

ESCROW AGREEMENT

This Escrow Agreement (“**Agreement**”) is entered into and effective as of [_____] [___], 2018 (the “**Effective Date**”) by and among Crocker Wind Farm, LLC, a South Dakota limited liability company (“**Crocker**”), and Minnwest Bank, a Minnesota state bank (“**Escrow Agent**”).

RECITALS

WHEREAS, Crocker intends to construct the initial phase of the Crocker Wind Farm, which consists of two hundred (200) megawatts, to be located in Clark County, South Dakota (the “**Project**”).

WHEREAS, pursuant to Condition Number 36 of the Final Decision and Order Granting Permit to Construct Facilities and Notice of Entry (the “**Order**”) of the South Dakota Public Utilities Commission (the “**Commission**”) (attached hereto as Exhibit A), Crocker is subject to certain obligations to decommission the Project (the “**Decommissioning Obligations**”).

WHEREAS, Condition Number 37 of the Order requires Crocker to file a plan with the Commission for Commission approval providing for establishment of a decommissioning escrow account (the “**Escrow Account**”) into which Crocker will deliver funds (the “**Escrow Funds**”) to meet Crocker’s Decommissioning Obligations.

WHEREAS, pursuant to Condition Number 37, on July 16, 2018, Crocker filed a plan with the Commission setting forth a proposed structure and proposed terms for the Escrow Account (the “**Decommissioning Escrow Account Plan**”) (attached hereto as Exhibit B).

WHEREAS, on August 3, 2018, the Commission issued an Order Approving Escrow Plan (“**Order Approving Escrow Plan**”), in which the Commission approved Crocker’s Decommissioning Escrow Account Plan and set forth certain additional conditions with which the Escrow Account and this Agreement must comply. The Order Approving Escrow Plan is attached hereto as Exhibit C.

WHEREAS, in accordance with the Order, the Decommissioning Escrow Account Plan, and the Order Approving Escrow Plan, Crocker and Escrow Agent desire to enter into this Agreement to define the terms and conditions pursuant to which the Escrow Funds will be deposited in, held in, and disbursed from the Escrow Account.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Appointment of Escrow Agent. On the terms, and subject to the conditions, set forth in this Agreement, Crocker hereby appoints Escrow Agent as its agent and custodian to hold, invest and disburse the Escrow Funds and all interest and investment earnings and revenue thereon (the “**Escrow Revenue**”) in accordance with this Agreement, and the Escrow Agent hereby accepts such appointment and agrees to assume and perform the duties of Escrow Agent pursuant to the terms and conditions of this Agreement.

2. Delivery of Funds to Escrow Agent. Crocker shall deliver to Escrow Agent and the Escrow Agent agrees to accept delivery of the following deposits:
 - a. Commencing no later than the commercial operation date of the Project (the “**Commercial Operation Date**”), an amount equal to \$5,000 per wind turbine that is installed and used in the Project (each, an “**Installed Turbine**”).

 - b. Annually for a period of twenty-nine (29) consecutive years thereafter, and not more than ninety (90) days following each anniversary of the Commercial Operation Date, an amount equal to five thousand dollars (\$5,000) per Installed Turbine (the “**Annual Escrow Funding Rate**”); *provided, however*, that if, pursuant to Condition No. 37(f) of the Order, the Commission issues an order changing the Annual Escrow Funding Rate (a “**Rate Revision Order**”), the Escrow Agent shall accept delivery from Crocker of an amount equal to the revised rate set forth in the Rate Revision Order for the remainder of the twenty-nine (29) year period. Crocker shall provide a copy of any Rate Revision Order to the Escrow Agent within seven (7) calendar days of the Commission’s issuance of such Rate Revision Order pursuant to the notice requirements set forth in Section 10 herein.

3. Investment. Escrow Agent shall hold and invest the Escrow Funds and all Escrow Revenue only in accordance with the terms of this Agreement. Escrow Agent shall invest and reinvest the Escrow Funds and all Escrow Revenue in an interest-bearing demand deposit account or in short term money market funds that invest primarily in short-term readily marketable direct obligations of the government of the United States or any agency or instrumentality thereof. Crocker understands and acknowledges that funds held in an interest-bearing account with Escrow Agent are covered by insurance issued by the Federal Deposit Insurance Corporation (FDIC) up to a maximum of two hundred fifty thousand dollars (\$250,000.00) in insurance coverage and that all funds held in an interest-bearing account in excess of such limit are uninsured. All of the Escrow Funds and all Escrow Revenue shall be held by, or registered in the name of, Escrow Agent or its nominee. All Escrow Revenue earned on the Escrow Funds shall be taxable to Crocker.

