IMPLEMENTING AGREEMENT

for the

PIONEER TRAIL WIND FARM HABITAT CONSERVATION PLAN

by and between

THE UNITED STATES FISH AND WILDLIFE SERVICE

and

PIONEER TRAIL WIND FARM, LLC

IMPLEMENTING AGREEMENT

1.0 PARTIES

2.0 RECITALS

3.0 PURPOSES

4.0 TERMS USED

- 4.1. "Changed Circumstances"
- 4.2. "Covered Activities"
- 4.3. "Covered Species"
- 4.4. "Environmental Assessment"
- 4.5. "HCP"
- 4.6. "ITP"
- 4.7. "Party" or "Parties"
- 4.8. "Permittee"
- 4.9. "Plan Area"
- 4.10. "Project"
- 4.11. "Unforeseen Circumstances"
- 4.12. "Unlisted Species"

5.0 OBLIGATIONS OF THE PARTIES

- 5.1. Obligations of the Permittee
- 5.2. Obligations of the USFWS

6.0 ENVIRONMENTAL REVIEW UNDER NATIONAL ENVIRONMENTAL POLICY ACT

7.0 INCORPORATION OF HCP

8.0 TERM

- 8.1. Initial Term

8.2. Permit Suspension or Revocation

8.3. Permit Renewal

8.4. Surrender

9.0 FUNDING

10.0 MONITORING AND REPORTING

10.1. Annual Mortality Monitoring Reports

10.2. Other Reports

10.3. Certification of Reports

10.4. Monitoring by USFWS

11.0 CHANGED CIRCUMSTANCES

11.1. Permittee-Initiated Response to Changed Circumstances

11.2. USFWS-Initiated Response to Changed Circumstances

11.3. Listing of Species that are not Covered Species

12.0 ADAPTIVE MANAGEMENT

12.1. Permittee-Initiated Adaptive Management

12.2. USFWS-Initiated Adaptive Management

12.3. Reductions in Mitigation

12.4. No Increase in Take

13.0 LAND TRANSACTIONS

13.1. Acquisition of Land by Permittee

13.2. Disposal of Land by Permittee

14.0 MODIFICATIONS AND AMENDMENTS

15.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION

15.1. In General

15.2. No Monetary Damages

15.3. Injunctive and Temporary Relief

15.4. Enforcement Authority of the United States

15.5. Dispute Resolution

16.0 MISCELLANEOUS PROVISIONS

16.1. No Partnership

16.2. Notices

16.3. Severability

16.4. Entire Agreement

16.5. Elected Officials not to Benefit

16.6. Availability of Funds

16.7. Duplicate Originals

16.8. No Third-Party Beneficiaries

16.9. Relationship to the ESA and Other Authorities

16.10. References to Regulations

16.11. Applicable Laws

16.12. Successors, Assigns, and Transfers

16.13. Authorized Parties

1.0 PARTIES

This IMPLEMENTING AGREEMENT (IA) for the Pioneer Trail Wind Farm Habitat Conservation Plan (HCP), is entered into as of the ____ day of _____, 2015, by and between the UNITED STATES FISH AND WILDLIFE SERVICE, an agency of the Department of the Interior of the United States of America (USFWS or the Service), and PIONEER TRAIL WIND FARM, LLC, a wholly owned subsidiary of E.ON CLIMATE & RENEWABLES NORTH AMERICA (PTWF or Permittee). In this IA, these entities may be referred to collectively as the "Parties" and each individually as a "Party."

2.0 RECITALS

The Parties have entered into this IA in consideration of the following facts:

2.1. The Service has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants, and their habitats under various federal laws, including the Endangered Species Act (ESA) (16 U.S.C. § 1531 *et seq.*), the Migratory Bird Treaty Act (MBTA) (16 U.S.C. § 701 *et seq.*), the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. § 668 *et seq.*), the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-666(c)), and the Fish and Wildlife Act of 1956 (16 U.S.C. § 742(a) *et seq.*).

2.2. The ESA prohibits the take of species listed as endangered or threatened under the ESA. Under Section 10(a)(1)(B) of the ESA (16 U.S.C. § 1539(a)(1)(B)), the Service may issue permits authorizing the incidental take of endangered or threatened species during otherwise lawful activities if certain statutory requirements are met by the applicant and such take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. To obtain a federal incidental take permit, the applicant must submit a habitat conservation plan describing, among other things, the steps the applicant will take to minimize and mitigate to the maximum extent practicable the impact of such take.

