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## EASEMENT ENCROACHMENT AND CONSENT AGREEMENT

THIS EASEMENT ENCROACHMENT AND CONSENT AGREEMENT (“**Agreement**”) is made this 20<sup>th</sup> day of April, 2016 by and between Brady Wind, LLC,, a Delaware limited liability company with its principal place of business at 700 Universe Boulevard, LAW/JB, Juno Beach, FL 33408 (the “**Crossing Party**”) and Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. and its successors and assigns with its principal place of business at 400 N. Fourth Street, Bismarck, ND 58501 (“**MDU**”). Crossing Party and MDU are collectively referred to herein as the “**Parties**”.

WHEREAS, MDU is the holder of an easement located in Stark County, North Dakota and described in **Exhibit A** which is attached hereto and incorporated herein, for purposes of constructing, operating, and maintaining electrical transmission lines and related improvements (the “**Easement**”). The real property encumbered by the Easement shall be the “**Easement Area**” for purposes of this Agreement.

WHEREAS, Crossing Party is constructing underground or electrical utility lines for the purpose of collecting and transmitting electrical energy from the Brady Wind Energy Center located in Stark County, North Dakota (the “**Collection Line**”). Crossing Party’s proposed Collection Line is proposed to cross MDU’s Easement Area in the location depicted on the attached **Exhibit B** which is attached hereto and incorporated herein (the “**Line Crossing**”).

WHEREAS, the Parties desire to permit the construction of the Line Crossing within the Easement Area pursuant to the terms and conditions contained herein:

NOW THEREFORE, for good and valuable consideration, the Parties agree as follows:

1. **Construction within Easement Area.** To the extent that MDU has the right to do so, MDU hereby grants to Crossing Party its consent to construct, operate, and maintain the Line Crossing, which Crossing Party shall construct and maintain in strict compliance with the plans and specifications provided on **Exhibit B**. Crossing Party shall not construct any improvements related to the Line Crossing except to the extent specifically described on **Exhibit B**.

2. **Location of Line Crossing.** The Line Crossing shall be located upon the Easement Area only as described and shown on **Exhibit B**. Crossing Party may not relocate or otherwise alter the Line Crossing without the prior written consent of MDU. MDU shall be permitted to remove any of the Line Crossing to construct, maintain, operate, repair, remove, or replace MDU's transmission line and related improvements in the Easement Area, provided MDU shall pay for the cost of removing, replacing, and reinstalling the Line Crossing. MDU shall not be obligated to pay for the costs of modifying the Line Crossing to the extent required for code clearance compliance or capacity increases as contemplated in this Agreement.
3. **Restrictions of Use.** Crossing Party shall only utilize as much of the Easement Area as described and permitted on the attached **Exhibit A**. Crossing Party shall at all times conduct all activities related to the Line Crossing in such a manner as not to interfere with or impede the operation and maintenance of MDU's improvements in the Easement Area. The Crossing Party shall, at its own cost and expense, comply with all applicable laws, including but not limited to existing zoning ordinances, governmental rules and regulations enacted or promulgated by any governmental authority and shall promptly execute and fulfill all orders and requirements imposed by such governmental authorities for the correction, prevention, and abatement of nuisances in or upon or connected with the Collection Line.
4. **Code Clearance Compliance.** Crossing Party shall ensure the Line Crossing complies with the National Electrical Safety Code ("NESC") Safety Rules for Overhead Lines and the required clearances between overhead conductors at all times. If NESC clearance requirements change, Crossing Party shall promptly make and incur all costs associated with the modifications required to keep the Line Crossing in compliance with then current NESC requirements.
5. **Capacity.** In the event MDU elects, or is otherwise required, to increase the capacity of its transmission line in the Easement, Crossing Party shall raise or otherwise modify the Line Crossing, at its sole cost and expense, to the extent reasonably necessary to accommodate MDU's capacity increase.
6. **Landowner Rights.** Crossing Party shall obtain, at its sole cost and expense, any and all real property rights, including easements or other right of way, as necessary for the Crossing Party's construction and operation of the Collection Line and Line Crossing.
7. **Maintenance of Line Crossing.** Crossing Party shall, at Crossing Party's sole expense, be responsible for the costs of construction, maintenance, and removal of any and all improvements constructed by Crossing Party, or a successor or assign, within the Easement Area.
8. **Indemnity.** Crossing Party assumes all risks for damages, injuries, or loss to either property or persons caused by, or arising out of, or resulting from the installation, construction, use, maintenance, repair, or replacement of the Line Crossing. Crossing Party agrees to indemnify, defend, and hold harmless MDU, its affiliates, subsidiaries, and their directors,

