



*Citi/Hinckley Allen Comments 03/17/2023*

**DEPOSIT AGREEMENT**

**among**

**NORTH BEND WIND PROJECT, LLC**

**and**

**THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

**and**

**CITIBANK, N.A., as Bank**

**Dated as of [●]**

This **DEPOSIT AGREEMENT** (this “Agreement”), dated as of [●], 2023, by and among North Bend Wind Project, LLC, a Delaware limited liability company (the “Depositor”), The Public Utilities Commission of the State of South Dakota (the “PUC”) and Citibank, N.A., a national banking association organized and existing under the laws of the United States of America (“Citibank”) and acting through its Agency and Trust Division and solely in its capacity as Bank under this Agreement, and any successors appointed pursuant to the terms hereof (Citibank in such capacity, the “Bank”).

### **WITNESSETH:**

**WHEREAS**, pursuant to SDCL 49-41B-39, all right and title in any financial security required by the PUC for the decommissioning of wind turbines shall be controlled by the PUC in accordance with the terms of the financial security agreement or instrument until the PUC by order releases the financial security; and

**WHEREAS**, the Depositor is constructing an approximately 200 MW wind power generation facility (the “Facility”), comprised of 71 wind turbines in Hyde County, South Dakota, and in connection therewith, entered into a Settlement Stipulation dated January 10, 2023, in EL21-018, with the Staff of the Public Utilities Commission of the State of South Dakota, and adopted and approved by the Public Utilities Commission in its Order Granting Joint Motion for Approval of Settlement Stipulation; Order Granting Permit to Construct Facility; Notice of Entry(the “Order”);

**WHEREAS**, pursuant to Condition 39 of the Order’s Permit Conditions, the Depositor is required to establish an escrow account to ensure the availability of funds on a timely basis to cover estimated decommissioning costs once the Facility has met its expected design life;

**WHEREAS**, Citibank is a nationally chartered bank with an office located in South Dakota;

**WHEREAS**, the PUC desires to join in this Agreement for the purposes set forth herein; and

**WHEREAS**, the Depositor wishes to appoint Citibank as Bank and Citibank is willing to accept such appointment and to act as Bank, in each case upon the terms and conditions of this Agreement. The Bank shall not be deemed to have any knowledge of nor obligation with respect to the meaning of any capitalized term not defined herein.

### **AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which is hereby irrevocably acknowledged, the parties hereto agree as follows:

**1. Establishment of Account.** (a) No later than the commercial operation date of the Facility, Depositor shall deposit with the Bank in immediately available funds an amount equal to US\$5,000 per wind turbine to be constructed and comprising the Facility, and (b) upon each

anniversary of the initial deposit date during the initial 30 years of commercial operation of the Facility, the Depositor shall, on an annual basis, make an additional deposit in the amount of US\$5,000 per wind turbine comprising the Facility (collectively, the “Deposit”, and together with any investment income or proceeds received from the investment thereof from time to time pursuant to Section 3 below, collectively, the “Property”), and the Bank shall hold the Deposit in an account established with the Bank (the “Account”). The Property will secure, up to the amounts on deposit in the Account, any obligation of the Depositor under the Order to ensure that the Facility (or any part thereof) is properly decommissioned in accordance with that certain Decommissioning Plan dated [●] (the “Decommissioning Plan”), prepared by the Facility’s independent engineer. The amounts to be deposited into the Account by Depositor may be modified beginning in the 10<sup>th</sup> year of the commercial operations of the Facility and each 5<sup>th</sup> year thereafter. In such event, the Depositor shall provide written notice of such modification to the Bank, attaching a copy of the applicable order of the PUC approving or directing such modification. Such modification shall apply to the Deposit and remain in effect until such time as any additional direction is provided by the Depositor.