2.3. PTWF currently operates a state-of-the-art wind energy facility (Pioneer Trail or the Project) located in Iroquois and Ford Counties, Illinois.

2.4. The operation and maintenance of Pioneer Trail has been determined to have the potential to affect the federally listed endangered species, Indiana bat (*Myotis sodalis*) and northern long-eared bat (*Myotis septentrionalis*), referred to as the "Covered Species."

2.5. PTWF, with technical assistance from the Service, has prepared the HCP and related documents for the Covered Species. PTWF has developed a series of measures, described in the HCP, to minimize and mitigate to the maximum extent practicable the effects of take of the Covered Species incidental to PTWF's Covered Activities.

2.6. This IA defines the Parties roles and responsibilities and provides a common understanding of actions that will be undertaken under the HCP and its accompanying ITP, among other things, to minimize and mitigate take of the Covered Species incidental to Covered Activities on the Plan Area and the lands upon which mitigation will occur.

3.0 PURPOSES

The purposes of this Agreement are:

3.1. To ensure implementation of the terms of the HCP;

3.2. To describe remedies and recourse should any Party fail to perform its obligations, responsibilities, and tasks as set forth in the HCP, ITP, and this IA; and

3.3. To provide "No Surprises" assurances to PTWF consistent with the The HCP Assurances (No Surprises) Final Rule, 63 FR 8859-8873 (Feb. 23, 1998) (codified at 50 C.F.R. § 17.22(b)(5)).

4.0 TERMS USED

Terms used in this IA and specifically defined in the ESA or in the implementing regulations adopted by the Service under the ESA have the same meaning as in the ESA and those implementing regulations, unless this IA expressly provides otherwise. The following terms used in this IA will have the meanings set forth below.

4.1. **"Changed Circumstances"** means, pursuant to 50 C.F.R § 17.3, changes in circumstances affecting a Covered Species or the geographic area covered by the HCP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the HCP (*e.g.*, the listing of a new species or a fire or other natural catastrophic event in areas prone to these events). Changed Circumstances and the planned responses to those circumstances are described in Section 8.2.2 of the HCP. Changed Circumstances are not Unforeseen Circumstances, which are defined in Section 4.11 of this IA.

4.2. **"Covered Activities"** means certain activities carried out by PTWF and its agents in the Plan Area and on the lands upon which mitigation will occur that may result in authorized take of Covered Species during the term of the HCP and ITP. These activities include those identified in Section 4.3 of the HCP.

4.3. **"Covered Species"** means the Indiana bat (*Myotis sodalis*) and the northern long-eared bat (*Myotis septentrionalis*), which the HCP sufficiently addresses to meet all the criteria for issuing an ITP under Section 10(a)(1)(B) of the ESA.

4.4. **"Environmental Assessment"** means the environmental assessment prepared pursuant to the National Environmental Policy Act (NEPA) to evaluate the environmental effects of the Project and determine whether to prepare an Environmental Impact Statement or Finding of No Significant Impact (40 C.F.R. § 1508.9).

4.5. **"HCP"** means the Habitat Conservation Plan prepared by PTWF to address the requirements of Section 10(a)(2)(A) of the ESA which is incorporated by reference in this IA.

4.6. **"ITP"** means the ITP issued by the Service to PTWF under Section 10(a)(1)(B) of the ESA for take incidental to Covered Activities in the Plan Area and on the lands upon which mitigation will occur, as it may be amended from time to time.

4.7. **"Party"** or **"Parties"** means any or all of the signatories to this IA.

4.8. **"Permittee"** means PTWF.

4.9. **"Plan Area"** means the geographic area described in Section 2.4 of the HCP upon which Covered Activities will occur.

4.10. **"Project"** means the wind energy farm which PTWF is currently operating in Iroquois and Ford Counties, Illinois.

4.11. **"Unforeseen Circumstances"** means changes in circumstances affecting the Covered Species or the Plan Area that could not reasonably have been anticipated by the Parties at the time of the HCP's negotiation and development, and that result in a substantial and adverse change in the status of the Covered Species.

4.12. **"Unlisted Species"** means a species, including a subspecies or a distinct population segment of a vertebrate species, that is not listed as endangered or threatened under the ESA, including proposed, candidate, and other species.

5.0 OBLIGATIONS OF THE PARTIES

5.1. Obligations of the Permittee.

5.1.1. Permittee will fully and faithfully perform all obligations assigned to it under this IA, the ITP, and the HCP.

5.1.2. Permittee will promptly notify the Service of any lawsuits filed against it, and of any written notices or letters expressing intent to file suit challenging the issuance of, or compliance with, the HCP and ITP.