officers, employees, representatives, and agents (the “**MDU Indemnitee**”) from and against any and all actions, claims, demands, liabilities, losses, damages, injuries, suits, proceedings, judgments, costs, or expenses (collectively “**Claims**”) of whatever kind or nature, including but not limited to reasonable attorney fees arising out of, or in any way resulting from Crossing Party’s installation, construction, use, maintenance, repair, or replacement of the Collection Line and the Line Crossing. Crossing Party shall not hold harmless the MDU Indemnitee for Claims arising out of the intentional acts or gross negligence of MDU.

9. **No Waiver.** This Agreement in no way constitutes a waiver by MDU of its rights to enjoy the Easement unencumbered by the construction, operation, maintenance or use of the Line Crossing in the Easement Area.
10. **Default.** If Crossing Party is in violation of any term or condition in this Agreement, MDU shall have all rights and remedies available at law or in equity.
11. **Successors and Assigns.** This Agreement shall run with the land, inure to the benefit of and be binding on the respective heirs, successors, and assigns of the Parties.
12. **Counterpart, Recording, and Choice of Law.** This Agreement may be executed simultaneously or in counterparts, each of which together shall constitute one and the same agreement. This Agreement may be recorded in Stark County, North Dakota by either party. This Agreement shall constitute the entire agreement between the Parties and supersedes all other prior writings and understandings with respect to the subject matter described herein. This Agreement shall not be amended or modified in any way except by an instrument signed by both Parties. This Agreement shall be governed by the laws of the State of North Dakota and Stark County, North Dakota shall be considered the proper venue for any disputes arising in connection with this Agreement.

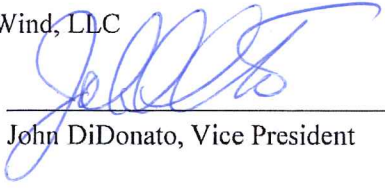
[SIGNATURES TO FOLLOW]



**Crossing Party:**

Brady Wind, LLC

By:

  
\_\_\_\_\_  
John DiDonato, Vice President

STATE OF FLORIDA                    )  
  :SS  
COUNTY OF PALM BEACH            )

On this 28 day of April, 2016, before me the undersigned notary public, personally appeared John DiDonato, as Vice President of Brady Wind, LLC, a Delaware limited liability company, who is personally known to me to be the person who subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of said limited liability company and that he was duly authorized to do so.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public



**EXHIBIT A**

**Description of the MDU Easement**

Electric Line Easement dated January 16, 1973 and recorded January 24, 1973 as Document No. 171534 in Book A150, Page 645 in Stark County, North Dakota between Montana-Dakota-Utilities Co and Joseph H. Kathrein and Magdalene C. Kathrein, his wife.

**EXHIBIT B**

**Depiction of Line Crossing**

**Underground Crossing (1 crossing)**

Latitude 46 38 37.71591 Longitude 102 46 10.32623

West side of 110<sup>th</sup> Ave. SW (South of 53<sup>rd</sup> St SW)