4. Disbursements of Escrow Funds and Escrow Revenue by Escrow Agent. Escrow Agent shall hold the Escrow Funds and all Escrow Revenue until instructed or otherwise

required to disburse the same or any portion thereof in accordance with Section 5 of this Agreement.

5. Disbursements.

- a. Escrow Revenue. To the extent any Escrow Revenue accrues during the term of this Agreement, such Escrow Revenue shall be added to the Escrow Funds, credited to the Escrow Account, and invested as set forth in Section 3 hereof until released pursuant this Section 5.
- b. Escrow Claims by the Commission for Crocker Decommissioning Expenses or Payment of Taxes on Escrow Revenue. Upon the issuance of an order by the Commission that Escrow Funds shall be disbursed to Crocker in connection with: (i) Crocker's partial or full completion of its Decommissioning Obligations or (ii) Crocker's payment of taxes on Escrow Revenue, the Commission shall provide the Escrow Agent with written instructions substantially in the form of Exhibit D hereto (the "**Crocker Claim Certificate**") specifying the nature of the claim and setting forth the precise amounts of Escrow Funds to be released to Crocker. Escrow Agent shall, in accordance with the Crocker Claim Certificate, pay to the Crocker account set forth in Exhibit F hereto, the amount of Escrow Funds set forth in the Crocker Claim Certificate on the first business day after the Escrow Agent's receipt of the Crocker Claim Certificate. Promptly upon receipt of any Crocker Claim Certificate, but no later than the first business day after receipt, the Escrow Agent shall deliver a copy of such Crocker Claim Certificate to Crocker pursuant to the notice provisions set forth in Section 10 herein.
- c. Escrow Claims by the Commission Due To Crocker Default. Upon the issuance of an order by the Commission that Escrow Funds shall be disbursed to a landowner who owns property upon which a Project facility subject to applicable state and local decommissioning laws is located in connection with such landowner's incurrence of decommissioning costs resulting from Crocker's default on its Decommissioning Obligations, the Commission shall provide the Escrow Agent with written instructions substantially in the form of Exhibit G hereto (the "**Landowner Claim Certificate**") specifying the nature of the claim and setting forth the precise amounts of Escrow Funds to be released to the landowner or landowners. Escrow Agent shall, in accordance with the Landowner Claim Certificate, pay to the account set forth in the Landowner Claim Certificate, the amount of Escrow Funds set forth in the Landowner Claim Certificate on the tenth business day after the Escrow Agent's receipt of the Landowner Claim Certificate. Promptly upon receipt of any Landowner Claim Certificate, but no later than the first business day after receipt, the Escrow Agent shall deliver a copy of such Landowner Claim Certificate to Crocker pursuant to the notice provisions set forth in Section 10 herein. Upon the disbursement of Escrow Funds to a landowner in connection with such landowner's incurrence of decommissioning costs, no additional Escrow Funds shall be disbursed to such landowner, or any other person, in connection with such previously funded

decommissioning costs, and neither Crocker nor the Escrow Agent shall have any ongoing liability with respect to such previously funded decommissioning costs.

- d. Release at End of Term; Substitution of Security. Upon either: (i) the full and final satisfaction of all of Crocker's Decommissioning Obligations or (ii) Crocker's provision of a letter of credit, bond or other security in form and substance satisfactory to the Commission to secure Crocker's Decommissioning Obligations prior to the full and final satisfaction thereof, each as reflected in an order issued by the Commission, and payment to Escrow Agent of all amounts owed to Escrow Agent by Crocker under the terms of this Agreement, any Escrow Funds and Escrow Revenue remaining in the Escrow Account shall be released to Crocker upon written instruction by the Commission substantially in the form of Exhibit H hereto (the "**End of Term Certificate**") on the first business day after the later of the following dates: (y) the date on which the Escrow Agent receives the End of Term Certificate or (z) the date on which payment to Escrow Agent of all amounts owed to Escrow Agent by Crocker under the terms of this Agreement has occurred. Promptly upon receipt of any End of Term Certificate, but no later than the first business day after receipt, the Escrow Agent shall deliver a copy of such End of Term Certificate to Crocker pursuant to the notice provisions set forth in Section 10 herein.
- e. Regulations of the Comptroller of the Currency. Crocker acknowledges that regulations of the Comptroller of the Currency grant Crocker the right to receive brokerage confirmations of any security transactions as they occur. Crocker specifically waives such notifications to the extent permitted by law, and Crocker will receive monthly cash transaction statements that will detail all investment transactions.

