

## SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter “Agreement”) is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_ 2025, and is entered into between and among Tama County, Iowa, the Tama County Board of Supervisors and Salt Creek Wind II, LLC (collectively “the Parties”).

### RECITALS

WHEREAS The Tama County Board of Supervisors (“BOS”) is the body constituted under Iowa Code Chapter 331 to perform certain prescribed duties on behalf of Tama County, Iowa (“Tama County”), including the adoption of county ordinances pursuant to its inherent home rule authority, the settlement of claims, the and the performances of actions pursuant thereto.

WHEREAS Salt Creek Wind II, LLC (“Salt Creek Wind II” or SCWII”) is developing a wind energy conversion system in Tama County, Iowa known as the Salt Creek Wind II Project (“the Project”).

WHEREAS on or about December 20, 2024, SCWII applied for a Conditional Use Permit for a Commercial Wind Energy Conversion System (“CUP”) under Tama County’s Wind Energy Conversion System Ordinance passed in 2010 (“C-WECS Ordinance”).

WHEREAS on January 6, 2025, the BOS passed Resolution 1-6-2025B (“Moratorium Resolution”), but the BOS has not held any hearings, public discussions, or working sessions regarding potential ordinance amendments, nor has there been a recommendation from the Planning and Zoning Commission as of the execution date of this agreement.

~~WHEREAS on April 7, 2025, the BOS passed resolution 4-07-2025A (“April Resolution”).~~

WHEREAS it is the desire of the Parties to resolve, compromise and settle, finally and fully, certain differences and disputes between them, and to eliminate the risk and cost of future litigation between them.

NOW, THEREFORE the PARTIES, in consideration of the foregoing and the following mutual promises set forth herein, hereby agree as follows:

1. LEGAL REPRESENTATION: The Parties acknowledge they are fully represented by legal counsel, as shown below, in connection with this matter and acknowledge that they enter into this Agreement knowingly and voluntarily after having been fully advised by their attorneys of their rights in this matter and of the scope and effect of this Agreement.

SCWII	
Tama County; Tama County Board of Supervisors	

2. AGREEMENTS BY TAMA COUNTY AND BOS:

- a. The BOS agrees to consider and vote on execution of this Agreement as an agenda item during an open meeting following publication of its agenda not less than four not more than twenty days in advance of the meeting, and will consider public comment and evidence at that meeting.
- b. The BOS acknowledges that it is tasked with enforcing Tama County's ordinances.
- c. Tama County and the BOS agree the Moratorium Resolution does not apply to the Project and that the terms of the 2010C-WECS Ordinance apply to the SCWII Project and CUP application. Tama County and the BOS further agree and stipulate they will not take any action to block, slow, hinder, obstruct, impede, or in any way delay any ongoing development, operations, or construction of the Project. The Parties agree that any violation of this Section by Tama County or the BOS shall be considered a material breach. Tama County stipulates any action to block, slow, hinder, obstruct, impede, or in any way delay the development, operations, or construction of the Project will result in irreparable harm to SCWII such that SCWII may not have an adequate remedy at law. Nothing in this paragraph prohibits Tama County, and its boards and officials, from enforcing county ordinances and requiring compliance with the ordinances.
- d. Tama County and the BOS acknowledge ~~that SCWII stipulate~~ that the threshold to establish vested rights for the ~~SCW-II-P~~ project has likely been met by SCWII pursuant to the CUP application, Zoning Certificates and C-WECS Ordinance, studies, activities, and expenditures by SCWII as of the execution date of this Agreement and that will be ongoing following the execution of this Agreement.
- e. The BOS stipulates that SCWII has, through its CUP application and the additional compromises and concessions made herein, met or exceeded the requirements of the C-WECS Ordinance.

