



AGREEMENT

Deerfield Wind, LLC and the Town of Searsburg, Vermont

This document (the "Agreement") dated April 8, 2008 sets out the terms of an agreement between the Town of Searsburg, Vermont ("Searsburg" or the "Town") and Deerfield Wind, LLC, a Delaware limited liability company with its principal office at 1125 NW Couch Street, Suite 700, Portland, OR 97209 ("Deerfield Wind"), collectively, the "Parties."

Whereas, Deerfield Wind filed an Amended Petition in August 2007 with the Vermont Public Service Board ("the PSB"), requesting permission to develop, construct, and operate the 34 MW Deerfield Wind Project (the "Project") and is proposing to install and operate seventeen (17) 2 MW wind turbine generators ("WTGs") in the Towns of Searsburg and Readsboro, Vermont, and the Amended Petition calls for ten of the WTGs to be installed in Searsburg and seven to be installed in Readsboro; and

Whereas, the Project will be constructed on federal land that is subject to the United States Forest Service's ("USFS") Land and Resource Management Plan for the Green Mountain National Forest; and

Whereas, Deerfield Wind believes that the Project can be constructed and operated in a manner that minimizes potential impacts and that the benefits of the Project clearly outweigh its costs, but Deerfield Wind also recognizes that close cooperation with the Town of Searsburg is critical to the success of the Project; and

Whereas, after much research, thought and discussion regarding the impacts and benefits of wind power, the Town has determined that the Project has the potential to be a net benefit, to provide much-needed revenue to the Town, and is an environmentally sound energy option for the State of Vermont, but at the same time, the Town believes that the Project will result in environmental and aesthetic changes in Searsburg and on town infrastructure, particularly during the construction phase of the Project, and that as a result, minimizing and mitigating such impacts is critically important; and

Whereas, in the interests of compromise and establishing a mutually beneficial long-term relationship between the Town and Deerfield Wind, and without conceding any factual assertions noted above regarding the impacts of the Project, the Parties agree that it is in their mutual interests to reach understandings with respect to financial payments to the Town, potential project-related impacts, and other related matters.

Therefore, provided that the PSB approves the Project consistent with Deerfield Wind's application or as modified by the PSB and accepted by Deerfield Wind, and Deerfield Wind chooses in its sole discretion to construct and operate the Project, the Parties agree as follows:

1. Municipal Property Taxes, Supplemental Payments and Adjustments

- a. Beginning the year in which the commercial operation of the Project commences and thereafter until the Project is no longer operated, Deerfield will pay to the Town the municipal portion of property taxes, in accordance with applicable law, on the segment

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of the Project located within the Town of Searsburg's boundaries. The tax rate, total taxes due, and value of the Project shall not be fixed by this Agreement, and as such this Agreement shall not constitute a tax stabilization agreement pursuant to 24 V.S.A. § 2741. The Parties agree, however, to cooperate in determining the fair market value of the Project, using an income-based valuation methodology.

- b. In addition to the payment of municipal property taxes as provided above, Deerfield Wind will pay an additional amount to the Town each year (the "Supplemental Payment"), calculated as follows:

\$220,000 attributable to the 20 MW to be installed in the Town
plus
\$20,000 for other Project infrastructure (substation and O&M building),
minus
Deerfield's annual municipal tax liability
equals the Supplemental Payment (not less than zero)

- c. During the first tax year, the municipal taxes on the Project and the Supplemental Payment shall be prorated to reflect the following: (i) the number of turbines that are commercially operational during the first year; and (ii) the fraction of the tax year during which the Project (or a portion thereof) is commercially operational.
- d. Deerfield Wind shall be entitled to adjust the Supplemental Payment required hereunder in the event that the Project's output at the point of interconnection with the substation is reduced, due to a *force majeure* event, by at least the equivalent of the average monthly production from a single turbine. For purposes of this section, the average monthly production from a single turbine shall be measured by dividing (i) the total energy production of the Project turbines in Searsburg over the one-year period immediately preceding the *force majeure* event, by (ii) the total number of Project turbines in Searsburg. The payment adjustment shall be proportional to the reduction in output at the point of interconnection, and shall continue for so long as production is reduced due to the *force majeure* event.

A *force majeure* event is an event that: (a) the occurrence and severity of which could not with reasonable diligence and foresight have been anticipated by Deerfield Wind; and (b) is beyond the reasonable control of Deerfield Wind. Provided these criteria are met, *force majeure* events include fire, lightning, earthquake, other weather-related events, sabotage, acts of God, acts of war, strike, civil disobedience, and the like. If Deerfield Wind is unable to meet its obligations herein by reason of a *force majeure* event, it shall use commercially reasonable efforts to restore operations and performance as soon as practicable.