**2. Claims and Payment; Release from Account.** At the time of the performance of the Decommissioning Plan for the Facility, the Depositor shall have the right, upon delivery of a certificate to the PUC, signed by an officer of the Depositor (a “Request for Reimbursement”), requesting reimbursement from the Account in order to pay the costs and expenses to be incurred in connection with Depositor’s performance of the decommissioning activities for the Facility, which Request for Reimbursement shall include a proposed draft Withdrawal Certificate (as hereinafter defined) and substantiating documentation for such costs and expenses.

Upon approval of a Request for Reimbursement from Depositor, the PUC shall then submit a Withdrawal Certificate, substantially in the form set forth in Exhibit A attached hereto (each, a “Withdrawal Certificate”), to the Bank. The Withdrawal Certificate shall be signed by an Authorized Person (as defined below) of the PUC. The PUC shall also provide a copy of such Withdrawal Certificate to Depositor. Such withdrawals shall be payable in accordance with the directions included in such Withdrawal Certificates. Upon receipt of a duly executed and completed Withdrawal Certificate, the Bank shall transfer from the Account to the Depositor, pursuant to instructions to be delivered as part of such Withdrawal Certificate, the amount set forth in such Withdrawal Certificate, provided that the PUC may, in any Withdrawal Certificate, direct the Bank to make disbursements from the Account directly to those Facility landowners who own the land on which associated Facility components are located to the extent that such landowners are required to incur and pay such decommissioning costs directly. Upon the receipt by the Bank of a final Withdrawal Certificate signed by an Authorized Person of the PUC, the Bank shall pay any amounts remaining in the Account in accordance with the instructions of said final Withdrawal Certificate. Except as set forth in Section 4(d) hereof, in no event shall the Bank make any withdrawals or disbursements from the Account without the express approval of the PUC, as reflected by the PUC’s execution of any Withdrawal Certificate submitted to the Bank. The Bank may conclusively rely (and shall be fully justified and shall incur no liability in acting upon) on any duly executed Withdrawal Certificate and shall not be responsible in any manner for the truth or accuracy of, or be required to independently evaluate or verify, any information or calculation contained therein (including any attachments or schedules attached thereto).

Upon the issuance of an order by the PUC that Depositor is in default of its payment obligations under the Decommissioning Plan and that disbursements from the Account shall therefore be made directly to a landowner or landowners who own property upon which associated Facility components subject to the Decommissioning Plan are located, the PUC shall submit to the Bank a copy of such order together with a duly executed and completed Withdrawal Certificate setting forth the precise amount of disbursements from the Account that are to be made to the subject landowner or landowners. The Bank shall thereafter make any such disbursements in accordance with the payment instructions set forth in the Withdrawal Certificate and the terms of this Agreement.

### **3. Investment of Funds.**

(a) Initially, until otherwise directed by the Depositor, the Bank shall hold the deposit in an interest-bearing account insured by the Federal Deposit Insurance Corporation (“FDIC”) to the applicable limits. The Depositor acknowledges that the initial interest rate is subject to change from time to time and shall be reflected in the monthly statement provided. The Bank shall have no liability for any loss sustained as a result of any investment made pursuant to this Agreement, or for any loss, cost or penalty as a result of any liquidation or sale of the Property.

Alternatively, if instructed by the Depositor, the Bank shall invest the Deposit in a money market mutual fund (subject to the availability of such investment with the Bank). The Bank shall invest the Deposit on the date of deposit, provided that it is received on or before 11:00 a.m. New York City time. Any Deposit received by the Bank after 11:00 a.m. New York City time shall be treated as if received on the following Business Day. For purposes of this Agreement, “*Business Day*” shall mean any day that the Bank is open for business. The Bank is hereby authorized and directed to sell or redeem any such investments as it deems necessary to make any payments or distributions required under this Agreement. The Bank shall have no responsibility or liability for any loss in the value of any investment made pursuant to this Agreement, or for any loss, cost or penalty resulting from any sale or liquidation of the Property. The Bank is hereby authorized to execute purchases and sales of investments through the facilities of its own trading or capital markets operations or those of any affiliated entity. The Bank does not have a duty nor will it undertake any duty to provide investment advice.