Voltage – 34.5 kV

# Brady Preliminary Crossing Stark County, ND

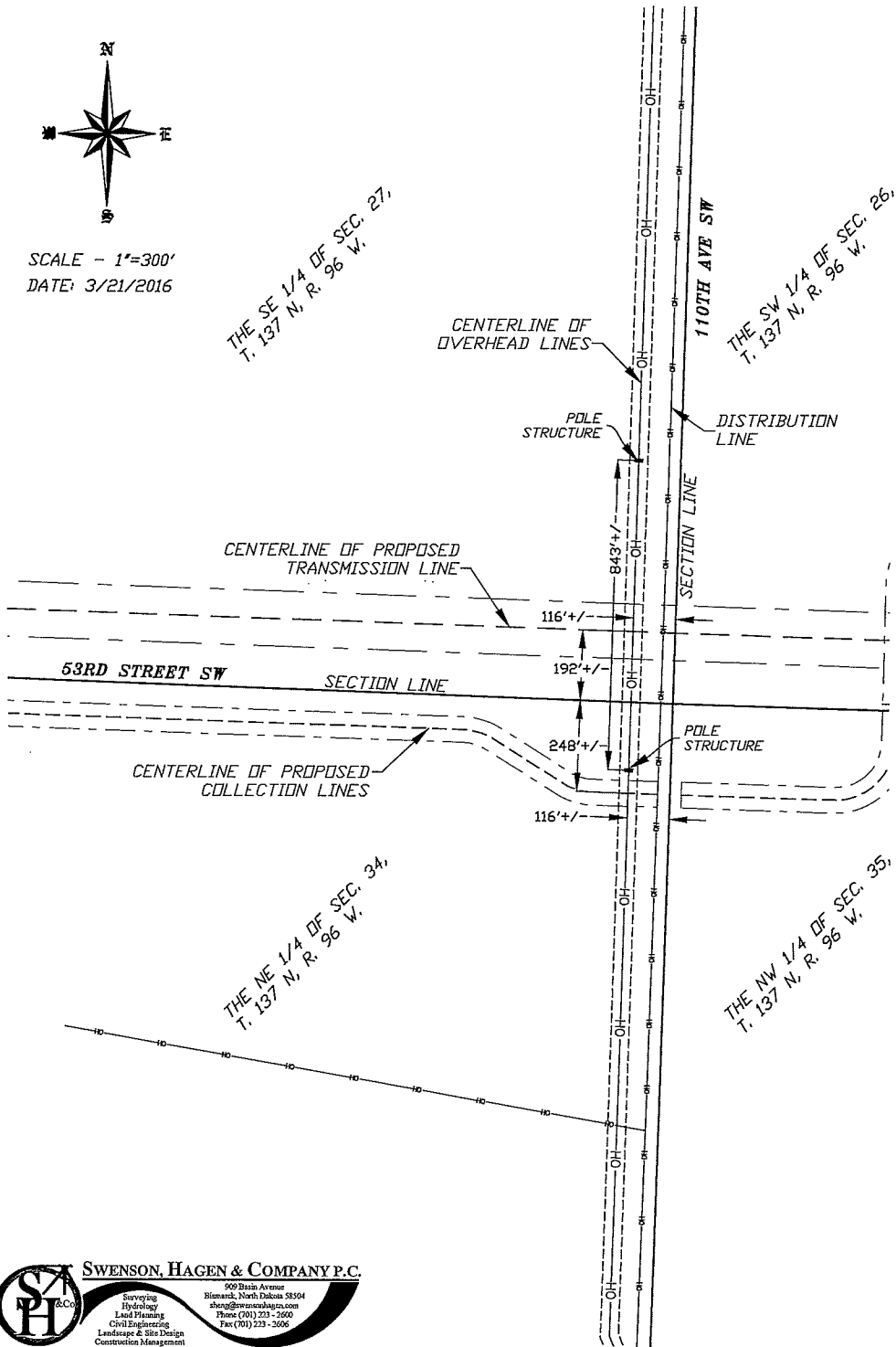
PART OF THE SE ¼ SEC. 27 &  
PART OF THE NE ¼ SEC. 34, T.137N., R.96W.

PRIVILEGED AND CONFIDENTIAL

Attorney-Client Communication/Attorney Work Product  
Prepared at the Direction of Legal Counsel



SCALE - 1"=300'  
DATE: 3/21/2016



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