-201 is repealed or amended in a manner that results in an obligation of Caney River or any owner of any of the Future Phases to make ad valorem property tax payments to the County in a particular calendar year, the PILOT payments hereunder in such calendar year shall be reduced by an amount equal to the amount of ad valorem property tax payments so made or to be made by Caney River or any owner of any of the Future Phases to the County with respect to such calendar year.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first written above.

THE COMPANY:

CANEY RIVER WIND PROJECT, LLC

By: TradeWind Energy, LLC, Member

By: Rob H. Freeman
Rob H. Freeman, Manager

THE COUNTY:

The Board of County Commissioners of Elk County, Kansas

Jim McDonald
Name: Jim McDonald

Lawrence Fortna
Name: Lawrence Fortna

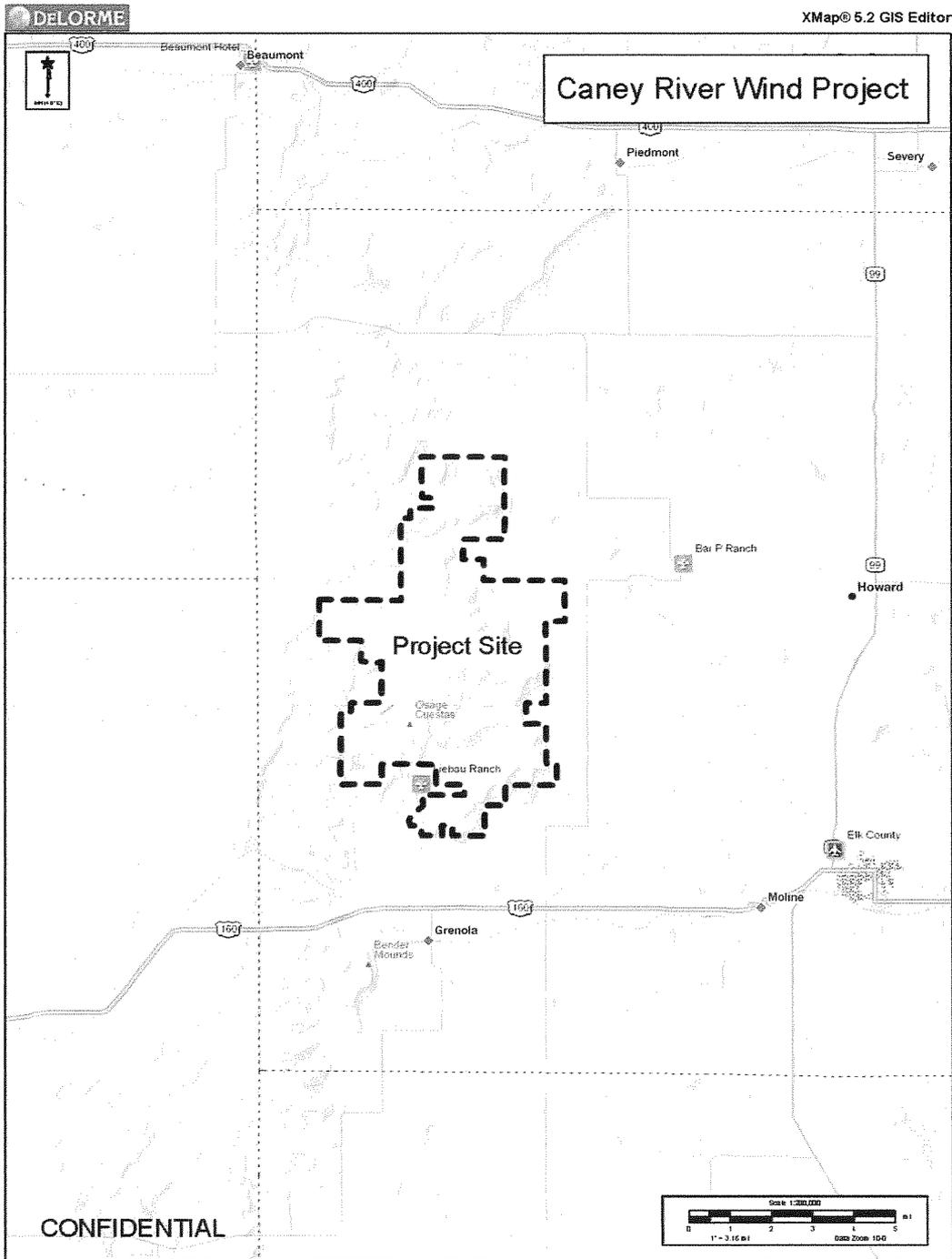
Elizabeth M. Hendricks
Name: Elizabeth M. Hendricks

ATTEST:

Donna K. Kaminski
Name: Donna K. Kaminski
County Clerk

EXHIBIT "A"

SITE PLAN



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EXHIBIT "B"
PAYMENT SCHEDULE

Full Calendar Year after Commercial Operation	Payment Amount per Megawatt Installed
Initial Payment	\$4,500.00
1	\$4,590.00
2	\$4,681.80
3	\$4,775.44
4	\$4,870.95
5	\$4,968.36
6	\$5,067.73
7	\$5,169.09
8	\$5,272.47
9	\$5,377.92
10	\$5,485.48
11	\$5,595.18
12	\$5,707.09
13	\$5,821.23
14	\$5,937.65
15	\$6,056.41
16	\$6,177.54
17	\$6,301.09
18	\$6,427.11
19	\$6,555.65