5.1.3. Permittee will notify the Service in writing within ten (10) days of the occurrence of any of the following: (1) any change in the registered name of PTWF; (2) the dissolution of PTWF; (3) the sale or conveyance of PTWF; (4) bankruptcy proceedings by PTWF as well as whether PTWF is in receivership; (5) when PTWF will no longer perform the Covered Activities in the Plan Area; (6) the revocation or suspension of PTWF's corporate authorization to do business in the state or states in which it is registered to do business; and (7) the disqualification of PTWF from performing Covered Activities under the ITP for either of the disqualifying factors listed in 50 C.F.R. § 13.21(c), as may be amended, or under any future USFWS regulation.

5.1.4. The authority issued to Permittee applies to all of Permittee's officers, directors, employees, agents, subsidiaries, contractors, and subcontractors and their officers, directors, employees, and agents, and consequently the Permittee is liable for any ITP violations that occur by any of the persons and/or entities referenced in this paragraph or by any other persons and/or entities under the control of the Permittee. Permittee shall conduct an educational program to inform all such persons and entities of the ITP and HCP's terms and conditions, and Permittee shall be responsible for supervising their compliance with those terms and conditions. All applicable contracts between Permittee and such persons and entities, where relevant, shall require their compliance with the HCP, this IA, and the ITP.

5.2. Obligations of the USFWS.

5.2.1. The Service will fully and faithfully perform all obligations assigned to it under this IA, the ITP, and the HCP.

5.2.2. Upon execution of this IA by all Parties and satisfaction of all other applicable legal requirements, the Service will issue Permittee an ITP under Section 10(a)(1)(B) of the ESA authorizing incidental take by Permittee of the Covered Species within the Plan Area and the lands upon which mitigation will occur incidental to the Covered Activities.

5.2.3. The Service will promptly notify Permittee if, for any reason (including court decisions or lack of appropriated funds), the Service is unable to fulfill any obligation associated with the HCP, ITP, or this IA.

5.2.4. The Service will promptly notify the Permittee of any lawsuits filed against it, and of any written notices or letters expressing intent to file suit challenging the issuance of, or compliance with, the HCP and ITP.

5.2.5. If Unforeseen Circumstances arise, the Service will not require, without the consent of the Permittee, the commitment of additional land, water, or financial compensation, or additional restrictions on the use of land, water, or other natural resources beyond the level specified in the approved HCP if the Permittee is adequately implementing the approved HCP.

6.0 ENVIRONMENTAL REVIEW UNDER NATIONAL ENVIRONMENTAL POLICY ACT

The Service's approval of the HCP and the issuance of the ITP under Section 10(a)(1)(B) of the ESA to Permittee are federal actions subject to review under NEPA (42 USC §§4321-4347, as amended). The Service is the federal lead agency under NEPA and has evaluated the HCP in compliance with NEPA in the Environmental Assessment (EA).

7.0 INCORPORATION OF HCP

The HCP and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this IA and the HCP, the terms of this IA will control only for purposes of interpreting this IA. The provisions of the HCP, ITP, and this IA shall be interpreted to be consistent with and complementary to each other. This IA is not intended to negate or nullify any provision of the ITP and/or the HCP.

8.0 TERM

8.1. Initial Term. This IA and the HCP will become effective on the date that the Service issues the ITP. Upon the effective date, Permittee may take the Covered Species while carrying out Covered Activities in the Plan Area and on the lands upon which mitigation will occur, as authorized by and subject to the conditions of this IA, the HCP, and the ITP. This IA,

the HCP, and the ITP will remain in effect for forty-three (43) years from issuance of the original ITP, except as provided below.

8.2. Permit Suspension or Revocation. The Service may suspend or revoke all or part of the privileges authorized by the ITP if the Permittee does not comply with the conditions of the ITP or with applicable laws and regulations governing the permitted activity. Suspension or revocation of the ITP, in whole or in part, by the Service shall be in accordance with 50 C.F.R. §§ 13.27-29, as may be amended over time.

8.3. Permit Renewal. When the ITP expires or when all authorized take has occurred, Permittee may apply for an extension or renewal of the ITP. If a written request for ITP renewal is on file with the issuing USFWS office at least 30 days prior to the permit's expiration, the ITP will remain valid while the renewal is being processed (50 C.F.R. § 13.22). Renewal of the ITP constitutes extension of the HCP and this IA for the same amount of time, subject to any amendments that the Service may require at the time of renewal.