### **4. Tax Matters.**

(a) The Depositor agrees that, unless otherwise specified in this Agreement, any earnings or proceeds received on or distributions of earnings or proceeds from the Property during a calendar year period shall be treated as the income of the Depositor and shall be reported on an annual basis by the Bank on the appropriate United States Internal Revenue Service (“IRS”) Form 1099 (or IRS Form 1042-S), as required pursuant to the Internal Revenue Code of 1986, as amended (“Code”) and the regulations thereunder. The Depositor and the Bank agree that the Bank will not be responsible for providing tax reporting and withholding for payments which are for compensation for services performed by an employee or independent contractor.

(b) If IRS imputed interest requirements apply, the Depositor is solely responsible to inform the Bank, provide the Bank with all imputed interest calculations, and direct the Bank to disburse imputed interest amounts. The Bank shall rely solely on such provided

calculations and information and shall have no responsibility for the accuracy or completeness of any such calculations or information or for the failure of the Depositor to provide such calculations or information.

(c) The Depositor shall upon the execution of this Agreement provide the Bank with a duly completed and properly executed IRS Form W-9 or applicable IRS Form W-8, in the case of a non-U.S. person, for each payee, together with any other documentation and information requested by the Bank in connection with the Bank's tax reporting obligations under the Code and the regulations thereunder. With respect to the Bank's tax reporting obligations under the Code, the Foreign Account Tax Compliance Act and the Foreign Investment in Real Property Tax Act and any other applicable law or regulation, the Depositor understands that, in the event valid U.S. tax forms or other required supporting documentation are not provided to the Bank, the Bank may be required to withhold tax from the Property and report account information on any earnings, proceeds or distributions from the Property.

(d) Should the Bank become liable for the payment of taxes, including withholding taxes relating to any funds, including interest and penalties thereon, held by it pursuant to this Agreement or any payment made hereunder, the Bank shall satisfy such liability to the extent possible from the Property. The Depositor agrees to indemnify and hold the Bank harmless pursuant to Section 6(b) hereof from any liability or obligation on account of taxes, assessments, interest, penalties, expenses, and other governmental charges that may be assessed or asserted against the Bank related to any funds held by it, or any payment made, pursuant hereto.

(e) The Bank's rights under this Section shall survive the termination of this Agreement or the resignation or removal of the Bank.

## **5. Concerning the Bank.**

(a) Bank Duties. Depositor acknowledges and agrees that (i) the duties, responsibilities and obligations of the Bank shall be limited to those expressly set forth in this Agreement, each of which is administrative or ministerial (and shall not be construed to be fiduciary) in nature, and no duties, responsibilities or obligations shall be inferred or implied, (ii) the Bank does not have any fiduciary obligation towards Depositor, the PUC, or any other party contemplated hereunder with respect to this Agreement or any of the agreements referred to or described herein or the transactions contemplated thereby, (iii) the Bank shall not be responsible for any of the agreements referred to or described herein (including without limitation the Order, or for determining or compelling compliance therewith, and shall not otherwise be bound thereby, and (iv) the Bank shall not be required to expend or risk any of its own funds to satisfy payments from the Property hereunder. The Bank shall furnish the Depositor with monthly account statements, showing starting and ending balances and all deposits and withdrawals made during such month.

(b) Liability of Bank. The Bank shall not be liable for any damage, loss or injury resulting from any action taken or omitted in the absence of gross negligence or willful misconduct (as finally adjudicated by a court of competent jurisdiction). In no event shall the Bank be liable for indirect, incidental, consequential, punitive or special losses or damages (including but not limited to lost profits), regardless of the form of action and whether or not any

such losses or damages were foreseeable or contemplated. The Bank shall be entitled to rely upon any instruction, notice, request or other instrument delivered to it without being required to determine the authenticity or validity thereof, or the truth or accuracy of any information stated therein. The Bank may act in reliance upon any signature believed by it to be genuine (including any signature affixed by DocuSign) and may assume that any person purporting to make any statement, execute any document, or send any instruction in connection with the provisions hereof has been duly authorized to do so. The Bank may consult with counsel satisfactory to it, and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith and in accordance with the opinion and advice of such counsel. The Bank may perform any and all of its duties through its agents, representatives, attorneys, custodians and /or nominees. The Bank shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control (including, without limitation, any provision of any present or future law or regulation or any act of any governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility).