- e. The BOS agrees and stipulates that neither the County, nor the BOA, has jurisdiction to revoke, rescind, withdraw or modify a CUP once issued to SCWII ~~or the Zoning Certificates once issued to SCWII.~~
- f. Salt Creek Wind II will have established use within the meaning of Tama County's ordinances for any and all ~~of the~~ Zoning Certificates for the Project upon completion of vertical erection of any one wind turbine generator at any one Zoning Certificate site. Upon completion of vertical erection of any one wind turbine generator SCWII will send the Zoning Administrator a certificate of completion of the first turbine ("Certificate of Completion"). Once use has been established as outlined herein, Tama County and its officials will not challenge the sufficiency of the established use. The Board of Supervisors agrees that Salt Creek Wind II's satisfaction of the conditions in this provision is sufficient to establish use under any and all ~~of the~~ Zoning Certificates for the Project, including those issued at a later date.
- g.f. Tama County and the BOS agree to direct the Zoning Administrator by resolution that once SCWII has established use under any and all ~~of the~~ Zoning Certificates for the Project, the Zoning Administrator shall take no action to the contrary.
- h.g. Tama County acknowledges that approval of applications for any Zoning Certificate for the Project, and road right-of-way permits, including but not limited to permits needed for entrance, right-of-way crossings, utility in rights-of-ways, work within rights-of-ways, and oversize/overweight permits to transport loads on county roads to Pproject-specific destinations are ministerial acts, and The BOS will direct, by resolution, that upon submission by SCWII of applications for such Zoning Certificate or permits that are consistent with applicable ordinances and the CUP application, the Zoning Administrator or the County Engineer shall to promptly issue such Zoning Certificate and road right-of-way permits; Tama County agrees that approval of such Zoning Certificate and road right-of-way permits shall not be unreasonably delayed or withheld and the BOS shall not interfere with the Zoning Administrator's nor the County Engineer's usual and customary processing of such applications including issuance of Zoning Certificate and right-of-way permits as required by consistent with applicable ordinances and the CUP application, except to direct prompt action be taken.
- h. Tama County acknowledges that approval of applications for any Zoning Certificate extensions for the Project are ministerial acts, and upon submission by SCWII of applications for such extension requests that are consistent with applicable ordinances and the CUP application, the Zoning

Administrator shall promptly issue such extensions; Tama County agrees that approval of such extensions shall not be unreasonably delayed or withheld and the BOS shall not interfere with the Zoning Administrator's usual and customary processing of such applications including issuance of Zoning Certificates as required by consistent with applicable ordinances and the CUP application.

- i. The BOS agrees that in the event of a legal challenge to this Agreement or the Project or any necessary permits, certificates, or approvals, the County will fully cooperate in good faith with SCWII in the defense of such challenge(s) at the County's expense, and further agrees that in the event of a successful challenge the County will use its best efforts and good faith to cure any deficiencies and re-enter into an Agreement on substantially the same terms included herein to facilitate development of the Project.

3. AGREEMENTS BY SCWII:

In consideration of the promises made in this agreement, SCWII will agree as follows:

- a. SCWII will make a \$1,200,000 payment, in addition to taxes, to Tama County within five days of delivery by SCWII of the Certificate of Completion and upon completion ~~by the County~~ of all of the following actions:
  - (1) Execution of this Agreement by the County;
  - (2) Timely issuance of all necessary permits, certificates, and approvals to construct the Project;
  - (3) Expiration of the limitations period for any challenges in any way related to the approval and construction of Project, including challenges to this Agreement and all necessary permits, certificates, and approvals; and
  - ~~(+)~~(4) The conclusion of unsuccessful challenges related to the approval and construction of Project, including challenges to this Agreement and all necessary permits, certificates, and approvals .
- b. SCWII will offer its standard Good Neighbor Agreement used for this Project and negotiate in good faith with any non-participating landowners located within one-half mile of any turbine constructed or to be constructed as part of the Project who contact SCWII and are not currently engaged in a similar agreement with a neighboring Pproject. For purposes of this Agreement, a "Non-Participating Residence" means the primary human dwelling on any privately-owned parcel of land where the owner(s) of such parcel have not entered a voluntary agreement with Salt Creek Wind II or any affiliate or agent thereof to provide any rights to or receive any compensation from Salt Creek Wind II.

- c. SCWII agrees to negotiate in good faith with any landowner who is currently a party to a Good Neighbor Agreement who wishes to be released from said Good Neighbor Agreement so long as the agreement is not needed for the development, construction, and/or operation of the Project.
- d. SCWII agrees to comply with the decommissioning ~~agreement—plan~~ attached to this ~~contract~~Agreement, which places additional obligations on SCWII and provides additional protections for the County and its landowners beyond those provided in the decommissioning plan submitted with the CUP application.
- e. Consistent with the decommissioning plan, ~~b~~Beginning 3 years after the ~~completion—commencement of commercial operation~~ of the Project, SCWII will agree to engage a licensed Iowa engineer to provide an updated, estimated cost of decommissioning for the Project every three years until the Project is decommissioned. SCWII will provide the results of the estimated cost to the BOS and County within 30 days of receipt and will update the bond in compliance with applicable County ordinances in effect as of the effective date of this Agreement.
- f. SCWII agrees to comply with the road use agreement attached to this ~~contract~~Agreement, which places additional obligations on SCWII and provides additional protections for the County and its landowners beyond those provided in the road use agreement referenced in the SCWII CUP application.
- g. SCWII agrees to not fund, develop, or plan any future wind energy conversion project in Tama County~~;~~. Additionally, SCWII will not sell any data gathered in preparation of ~~the—any~~ potential Salt Creek Wind III project in Tama County.
- h. Salt Creek Wind II agrees that the location of the turbines as measured from the center of the turbine will be no closer than 1500 feet from the outside wall of any Non-Participating Residence, which is further than the required setbacks in the C-WECS ordinance and further than the setbacks proposed in the SCWII CUP application. The agreed-upon turbine locations are indicated in the map provided on Appendix A. Parties agree that minor shifts of no more than \_\_\_ feet in any direction from the locations shown in Appendix A, ~~as allowed under Salt Creek Wind II's WECS Approval,~~ will be allowed to resolve micro-siting issues prior to construction.
- i. Prior to construction, Salt Creek Wind II agrees to provide to the BOS an updated noise model confirming that noise caused by the Project shall not exceed 50 dBA at the outside wall of any Non-Participating Residence during

