

RESOLUTION NO 2007-11

Appointment of Acting Lincoln County Attorney


BE IT RESOLVED: that Robert A. Walsh, Attorney-At-Law, is hereby employed as the Acting Lincoln County Attorney, for the purpose of the investigation and prosecution of Lincoln County cases involving criminal actions against Tamie M. Dragone, and Child in Need of Care cases involving B.D., D.D. and E.D., and said attorney shall be compensated for his services herein by the County at the rate of \$60.00 per hour for his time, \$20.00 per hour for his staff's time, and \$20.00 per hour for any travel time, and said attorney shall be reimbursed for all out-of-pocket expenses and will receive mileage for any travel expenses at the current rate allowed by the Board of County Commissioners, effective January 30, 2007.

Dated: ~~February~~ Jan. 31, 2007.

BOARD OF COUNTY COMMISSIONERS
LINCOLN COUNTY, KANSAS


Chairman


Member


Member



ATTEST:


County Clerk

PAYMENT IN LIEU OF TAXES AGREEMENT

This Payment in Lieu of Taxes (“PILOT”) Agreement (the “Agreement”) is made effective as of the 12th day of February 2007, by and between Smoky Hills Wind Farm, LLC (“Smoky Hills”), a Kansas limited liability company and The Board of County Commissioners of Lincoln 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, Smoky Hills has been and will continue to develop and construct a wind power project on certain real property located in Ellsworth and Lincoln Counties, Kansas with a projected total size of approximately 250 megawatts (“MWs”) of installed capacity (“the Project”). The total size of the Project may be subject to change at the sole discretion of Smoky Hills; 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 will 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 100.8 MWs of nameplate electric power capacity (out of the anticipated 250MWs 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 Phase I of the Project will be constructed in 2007, and that Phase I will consist of approximately 56 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 Phase I will be located entirely in Lincoln County, Kansas, except for an interconnection substation that will be built in Ellsworth County adjacent to the Midwest Energy, Inc. 230kV transmission line; and

WHEREAS, it is anticipated that future phases of the Project will include construction and operation of wind turbines and other infrastructure within both Ellsworth and Lincoln Counties; and

WHEREAS, it is anticipated that the full Project will be completed in future phases of construction, potentially commencing construction as early as 2008; 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, Smoky Hills 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 (including all phases of the Project up to approximately 250MWs installed); and

WHEREAS, the County is willing to enter into this Agreement as an inducement to Smoky Hills (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 Smoky Hills and the County, Smoky Hills 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, Smoky Hills agrees to voluntarily make PILOT payments to the County, for the purpose of promoting economic development in Lincoln County and such

funds shall be paid into the Windpower Economic Benefit fund created by the Board of County Commissioners by separate Resolution and distributed according to K.S.A. 12-148(1). Upon receipt of such funds, the Lincoln County Treasurer is directed to act accordingly under K.S.A. 12-148(1) and deposit such funds in the Windpower Economic Benefit Fund.

Such PILOT payments shall be made by Smoky Hills to the County specifically for a 100.8 MW Phase I Project as follows (subject to proportionate adjustment for a smaller or larger Phase I project at completion and based on installed MWs completed):

- a. \$275,000 during the year in which Phase I of the Project is completed (projected to be 2007), due and payable on or before December 31 of such calendar year; and
- b. \$200,000 each year thereafter for each of the first nine (9) full calendar years in which Phase I of the Project is operational, due and payable on or before December 31 of each of such full calendar years.

It is also agreed between the parties that Smoky Hills, 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 proportionate in amount to the Phase I PILOT payments described above in subsections (a) and (b), based on installed MWs completed of such additional phases, including but not limited to Phase II and Phase III.

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

Smoky Hills 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, Smoky Hills agrees to assume responsibility for responding and

implementing any required measures. Costs of the County to provide extraordinary law enforcement patrol, ambulance services, emergency medical services and fire services, if required and personnel is available for said service, will be promptly reimbursed by Smoky Hills, 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 Smoky Hills 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, Smoky Hills 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

Smoky Hills may assign its rights, obligations and interests pursuant to this Agreement upon written notice to the County, including, but not limited to, in connection with future phases of the Project.

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 Smoky Hills:

Smoky Hills Wind Farm, 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 Lincoln County:

Lincoln County Commission
Attn: Lincoln County Clerk
216 E. Lincoln Ave.
Lincoln, Kansas 67455
(785) 524-4757 telephone
(785) 524-5008 facsimile

The parties acknowledge that Lincoln County meets in regular session on a weekly basis and any time sensitive requests shall be sent to the Lincoln 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 Smoky Hills 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 Smoky Hills.

If Smoky Hills should decide to not pursue the project, Smoky Hills will be obligated to provide written notice to Lincoln 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 Smoky Hills to make ad valorem property tax payments to the County in a particular calendar year, the PILOT payments required 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 Smoky Hills to the County with respect to such calendar year.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year above written.