(c) Reliance on Orders. The Bank is authorized to comply with final orders issued or process entered by any court with respect to the Property, without determination by the Bank of such court's jurisdiction in the matter. If any portion of the Property is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, the Bank is authorized to rely upon and comply with any such order, writ, judgment or decree which it is advised is binding upon it without the need for appeal or other action; and if the Bank complies with any such order, writ, judgment or decree, it shall not be liable to the Depositor or to any other person or entity by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

(d) Erroneous Payments. If the Bank releases any funds (including but not limited to the Property or any portion of it) to Depositor or PUC and subsequently determines (in its absolute discretion) that the payment (or any portion of it) was made in error, that Depositor or PUC shall upon notice promptly refund the erroneous payment, and none of the obligations of Depositor and PUC or the remedies of the Bank will be affected by any act, omission, matter or thing (including, without limitation, any obligation pursuant to which an erroneous payment is made) which, but for this provision, would reduce, release, preclude or prejudice any such obligation or remedy (whether or not known by the Bank or Depositor or PUC). Each of Depositor and PUC agrees not to assert discharge for value, bona fide payee, or any similar doctrine as a defense to recovery of any erroneous payment by the Bank.

**6. Compensation, Expense Reimbursement and Indemnification.**

(a) Compensation. The Depositor covenants and agrees to pay the Bank's compensation specified in Schedule A. The Depositor covenants and agrees to pay the Bank all out-of-pocket expenses incurred by the Bank in the performance of its role under this Agreement (including, but not limited to, any attorney's fees incurred in connection with the preparation and negotiation of this Agreement, which shall be due and payable upon the execution of this Agreement). It is expressly agreed by the Depositor and the Bank that the PUC shall have no

obligation or liability under this Agreement for the payment of any costs and expenses required to be made by the Depositor to the Bank pursuant to the Agreement and the Bank agrees to look solely to Depositor for the payment of any such amounts.

(b) **Indemnification.** The Depositor covenants and agrees to indemnify the Bank and its employees, officers, directors, affiliates, and agents (each, an “**Indemnified Party**”) for, hold each Indemnified Party harmless from, and defend each Indemnified Party against, any and all claims, losses, actions, liabilities, costs, damages and expenses of any nature incurred by any Indemnified Party, arising out of or in connection with this Agreement or with the administration of its duties hereunder, including but not limited to attorney’s fees, costs and expenses, except to the extent such loss, liability, damage, cost or expense shall have been finally adjudicated by a court of competent jurisdiction to have resulted solely from the Indemnified Party’s own gross negligence or willful misconduct. The foregoing indemnification and agreement to hold the Bank harmless shall survive the termination of this Agreement and the resignation or removal of the Bank. The Bank agrees to look solely to Depositor for the fulfillment of any indemnification obligation of Depositor under this Section 6(b).

**7. Dispute Resolution.** In the event of any disagreement among the Depositor and any other person, resulting in adverse claims or demands being made with respect to the subject matter of this Agreement, or in the event that the Bank, in good faith, is in doubt as to any action it should take hereunder, the Bank may, at its option, refuse to comply with any claims or demands and refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, the Bank shall not be liable in any way or to any person for its failure or refusal to act, and the Bank shall be entitled to continue to so refuse to act and refrain from acting until the Bank shall have received (i) a final, non-appealable order, judgment or decree by a court of competent jurisdiction or (ii) an instruction executed by the Depositor detailing the resolution of such disagreement, in which case the Bank shall be authorized to disburse the Property in accordance with such final court order, judgment, decree or instruction. The Bank shall be entitled to receive (from and at the expense of the Depositor) an opinion of counsel to the effect that any order, judgment or decree is final and not subject to appeal. The Bank shall have the option, after 30 calendar days’ notice to the Depositor of its intention to do so, to petition (by means of filing an action in interpleader or any other appropriate method) any court of competent jurisdiction, for instructions with respect to any dispute or uncertainty, and to the extent required or permitted by law, pay into such court the Property for holding and disposition in accordance with the instructions of such court. The costs and expenses (including reasonable attorneys’ fees and expenses) incurred by the Bank in connection with such proceeding shall be paid by the Depositor.