8.4. Surrender. Permittee may surrender the ITP. Such surrender shall be in accordance with the regulations of the Service in force, if any, on the date of surrender (see 50 C.F.R. § 13.26). If no such regulations exist, Permittee shall provide thirty (30) days written notice to the Service of its intent to surrender the ITP. Notwithstanding any surrender of the ITP, Permittee shall remain responsible for any outstanding minimization and mitigation measures required under the terms of the ITP for take that occurs prior to surrender of the ITP. The ITP shall be deemed cancelled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the ITP, no further take shall be authorized under the terms of the surrendered ITP, and no further minimization or mitigation shall be required of the Permittee.

9.0 FUNDING

Permittee warrants that it has, and will expend, funds necessary to fulfill its obligations under the HCP. Permittee will notify the Service within thirty (30) days of the Permittee becoming aware of any material change in Permittee's financial ability to fulfill its obligations. In order to provide the Service with additional financial security, Permittee will provide a Letter of Credit in the amount of $2,855,410 to assure the Service that all commitments of the HCP will be met. This amount includes the estimated costs of summer habitat mitigation and monitoring ($2,502,700), winter habitat mitigation and monitoring ($100,000), as well as estimated costs of potential responses to changed circumstances ($252,710). The Letter of Credit will renew on an annual basis, and will remain in place for the duration of the ITP. The total amount will be adjusted annually for inflation and reduced each year, where appropriate, to reflect the estimated cost of the financial commitment for any mitigation activities not yet completed. However, to ensure that adequate funds will always remain available to address remaining commitments as well as any changed circumstances that may arise, the Letter of Credit will at all times remain at an amount no less than $252,710 (adjusted annually for inflation) plus the estimated cost of the remaining mitigation commitments, if any.

10.0 MONITORING AND REPORTING

10.1. Annual Mortality Monitoring Reports. Permittee will provide the Service with the reports described in Section 7.3.5.2 of the HCP at the notice address then in effect for the Service, and will provide any available information requested by the Service to verify the information contained in such reports.

10.2. Other Reports. Permittee will promptly report fatalities of ESA-listed species or eagles to the Service. Permittee will report the discovery of any suspected or confirmed Indiana bat or northern long-eared bat fatalities to the Service within forty-eight (48) hours of discovery.

10.3. Certification of Reports. All reports will include the following certification from a responsible company official who supervised or directed preparation of the report:

> "Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate and complete in all material respects."

10.4. Monitoring by USFWS. Upon receiving reasonable notice, Permittee will allow the Service to conduct inspections and monitoring in connection with the ITP in accordance with USFWS regulations.

11.0 CHANGED CIRCUMSTANCES

11.1. Permittee-Initiated Response to Changed Circumstances. Permittee will give notice to the Service within seven (7) days after learning that any of the Changed Circumstances listed in Section 8.2.2 of the HCP has occurred. Permittee will modify its activities in the manner described in Section 8.2.2 of the HCP to the extent necessary to mitigate the effects of the Changed Circumstances on Covered Species as soon as practicable and will report to the Service on its actions. Except where consultation with the Service is required by Section 8.2.2 of the HCP, Permittee will make these modifications without awaiting notice from the Service.

11.2. USFWS-Initiated Response to Changed Circumstances. If the Service determines that Changed Circumstances provided for in the HCP have occurred and that Permittee has not responded in accordance with Section 8.2.2 of the HCP, the Service will immediately notify Permittee and will direct Permittee to make the required changes. Permittee will report to the Service on its actions or intended actions within thirty (30) days after receiving notice from the Service and shall make the required changes in the period of time necessary to implement the changes, as agreed to by Service and the Permittee. Such changes are provided for in the HCP and hence do not constitute Unforeseen Circumstances or require amendment of the ITP or HCP. Provided the HCP is being properly implemented, the Service will not require Permittee to carry out any additional conservation and mitigation measures other than those identified in Section 8.2.2 of the HCP without consent of Permittee.