- c. In addition to the payments specified in sections 1.a and 1.b above, Deerfield Wind shall be separately obligated to pay property taxes on any private real property in Searsburg acquired by Deerfield Wind after the execution of this Agreement, provided, however, that the Project infrastructure located on such private property shall be valued and taxed

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pursuant to section 1.a. above and therefore shall not be included again in the taxation of such private real property.

- f. The Town shall not impose any other fees, dues, or other types of payments beyond those provided for in this Agreement, with the exception of fees normally charged for town services, such as permits, applications, copies and the like.
- g. Deerfield Wind's payments under this Agreement satisfy any financial obligations that Deerfield Wind may have to the Town with respect to the construction and operation of the Project, except as otherwise provided in section 3.a.iii. below.

2. Communications

- a. Deerfield Wind will establish an office in Searsburg or Readsboro at the commencement of construction, in order to foster good communication and to address any potential concerns during construction and operation. Normal business hours will be maintained at the office and a 24-hour telephone number will be established for emergencies.
- b. Deerfield Wind agrees to supply to the Town during design and construction phases copies of site work plans and general specifications, construction schedule, and the name, email and postal addresses and phone numbers of the Deerfield Wind project manager and of any other Deerfield Wind personnel whom the Town should contact if the project manager is not available, at any time during the day or evening should a situation arise that requires immediate notification. All communications shall be conducted through the project manager or his designee, and the Town shall not directly contact any of Deerfield Wind's contractors or subcontractors.
- c. In the event that any additional significant construction or significant unscheduled maintenance is required beyond what is expressly and specifically approved in the CPG or any post-CPG approval issued by the PSB that would have the likelihood of materially impacting Town-owned property, Deerfield Wind shall provide the Town notice of the required work in a timely fashion in order to address any questions and concerns prior to commencement of work. Emergency repairs, however, shall not be subject to this notification requirement. This obligation is in addition to other obligations under Section 3 - Project Construction Impacts
- d. In general, Deerfield Wind and the Town will make good-faith efforts to assure that open communications exist between Deerfield Wind and the Town.

3. Project Construction Impacts

- a. Deerfield Wind shall:
 - i. Submit to the Town for prior review and prior approval the plans for any work related to the Project that abuts, joins, or requires alteration of any town highways or trails, including Class 4 roads. The Town shall have twenty-one (21)

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calendar days to approve, such approval not to be unreasonably withheld, conditioned or delayed. Failure of the Town to act within this time period shall constitute approval of such plans.

- ii. Submit to the Town for prior review and prior approval the plans for any work related to the Project that affects drainage along, across, above or below town highways, including Class 4 roads. The Town shall have ten (10) business days to approve, such approval not to be unreasonably withheld, conditioned or delayed. Failure of the Town to act within this time period shall constitute approval of such plans.
 - iii. Promptly repair or correct, at Deerfield Wind's sole expense, any damage to town highways, drainage structures, or other Town-owned infrastructure caused by Deerfield Wind or its contractors during construction and/or operation of the Project. Should Deerfield Wind fail to make such repairs in a reasonable period of time after receiving actual notice of the damage and the resulting conditions pose undue risks to public safety or the environment, the Town may elect to make the repairs itself. In such an event, Deerfield Wind shall pay all reasonable costs associated with the repairs.
 - iv. Upon reasonable advance notice, provide Town officials or authorized representatives with reasonable access to the project site during design and construction phases of the Project during normal business hours. All requests for access will be made through the Deerfield Wind project manager or the project manager's designee and any Town officials and their authorized representatives will be accompanied on-site by the Deerfield Wind project manager or her/his designee. The Town agrees to limit the number of such requests and the number of persons attending site visits to only what is reasonably necessary, and Deerfield Wind retains the right to manage all site visit requests consistent with the needs of the Project, as well as health and safety concerns. Town officials and their authorized representatives shall make themselves aware of and abide by Deerfield Wind's job site regulations, if any, including without limitation, environmental protection, loss control, dust control, safety, and security.
 - v. Provide to the Town the final drawings for any improvements that received Town and PSB approval and provide as-built or equivalent drawings of the site work on the entire Project upon completion of the construction of the Project.
- b. Notwithstanding the Town's approval rights specified above, the Parties acknowledge that the PSB has ultimate review and approval authority over all Project plans. Any action taken by the Town hereunder may not be materially inconsistent with, or have the effect of altering or modifying, any order, judgment, decision or approval of the PSB; provided, however, that the Town does not waive any rights to present a case at the PSB consistent with Section 11 below, nor does it concede that it lacks any jurisdiction that it has by law. The Town shall retain the right to appeal a PSB decision regarding the

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Project, limited to the following circumstances: (i) the PSB decision is significantly different and materially inconsistent with the Project as proposed by Deerfield Wind and reflected in this Agreement (including any significant and material project changes of which Deerfield Wind has notified the Town and to which the Town has not objected); and (ii) the PSB decision creates additional burdens to the Town over and above any associated with the Project as proposed by Deerfield Wind.