6. Unencumbered Funds. Crocker warrants that Crocker will not use the Escrow Funds as security for any transaction, nor will Crocker pledge the Escrow Funds or list the Escrow Account as an asset on any application to obtain credit or to obtain real or personal property. The parties hereto acknowledge and agree that any rights that Crocker or any other party has to the Escrow Funds and any associated Escrow Revenue are contingent rights and receipt of any Escrow Funds or Escrow Revenue is subject to the satisfaction or waiver of such contingencies. The parties hereto acknowledge and understand that, in the event of a bankruptcy filing or other insolvency proceeding commenced by or against Crocker prior to the satisfaction or waiver of such contingencies, the Escrow Funds will not constitute property of the bankruptcy estate or otherwise be reachable by Crocker's creditors.

7. Rights and Obligations of Escrow Agent.

- a. Duties.
 - i. Escrow Agent hereby accepts its obligations under this Agreement and represents that it has the legal power and authority to enter into this Agreement and to perform its obligations hereunder. Escrow Agent agrees that all Escrow Funds and any Escrow Revenue held by Escrow Agent

under this Agreement shall be segregated from all other property held by Escrow Agent and shall be identified as being held in connection with this Agreement. Segregation may be accomplished by appropriate identification on the books and records of Escrow Agent. Escrow Agent's documents and records with respect to the transactions contemplated by this Agreement shall be available for examination by authorized representatives of Crocker and/or the Commission. Annual account statements summarizing any activity with respect to the Escrow Funds (including the amount of Escrow Revenue) and detailing the balance of the Escrow Account shall be provided to Crocker not more than 90 days following each calendar year. In addition, the Escrow Agent will provide to Crocker such reports, in such detail, as Crocker reasonably deems necessary to enable Crocker to satisfy all applicable regulatory and accounting requirements. On request, the Escrow Agent will provide confirmation to Crocker of the deposit of money in the Escrow Account.

ii. This Agreement may be terminated only as described herein or by an order of the Commission.

- b. No Other Duties. Escrow Agent shall not have any duties or responsibilities under this Agreement except as expressly set forth herein.
- c. Escrow Fee. Escrow Agent shall be entitled to receive solely from Crocker: (i) compensation for its regular services as Escrow Agent under this Agreement; and (ii) reimbursement for all documented, reasonable and necessary out-of-pocket expenses incurred by Escrow Agent in fulfilling its obligations under this Agreement, including, without limitation, reasonable fees and disbursements of legal counsel. Such compensation and reimbursement obligations shall be paid from time to time as incurred. In no circumstance will the Commission have any obligation to pay any amount to Escrow Agent arising out of or under this Agreement.
- d. Resignation of Escrow Agent. Escrow Agent may at any time resign by giving sixty (60) days advance written notice of such resignation to the Commission and Crocker. Upon such resignation, Escrow Agent shall not be discharged from its obligations under this Agreement until (i) a successor escrow agent, as approved in writing by each of Crocker and the Commission, shall have been appointed, (ii) the successor escrow agent shall have executed and delivered an Escrow Agreement in substantially the form of this Agreement or a form acceptable to Crocker and the successor escrow agent, and approved by the Commission and (iii) all Escrow Funds and Escrow Revenue then held by Escrow Agent under this Agreement shall have been delivered to such successor escrow agent.
- e. Standard of Care. In performing its duties under this Agreement, Escrow Agent shall exercise the standard of care required by applicable law, including without limitation, the same care and diligence that a professional escrow agent engaged

in the banking or trust company industry and having professional expertise in financial and securities processing transactions and custody would observe in these affairs.