12.0 ADAPTIVE MANAGEMENT

12.1. Permittee-Initiated Adaptive Management. Permittee will implement the adaptive management provisions in Section 7.4 of the HCP when changes in management

practices are necessary to achieve the HCP's biological objectives or to respond to post construction monitoring results or new scientific information. The proposed take limit has been established at no more than 129 Indiana bats and no more than 86 northern long-eared bats over the 43-year life of the permit, based on an expected average take of 3 Indiana bats and 2 northern long-eared bats per calendar year. PTWF will implement adaptive management measures based on these annual expected take averages as described in Section 7.4 to provide assurance that total authorized levels of take will not be exceeded. However, no violation of the ITP shall be deemed to have occurred based solely on exceedance of the expected annual average take of 3 Indiana bats or 2 northern long-eared bats in a calendar year. Permittee will provide written notification to the Service prior to the implementation of any adaptive management measures set forth in Section 7.4 of the HCP.

12.2. USFWS-Initiated Adaptive Management. If the Service determines that one or more of the adaptive management provisions in the HCP have been triggered and that Permittee has not changed its management practices in accordance with Section 7.4 of the HCP, the Service will notify Permittee and will direct Permittee to make the required changes. Permittee will report to the Service on its actions or intended actions within thirty (30) days after receiving notice from the Service and shall make the required changes in the period of time necessary to implement the changes, as agreed to by the Service and the Permittee. These changes are provided for in the HCP and hence do not constitute Unforeseen Circumstances or require amendment of the ITP or HCP.

12.3. Reductions in Mitigation. Permittee will not implement adaptive management changes that may result in less mitigation than provided for the Covered Species under the original terms of the HCP unless the Service first provides written approval. In such circumstances, Permittee may propose the adaptive management changes by notice to the Service, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on the Covered Species. Within one hundred twenty (120) days of receiving the notice, the Service will either approve the proposed adaptive management changes, approve them as modified by the Service, or notify Permittee that the proposed changes constitute amendments that must be processed in accordance with Section 8.3.2 of the HCP.

12.4. No Increase in Take. This Section does not authorize any modifications that would increase the amount of take or increase the impacts of take of Covered Species beyond those analyzed under the original HCP and any amendments thereto. Any such modification must be processed in accordance with Section 8.3.2 of the HCP.

13.0 MODIFICATIONS AND AMENDMENTS

Permittee may request an amendment to the HCP by submitting a signed letter to the Service referencing the ITP permit number along with a twenty-five dollar ($25) fee. The amendment request shall explain the specific amendment requested and provide the basis for same, along with appropriate supporting documentation. The Service shall process the amendment request in the same manner as the original HCP; provided, however, that additional NEPA review or modifications to the IA shall be necessary only if and to the extent that the amendment involves an issue or action that was not addressed in the original NEPA analysis or IA, respectively. If

the circumstances necessitating the amendment were addressed in the original documents then only amendment of the ITP itself shall be necessary.

14.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION

14.1. In General. Except as set forth below, each Party shall have all remedies otherwise available to enforce the terms of this IA and the HCP.

14.2. No Monetary Damages. No Party shall be liable in damages to any other Party or other person for any breach of this IA, any performance or failure to perform a mandatory or discretionary obligation imposed by this IA, or any other cause of action arising from this IA.

14.3. Injunctive and Temporary Relief. The Parties acknowledge that the Covered Species are unique and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this IA.

14.4. Enforcement Authority of the United States. Nothing contained in this IA is intended to limit the authority of the United States government to seek civil or criminal penalties for violation of or otherwise fulfill its enforcement responsibilities under the ESA.

14.5. Dispute Resolution. The Parties recognize that disputes concerning implementation of, compliance with, suspension of, or termination of this IA, the HCP, and the ITP may arise from time to time. The Parties agree to work together in good faith to resolve any disputes, using the informal dispute resolution procedures set forth in this section or other procedures upon which the Parties may later agree. However, if at any time any Party determines that circumstances warrant, it may seek any available remedy without waiting to complete informal dispute resolution. Unless the Parties agree upon another dispute resolution process, or unless an aggrieved Party has initiated administrative proceedings or litigation related to the subject of the dispute in federal court, the Parties may use the following process to attempt to resolve disputes:

14.5.1. The aggrieved Party will notify the other Party in writing of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.

14.5.2. The Party alleged to be in violation will have thirty (30) days from receipt of notice, or such other time as may be agreed, to respond. During this time period, the Party may seek clarification of the information provided in the initial notice. The aggrieved Party will use its best efforts to provide the other Party with any information then available to it that may be responsive to these inquiries.

14.5.3. Within thirty (30) days after the response was received by the aggrieved Party or such other time as maybe agreed to by the Parties, representatives of the Parties having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all Parties, or will establish a specific process and timetable to seek a solution.