BOARD OF COUNTY COMMISSIONERS,
LINCOLN COUNTY, KANSAS

Al Joe Wallace
Al Joe Wallace, Chairman

Terry L. Finch
Terry L. Finch, Vice-Chairman

Steven R. Errebo
Steven R. Errebo, Member

ATTEST:

Dawn M. Harlow
Dawn M. Harlow
County Clerk



APPROVED AS TO FORM:

By: Jennifer R. O'Hare
Jennifer R. O'Hare
Lincoln County Attorney

STATE OF KANSAS

COUNTY OF LINCOLN

BE IT REMEMBERED, that on this 2th day of January, 2007, before me, the undersigned, a notary public in and for the County and State aforesaid, came Al Joe Wallace, Terry L. Finch and Steven R. Errebo, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year last above written.



Debora Zaczgo
Notary Public

Debora Zaczgo
Name of Notary Public

Term expires: 6-1-08

SMOKY HILLS WIND FARM, LLC

By: TradeWind Energy, LLC, Member

By: _____
Robert H. Freeman, Manager

STATE OF KANSAS

COUNTY OF _____

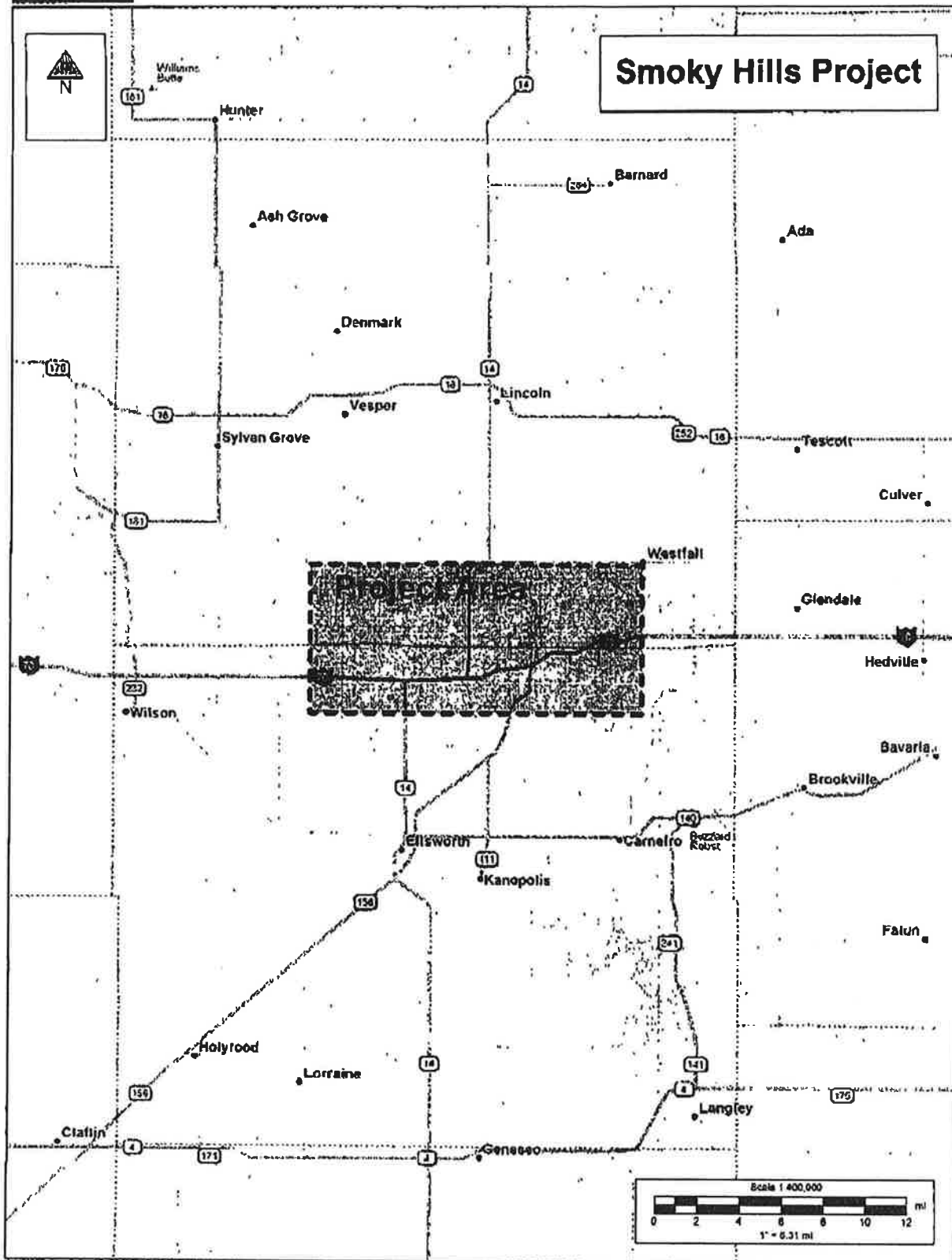
BE IT REMEMBERED, that on this _____ day of January, 2007, before me, the undersigned, a notary public in and for the County and State aforesaid, came Robert H. Freeman, Manager of Tradewind Energy, the Member of Smoky Hills Wind Farm, LLC, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year last above written.

Notary Public

Name of Notary Public

Term expires: _____



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