- f. Liability of Escrow Agent. Escrow Agent shall not be liable for any action taken in accordance and compliant with the terms of this Agreement, including, without limitation, any disbursement of the Escrow Funds in accordance with Section 5, as long as the action was taken in good faith. Except as expressly set forth herein, Escrow Agent shall not be liable for any other act or failure to act under or in connection with this Agreement, except for its own gross negligence or intentional tortious misconduct. Crocker agrees to indemnify, defend and hold Escrow Agent harmless from and against all claims, causes of action, costs, judgments, losses and damages arising out of or related to this Agreement, except for any such claims, causes of action, costs, judgments, losses or damages arising from or related to any breach of this Agreement by Escrow Agent or grossly negligent or intentional tortious actions or omissions of Escrow Agent.
 - g. Reliance on Documentary Evidence. Escrow Agent shall be entitled to rely on any written notice, certificate, affidavit, letter, document or other communication that is reasonably believed by Escrow Agent to be genuine and to have been signed or sent by the proper party or parties, and on statements contained therein, without further inquiry or investigation. Notwithstanding anything to the contrary in this Agreement, Escrow Agent may act on any written instructions given jointly by the Commission and Crocker.
 - h. Interpleader. If the Commission and/or Crocker shall disagree about the interpretation of this Agreement, or about the rights and obligations or the propriety of any act contemplated by Escrow Agent hereunder, then Escrow Agent may, within its reasonably exercised discretion, file an action of interpleader in the appropriate court of competent jurisdiction and deposit all of the applicable Escrow Funds with such court.
8. Term and Termination of Agreement. This Agreement shall continue through the date on which the Escrow Funds and Escrow Revenue have been fully disbursed, or, if earlier, until otherwise terminated pursuant to the terms of this Agreement.
9. Taxes. Taxes, if any, imposed upon disbursements of the Escrow Funds shall be paid by Crocker.
10. Notices. All notices and other communications (including all certificates delivered pursuant to Section 5) under this Agreement by the Commission or Crocker to Escrow Agent (Escrow Agent, together with the Commission and Crocker, the “**Notice Parties**” and each a “**Notice Party**”) shall be delivered contemporaneously to the other Notice Parties in the same manner as provided to Escrow Agent. All notices and other communications under this Agreement shall be given in writing and shall be personally delivered, sent by telecopier, facsimile, or email (in a pdf attached thereto) transmission,

or sent to the applicable Notice Parties at their respective addresses indicated in this Section 10 by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service, as follows:

If to Crocker:
Crocker Wind Farm, LLC
c/o Geronimo Energy
7650 Edinborough Way, Suite 725
Edina, MN 55435
Attention: Chris Morgan
Phone: 952-358-5694
Email: cmorgan@geronimoenergy.com

If to Commission, to:
Executive Director
Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

If to Escrow Agent, to:
Minnwest Bank
5001 S Louise Ave.
Sioux Falls, SD 57108
Contact: Scott Gullickson
Phone 605-323-7070
Fax 605-362-6220
E-Mail: scottg@minnwestbankgroup.com

or to such other person or address as any Notice Party shall have specified by notice in writing to the other Notice Parties. If personally delivered, such communication shall be deemed delivered upon actual receipt; if sent by telecopier, facsimile, or email transmission, such communication shall be deemed delivered the day of the transmission, or if the transmission is not made on a business day, the first business day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this Section 10, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this Section 10, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal. Escrow Agent agrees that the delivery by Crocker of an order or other decree from the Commission pursuant to one of the methods set forth in this Section 10 shall be deemed to be a communication from the Commission.

11. Miscellaneous.

- a. Captions. All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.
- b. Third-Party Beneficiary. Except with respect to the Commission as provided below, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or other third party, so as to constitute any such person a third-party beneficiary under this Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto. Notwithstanding the foregoing, the Commission is a third-party beneficiary and may enforce this Agreement.
- c. Integration; Amendment. This Agreement constitutes the entire agreement among the parties relating to the transactions described herein and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding on the parties, and no party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the parties hereto and has been approved in writing by the Commission.
- d. Assignment. Except as expressly provided herein, neither Crocker nor the Escrow Agent shall assign or transfer this Agreement without the prior written consent of the other party, which written consent shall not be unreasonably withheld, and the prior written approval of the Commission.
- e. Governing Law and Venue. This Agreement is made in the State of South Dakota, excluding South Dakota's conflicts of law principles, and shall be interpreted and governed by the laws of such State or the laws of the United States, as applicable. Any action shall be venued in the state of South Dakota, in state or federal court as applicable, unless otherwise agreed upon by Crocker, Escrow Agent, and Commission.
- f. Successors and Assigns. This Agreement shall bind the successors, transferees, and assigns of Crocker and the Escrow Agent.
- g. Good Faith and Fair Dealing; Reasonableness. The parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) whenever this Agreement requires the consent, approval or similar action by a party, such consent, approval or similar action shall not be unreasonably withheld or delayed, and (ii) whenever this Agreement gives a party a right to determine, require, specify or take similar action with respect to matters,

such determination, requirement, specification or similar action shall be reasonable.

- h. Severability. Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in force. The parties will, however, use their reasonable best endeavors to agree on the replacement of the void, illegal or unenforceable provisions with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.
- i. Cooperation. The parties agree to cooperate reasonably with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require any party to act in a manner inconsistent with its rights under this Agreement.
- j. Execution in Counterparts and Facsimile Transmission. This Agreement may be executed in two (2) or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original. This Agreement may be executed and delivered by facsimile or email (in a pdf attached thereto) transmission, and the parties agree that such execution and delivery by facsimile or email transmittal shall have the same force and effect as delivery of an original document with original signatures.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the Effective Date.