normal operating conditions, .-which places additional obligations on SCWII and provides additional protections for the County and its landowners beyond those provided in C-WECS Ordinance and referenced in the SCWII CUP application. -If, on investigation by Tama County upon complaint by an individual residing in a Non-Participating Residence, the sound level exclusively caused by the wind turbines is found to exceed 50 dBA, notice shall be made to Salt Creek Wind II who will have thirty (30) days to investigate and cure the noise level or temporarily suspend operation of the turbine causing the exceedance until the noise level during operations can be cured. If, after investigation, Salt Creek Wind II determines that the complaint was unfounded or not caused by Salt Creek Wind II, it shall present the findings to the County Engineer or other person designated by the County to administer these provisions. If the County disagrees with Salt Creek Wind II's determination, the County Engineer and Salt Creek Wind II shall select a mutually agreeable third-party who will mediate the dispute. Failure by Salt Creek Wind II to reduce noise caused by the Project at the outside wall of the Non-Participating Residence to 50 dBA or below, or to present investigative findings disputing the complaint, by that time may result in the assessment of a penalty in the amount provided for County Infractions in Iowa Code § 331.307(1), unless an extension of the deadline for good cause is approved by the officer of the County designated by the Board to enforce County codes and regulations. Providing investigative results to the County disputing the complaint shall toll the time for cure until resolution of the dispute. The Parties may adopt by mutual agreement in writing dispute resolution processes that supersede the terms of this paragraph.

- j. After completion of construction of the Project, Salt Creek Wind II will make all necessary federal, state, and County applications for approvals required for installation of an Aircraft Detection Lighting System ("ADLS") on the Project and, if all such applications are approved Salt Creek Wind II will install an ADLS system as part of the Project. Tama County agrees that (1) the BOS will direct the Zoning Administrator, by resolution, that any zoning application to Tama County for any tower necessary to install or operate an ADLS system will not be unreasonably denied; (2) that upon the denial of any approval required to install an ADLS system by any federal, state, or County government entity, Salt Creek Wind II will be deemed to have fulfilled this obligation and shall be permitted ~~to build and~~ continue to operate the Project as described herein notwithstanding the inability to use an ADLS; and (3) Tama County acknowledges that, for technical and/or permitting reasons, the Project may be fully in operation approximately nine months before an ADLS can be implemented. During any period during which an ADLS is not operational, consistent with lighting requirements under the Preexisting Wind Ordinance, the Project will be artificially lighted only to the extent required by the FAA or other applicable authority and as needed

for nighttime maintenance, and the lighting intensity and frequency of the strobe shall adhere to but not exceed requirements established by FAA regulations. The ADLS requirement places additional obligations on SCWII and provides additional protections for the County and its landowners beyond those provided in the C WECS ordinance and the SCWII CUP application.

- k. Salt Creek Wind II agrees that Appendix B to this Agreement lists the turbine models that may be used for constructed as part of the portion of the Project to be located in Tama County and the manufacturer, hub height, and maximum total height of each. Sixty (60) days prior to construction, Salt Creek Wind II will confirm the specific turbine model to be constructed at each agreed-upon turbine location and its maximum total height.
- l. ~~No turbine may be taller than 500 feet in height measured to the tip of the blades. Salt Creek agrees that no wind turbine that is part of the Project shall be greater in height than 500 feet. Height shall be measured from the surface level of the ground to the tip of the blade when it is at its maximum height.~~
- m. SCWII agrees that it has met and will meet the requirements of the ~~2010 C-WECS~~ Ordinance, which that was in place prior to the passage of the ~~Mmoratorium~~ Resolution and ~~prior to at the time of submission of~~ its application for a conditional use permit.
- n. Salt Creek Wind II agrees to use curtailment measures such that no Residence will experience more than 30 hours of shadow flicker from the Project per year unless this limit has been waived by the owner of the Residence in an easement or other written instrument including but not limited to a Good Neighbor Agreement. Compliance with this requirement shall be shown by Salt Creek Wind II via pre-construction modeling that will be provided to [ ] the BOS. The shadow flicker requirement places additional obligations on SCWII and provides additional protections for the County and its landowners beyond those provided in the C-WECS ordinance and the SCWII CUP application.
- o. SCWII agrees and stipulates that this Agreement does not have a confidentiality provision. SCWII agrees that nothing in this Agreements bars the County or the BOS from speaking about this Agreement or the terms herein following its execution.