14.5.4. If any issues cannot be resolved through negotiations, the Parties will consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

14.5.5. The Parties reserve the right, at any time without completing informal dispute resolution, to use whatever powers and remedies are available by law or regulation to ensure enforcement of or adherence to the HCP, this IA, and the ITP, including but not limited to, in the case of the Service, suspension or revocation of the ITP and civil or criminal penalties.

15.0 MISCELLANEOUS PROVISIONS.

15.1. No Partnership. Neither this IA nor the HCP shall make or be deemed to make any Party to this IA the agent for or the partner of any other Party.

15.2. Notices. Any notice permitted or required by this IA shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States Mail, certified and postage prepaid, return receipt requested and addressed as follows or at such other address as any Party may from time to time specify to the other Party in writing:

If to the Service:

United States Fish and Wildlife Service
5600 American Blvd West, Suite 990
Bloomington, MN 55437-1173

with a copy to:

United States Fish and Wildlife Service
Rock Island Field Office
1511 47th Avenue
Moline, IL 61265

If to Permittee:

Pioneer Trail Wind Farm, LLC
c/o E.ON Climate and Renewables
353 N. Clark, 30th Floor
Chicago, IL 60654

with a copy to:

M. Benjamin Cowan
Locke Lord LLP
2800 Chase Tower
Hauston, TX 77002

Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail, and such electronic notices shall thereafter be deemed effective upon receipt. Notices shall be transmitted so that they are received within the specified deadlines.

15.3. Severability. If any provision of this IA is found invalid or unenforceable, all other provisions shall remain in effect to the extent they can be reasonably applied in the absence of the invalid or unenforceable provision.

15.4. Entire Agreement. This IA, together with the HCP and the ITP, constitute the entire agreement among the Parties. Excepting the HCP and ITP, this IA supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

15.5. Elected Officials not to Benefit. No member of or delegate to Congress shall be entitled to any share or part of this IA, or to any benefit that may arise from it.

15.6. Availability of Funds. The Service's implementation of this IA and the HCP is subject to the requirements of the Anti-Deficiency Act (31 U.S.C. § 1341) and the availability of appropriated funds. Nothing in this IA will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the United States Treasury. The Parties acknowledge this IA does not require the Service to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to the expenditures as evidenced in writing.

15.7. Duplicate Originals. This IA may be executed in any number of duplicate originals, and shall be deemed effective as of the issuance of the ITP. A complete original of this IA shall be maintained in the official records of each of the Parties hereto.

15.8. No Third-Party Beneficiaries. Without limiting the applicability of rights granted to the public under the ESA or other federal law, this IA shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone who is not a Party to this IA to maintain a suit for personal injuries or damages pursuant to the provisions of this IA. The Parties' duties, obligations, and responsibilities with respect to third parties shall remain as imposed under existing law.

15.9. Relationship to the ESA and Other Authorities. The terms of this IA shall be governed by and construed in accordance with the ESA and applicable federal law. In particular, nothing in this IA is intended to limit the Service's authority to seek civil or criminal penalties for violations of or otherwise fulfill its responsibilities under the ESA. Moreover, nothing in this IA is intended to limit or diminish the legal obligations and responsibilities of the Service as an agency of the federal government. Nothing in this IA will limit the right or obligation of any

federal agency to engage in consultation required under ESA Section 7 or other federal law; however, it is intended that Permittee's rights and obligations under the HCP, ITP, and this IA will be considered in any consultation affecting Permittee's use of the Plan Area. Nothing in this IA is intended to limit Permittee's rights under the HCP or the ITP, or its ability to exercise those rights under applicable law.

15.10. References to Regulations. Any reference in this IA, the HCP, or the ITP to any Service regulation or rule shall be deemed to be a reference to the regulation or rule in existence at the time an action is taken.

15.11. Applicable Laws. All activities undertaken under this IA, the HCP, or the ITP must be in compliance with all applicable state and federal laws and regulations.

15.12. Successors, Assigns, and Transfers. This IA and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. Assignment or other transfer of the ITP shall be governed by the Service regulations in force at the time.

15.13. Authorized Parties. Each Party warrants that the signatory below is authorized to execute this IA on behalf of that Party.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this IA to be in effect as of the date last signed below.

BY: _____ Date 26 May 2015

Paul Bowman
Senior Vice President
Pioneer Trail Wind Farm, LLC

BY: Lynn M Lewis Date 11/23/15

Lynn M. Lewis
Assistant Regional Director
United States Fish and Wildlife Service
Bloomington, MN