Dated:

CROCKER WIND FARM, LLC

By: _____
Name: _____
Its: _____

Dated:

MINNWEST BANK

By: _____
Name: _____
Its: _____

EXHIBIT A

COMMISSION ORDER

EXHIBIT B TO ESCROW AGREEMENT

DECOMMISSIONING ESCROW ACCOUNT PLAN

EXHIBIT C TO ESCROW AGREEMENT

COMMISSION ORDER APPROVING ESCROW ACCOUNT

EXHIBIT D

CROCKER CLAIM CERTIFICATE

TO: Minnwest Bank

This Certificate is issued pursuant to that certain Escrow Agreement, dated as of [_____, 20__], by and among Crocker Wind Farm, LLC (“Crocker”) and you, as Escrow Agent (the “Escrow Agreement”). Capitalized terms used but not otherwise defined in this Certificate shall have the meaning ascribed to them in the Escrow Agreement.

The undersigned representative of Commission hereby certifies that, as set forth in the attached order issued by the South Dakota Public Utilities Commission, Crocker is entitled to receive Escrow Funds in the amount of [\$_____], pursuant to the terms of the Escrow Agreement, due to the following (generally): [_____].

Accordingly, subject to the terms of the Escrow Agreement, you are hereby instructed to disburse, on the first business day after your receipt of this Certificate, the sum of [\$_____] from the Escrow Account to Crocker by wire transfer to the account set forth in Exhibit F to the Escrow Agreement.

Dated: [_____, 20__]

South Dakota Public Utilities Commission

By: _____

Name: _____

Title: _____

EXHIBIT F

CROCKER ACCOUNT INFORMATION

[Bank: _____
Account: _____
Routing Number: _____]

EXHIBIT G

LANDOWNER CLAIM CERTIFICATE

TO: Minnwest Bank

This Certificate is issued pursuant to that certain Escrow Agreement, dated as of [_____, 20__], by and among Crocker Wind Farm, LLC (“Crocker”) and you, as Escrow Agent (the “Escrow Agreement”). Capitalized terms used but not otherwise defined in this Certificate shall have the meaning ascribed to them in the Escrow Agreement.

The undersigned representative of Commission hereby certifies that:

Individual/Entity Name: _____

Address: _____

Affected Parcel(s) Identification Number(s): _____

as set forth in the attached order issued by the South Dakota Public Utilities Commission, is entitled to receive Escrow Funds in the amount of [\$_____], pursuant to the terms of the Escrow Agreement, due to the following (generally): [_____]. A copy of the individual’s or entity’s Form W-9 is attached hereto.

Accordingly, subject to the terms of the Escrow Agreement, you are hereby instructed to disburse, on the tenth business day after your receipt of this Certificate, the sum of [\$_____] from the Escrow Account to the individual or entity identified above by wire transfer to the following account:

Bank: [_____]

Account: [_____]

Routing Number: [_____]

Dated: [_____, 20__]

South Dakota Public Utilities Commission

By: _____

Name: _____

Title: _____

EXHIBIT H

END OF TERM CERTIFICATE

TO: Minnwest Bank

This Certificate is issued pursuant to that certain Escrow Agreement, dated as of [_____, 20__], by and among Crocker Wind Farm, LLC (“Crocker”) and you, as Escrow Agent (the “Escrow Agreement”). Capitalized terms used but not otherwise defined in this Certificate shall have the meaning ascribed to them in the Escrow Agreement.

The undersigned representative of Commission hereby certifies that, as set forth in the attached order issued by the South Dakota Public Utilities Commission, Crocker is entitled to receive Escrow Funds in the amount of [\$_____] and Escrow Revenue in the amount of [\$_____], pursuant to the terms of the Escrow Agreement, due to the following (generally): [_____].

Accordingly, subject to the terms of the Escrow Agreement, you are hereby instructed to disburse to Crocker on the later of (i) the first business day after your receipt of this Certificate or (ii) the date on which payment to Escrow Agent of all amounts owed to Escrow Agent by Crocker under the terms of the Escrow Agreement has occurred, all Escrow Funds and Escrow Revenue remaining in the Escrow Account by wire transfer to the account set forth in Exhibit F to the Escrow Agreement.

Dated: [_____, 20__]

South Dakota Public Utilities Commission

By: _____

Name: _____

Title: _____