4. DUTY TO DEFEND: By entering into this Agreement, the County and BOS agree and stipulate this Agreement is a legal, enforceable and binding contract. The Parties further agree to defend the validity of this Agreement, should it be challenged.



~~4. PREVAILING PARTY ATTORNEYS' FEES IN PROJECT-RELATED~~

5. **LITIGATION:** If either SCWII or Tama County initiates or is forced to defend litigation against the other party arising from or related to the denial, rejection, delay, withholding, or other adverse action by any Tama County board, commission, officer, employee, or agent (including but not limited to the Board of Adjustment or the Zoning Administrator) concerning the Project, the prevailing party in such litigation shall be entitled to recover its reasonable attorneys' fees and litigation costs incurred in connection with the proceeding. For purposes of this provision, "prevailing party" includes a party that obtains a favorable judgment, injunction, declaratory relief, or other comparable legal or equitable relief on any substantial issue. Tama County expressly agrees and stipulates that it—not any board, commission, or official in their personal or professional capacity—is financially responsible for any fees and costs awarded under this provision. Notwithstanding the foregoing, whichever party is the prevailing party, the non-prevailing party's reimbursement obligation shall be capped at an amount equal to the total fees SCWII would otherwise owe under the ordinance attached hereto as Exhibit A, if it is adopted and applied to the Project.

6. **RELIANCE:** The Parties freely and voluntarily execute this Agreement solely in reliance upon their own knowledge, belief, and judgment, including advice by their respective attorneys, and not upon any representations made by the other party or its attorneys. Each of the Parties acknowledge and certify that it has read the terms of this Agreement prior to entering into and executing this Agreement and has had a full and ample opportunity to consult with and obtain the advice of an attorney.

7. **ENTIRE AGREEMENT:** This Agreement executed by the Parties constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement, and it supersedes all negotiations and all prior or contemporaneous discussions and understandings of the Parties in connection with the subject matter of this Agreement. This Agreement does not supersede or replace any prior written agreements between the Parties.

8. **SEVERABILITY:** If any term or provision of this Agreement is held invalid or unenforceable to any extent, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

~~9. CHOICE OF LAW, VENUE AND WAIVER OF JURY TRIAL:~~ This Agreement ~~shall be construed and enforced in accordance with the laws of the State of Iowa. This Agreement shall be deemed to have been entered into and performed in Tama County, Iowa. The Parties agree that any dispute related to this Agreement shall be brought in the Iowa District Court for Tama County, Iowa.~~ 10.9. ~~EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT.~~

~~11.10.~~ 10.10. **HEADINGS:** The headings in this Agreement are intended solely for



convenience of reference and shall be given no effect in the construction and interpretation of this Agreement.

~~12~~11. SUCCESSORS AND ASSIGNS: To the extent permitted by law, the terms of this Agreement are binding upon and inure to the benefit of the Parties hereto and each of their respective heirs, representatives, administrators, executors, successors and assigns. Provided, however, the Parties recognize that one Board of Supervisors cannot bind a future Board of Supervisors on legislative matters.

~~13~~12. AMENDMENTS: The terms, covenants, conditions, and provisions of this Agreement cannot be altered, changed, modified, added to or deleted from, except in a writing signed by all of the Parties hereto.

~~14~~13. CONSTRUCTION AND INTERPRETATION: This Agreement shall be construed and interpreted without regard to the party or parties responsible for its preparation and will be deemed as prepared jointly by the Parties. In resolving any ambiguity or uncertainty relating to this Agreement, the Parties agree that no consideration or weight shall be given to the identity of the party drafting the document.

~~15~~14. COPIES: A copy of this Agreement shall have the same legal effect as the original.

~~16~~15. COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

**SIGNATURE PAGES FOLLOW**

IN WITNESS WHEREOF, the PARTIES have executed and delivered this SETTLEMENT AGREEMENT effective as of the date written above.

---

TAMA COUNTY, IOWA

By: \_\_\_\_\_

Its: \_\_\_\_\_

---

TAMA COUNTY BOARD OF SUPERVISORS

By: \_\_\_\_\_

Its: \_\_\_\_\_

---

SALT CREEK WIND II LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_