- c. The Town represents that any approvals or permission given hereunder shall satisfy all its rights and obligations under local ordinances and state statutes. This representation is not intended to address whether there is a legal requirement for a town vote on the disposition of any payments received by the Town under this Agreement, or a town vote on any subsequent tax stabilization agreement, should one be entered into.

4. Potential Impacts to Private Property

- a. Deerfield Wind affirms that at present its Project plans do not call for physical improvements or changes to be made to any private land that is not subject or will not be subject to an agreement between Deerfield Wind and the property owner.
- b. Deerfield Wind has worked and will continue to work with consulting engineers and state officials to ensure that the Project is built and operated in a safe and commercially sound manner. In addition,
 - i. Deerfield Wind agrees to carry liability insurance in an amount no less than \$5,000,000, and will ensure that its contractors carry sufficient liability insurance to cover property damage claims. Proof of such insurance will be provided to the Town;
 - ii. Prior to construction, Deerfield Wind will undertake any necessary baseline monitoring of conditions concerning properties that have the potential to be affected by the Project, as determined by Deerfield Wind's consulting engineers. Such monitoring may include water well testing, surveying of septic systems, and inventorying the current condition of roads and drainage systems. Deerfield Wind will include a proposed baseline monitoring program in the final plans that will be submitted to the PSB;
 - iii. Deerfield Wind agrees to identify a contact person and phone number that private property owners may contact; and
 - iv. Deerfield Wind agrees that it will act in good faith to respond in a timely manner to any reports of physical damage to private property to ascertain whether the damage was caused by the Project, and if so, to remedy the damage.
- c. The Parties agree that in certain circumstances, the Town may be in a position to help informally to resolve disputes between Deerfield Wind and private property owners regarding damage claims. Deerfield Wind agrees that it will, in the first instance, always

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attempt to resolve such disputes at the lowest level, and with the assistance of the Town if appropriate.

- d. The Parties agree that any legal rights, responsibilities and obligations with respect to private property damage claims are matters between Deerfield Wind and private landowners, and this Agreement shall not create any rights of persons or entities other than the Parties to enforce the Agreement, nor any rights of the Town to enter into, mediate or enforce any such obligations in court or otherwise.

5. Changes to Project

The Parties acknowledge that the PSB has ultimate regulatory control over the Project and the details thereof. If the PSB grants a CPG and Deerfield Wind chooses in its sole discretion to proceed with the Project, Deerfield Wind must build the Project in accordance with the terms of such approval. If for any reason, changes are necessary and are outside of what the PSB has approved, the Town or Deerfield Wind or both, as the case may be, will petition the PSB to make such amendments to the CPG. If these amendments are subsequently approved by the PSB, Deerfield Wind will notify the Town of such amendments. Nothing in this Agreement prevents the Town from opposing such a petition brought by Deerfield Wind if the Town concludes the change is not in the Town's best interests.

6. Warranties and Representations

- a. Deerfield Wind warrants and represents that, unless the Project is transferred or assigned to an unrelated entity while this Agreement is in effect:
 - i. Deerfield Wind or its successor is, and will at all times during the term of this Agreement be, the lessee or owner of the Project and have all rights to the real property on which the Project will be constructed that are necessary to construct and operate the Project;
 - ii. Deerfield Wind or its successor will, at all times while this Agreement is in effect, maintain adequate financial resources or have access to adequate financial resources required to perform all of the obligations herein to be performed by it;
 - iii. Deerfield Wind or its successor will, at all times this Agreement is in effect, have the power to assure that services or equipment or materials for the Project will be performed or caused to be performed;
 - iv. Deerfield Wind or its successor will, at all times this Agreement is in effect, be responsible for the operation and maintenance of the Project, either directly or through a contracted entity.
- b. Deerfield Wind will require insurance, performance bonds, or other appropriate forms of guaranty of all its contractors and others working on the Project, as determined by

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Deerfield Wind in accordance with good industry practice.

- c. Deerfield Wind will hold harmless the Town from any and all claims, disputes and legal or regulatory actions that may be brought against the Town as a direct result of any claims associated with Deerfield Wind's negligence or willful misconduct. Notwithstanding the above, Deerfield Wind will not indemnify the Town for acts of negligence or willful misconduct or for any other actions by the Town that are in derogation of its obligations under law or this Agreement.

7. Transferees, Successors, and Assigns

This Agreement in its entirety shall apply to, inure to the benefit of and be binding upon and enforceable against the parties hereto and their successors and assigns, and any persons or entities to which are transferred the Project or any rights or components of the Project, to the same extent as if such persons or entities were recited as parties to this Agreement, and notwithstanding the terms of any such assignment or transfer. In the event of assignment or transfer, the assignee(s) or transferee(s) shall be substituted for Deerfield Wind in this agreement in all respects.

8. Decommissioning Fund

A decommissioning fund will be established for the dismantling of the Project at the end of its useful life. While the PSB will be the ultimate approving entity of the decommissioning fund and the USFS has ultimate authority over the use and disposition of federal lands used for the Project, Deerfield Wind and the Town agree that the following principles should apply if approved by the PSB and USFS:

- a. When decommissioning occurs, it will consist of the removal of the wind turbines, transformers (if separate), and overhead power collection lines. All underground infrastructure down to a depth of 2 feet below grade will be removed; all infrastructure below that depth will be abandoned in place. Areas where subsurface components are removed will be graded to match adjacent contours, and allowed to revegetate naturally. All road materials will remain.
- b. Decommissioning will be funded according to a plan filed with and approved by the PSB.
- c. No portion of the Fund will be available to satisfy any claims of creditors of Deerfield Wind or the Project or their successors or assigns until all decommissioning obligations have been satisfied, as determined by the PSB.

9. Noise

Within twelve (12) months of the commercial operation date, Deerfield Wind will complete a baseline monitoring noise study in order to confirm compliance with any noise limits required by the PSB in the CPG. Deerfield Wind will make the results of such study available to the Town. This arrangement will protect both Deerfield Wind and the Town from future controversy over the noise

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levels from the wind farm and, over the life of the Project, will help the Town monitor the condition of the turbines for comparison with such baseline results. Deerfield Wind and the Town will cooperate as necessary to assure that accurate monitoring and analysis is conducted.

10. Maintenance and Fire Protection

- a. Deerfield Wind warrants that it will operate the Project in accordance with prudent utility practices and in accordance with the manufacturers' requirements for maintenance of Project equipment.
- b. In the event that the Project receives fire protection services through an entity that is not controlled by the Town of Searsburg, Deerfield Wind will be responsible for any incremental fees attributable to the provision of such services to the Project.

11. Cooperation by the Parties

- a. The Town agrees to cooperate with Deerfield Wind before the Public Service Board and other state, federal and county instrumentalities. If, after the execution of the agreement, Deerfield Wind discloses to the Town any proposed significant changes to the Project that may materially impact the Town's rights hereunder and the Town concludes that such changes are acceptable, the Town, acting within the bounds of its authority, will cooperate with Deerfield Wind in dealing with State of Vermont agencies, the Vermont legislature, and the Windham Regional Commission, and will support Deerfield Wind's petition to the PSB, including the filing of appropriate testimony, exhibits and other filings related to the Project's compliance with the section 248 criteria including but not necessarily limited to subsections (b)(1) and (b)(5).
- b. The Parties acknowledge that the Town may present its independent position on issues to be decided by the PSB, provided the Town acts consistently with the other provisions of this section.
- c. Deerfield Wind and the Town each agree that they will not take actions during the 248 proceeding to undermine this Agreement.

12. Effective Date and Term of Agreement

- a. The Agreement shall be effective upon its execution by the Parties.
- b. The Agreement shall be in effect for the duration of the Project, as established by the PSB's CPG in Docket No. 7250.
- c. Nothing in this Agreement shall obligate Deerfield Wind to build and operate the Project, which shall be a decision within its sole discretion. All payment obligations, other than those for payment of expenses, if any, incurred pursuant to paragraph 3 hereof, shall be in effect only during the time the Project is operated.

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- d. Notwithstanding the foregoing, this Agreement shall terminate if the PSB denies Deerfield Wind's petition to construct and operate the Project and such denial is upheld on appeal, if an appeal is taken.

13. Governing Law and Jurisdiction

This Agreement shall be construed in accordance with and governed by the laws of the State of Vermont. The Town and Deerfield Wind agree to ask that the PSB include the full terms of this Agreement, by reference or otherwise, in any Order or CPG authorizing construction of the Project and agree that this Agreement may be enforced by the PSB as a condition of construction and operation of the Project and further agree that the state and federal courts situated in the State of Vermont have jurisdiction over the Parties to entertain and decide any and all actions that may arise under or in connection with this Agreement.

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

DEERFIELD WIND, LLC

Joan Rogers
Witness

W.

By:

Allan Overy
Duly Authorized Agent
Allan Overy

THE TOWN OF SEARSBURG

Josephine K. K. K.
Witness

By:

Stanley L. L.
Duly Authorized Agent