**8. Entire Agreement; Exclusive Benefit.** This Agreement constitutes the entire agreement between the parties and sets forth in its entirety the obligations and duties of the Bank with respect to the Property. This Agreement is for the exclusive benefit of the parties to this Agreement and their respective permitted successors, and shall not be deemed to give, either expressly or implicitly, any legal or equitable right, remedy, or claim to any other entity or person whatsoever. No party may assign any of its rights or obligations under this Agreement without the prior written consent of the other parties, and this Agreement shall expressly bind any successors and permitted transferees and assigns of Depositor.

**9. Resignation and Removal.**

(a) The Depositor may remove the Bank at any time by giving to the Bank thirty (30) calendar days' prior written notice of removal signed by an Authorized Person of the Depositor. The Bank may resign at any time by giving the Depositor thirty (30) calendar days' prior written notice of resignation.

(b) Within thirty (30) calendar days after giving the foregoing notice of removal to the Bank or within thirty (30) calendar days after receiving the foregoing notice of resignation from the Bank, the Depositor shall appoint a successor bank and give notice of such successor bank to the Bank. If a successor bank has not accepted such appointment by the end of such 30-day period, the Bank may either (A) safe keep the Property until a successor bank is appointed, without any obligation to invest the same or continue to perform under this Agreement, or (B) apply to a court of competent jurisdiction for the appointment of a successor bank or for other appropriate relief.

(c) Upon receipt of notice of the identity of the successor bank, the Bank shall either deliver the Property then held hereunder to the successor bank, less the Bank's fees, costs and expenses, or hold such Property (or any portion thereof) pending distribution, until all such fees, costs and expenses are paid to it. Upon delivery of the Property to the successor bank, the Bank shall have no further duties, responsibilities or obligations hereunder.

**10. Governing Law; Jurisdiction; Waivers.** This Agreement is governed by and shall be construed and interpreted in accordance with the laws of the State of South Dakota without giving effect to the conflict of laws principles thereof. The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the federal and state courts located in the State of South Dakota, for any proceedings commenced regarding this Agreement. The parties irrevocably submit to the jurisdiction of such courts for the determination of all issues in such proceedings and irrevocably waive any objection to venue or inconvenient forum for any proceeding brought in any such court. The parties irrevocably and unconditionally waive any right to trial by jury with respect to any proceeding relating to this Agreement.

**11. Representations and Warranties.**

(a) The Depositor represents and warrants that it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and this Agreement has been duly approved by all necessary action and constitutes its valid and binding agreement enforceable in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditor's rights and subject to general equity principles.

(b) None of the Depositor and PUC or any of their parents or subsidiaries, or any of their respective directors, officers, or employees, or to the knowledge of the Depositor and PUC, the affiliates of the Depositor and PUC or any of their subsidiaries, will, directly or indirectly, use any part of any proceeds or lend, contribute, or otherwise make available such Property in any manner that would result in a violation by any person of economic, trade, or financial sanctions, requirements, or embargoes imposed, administered, or enforced from time to time by the United



States (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury and the U.S. Department of State), the United Kingdom (including, without limitation, His Majesty's Treasury), the European Union and any EU member state, the United Nations Security Council, and any other relevant sanctions authority.

## **12. Notices; Instructions.**

(a) Any notice or instruction hereunder shall be in writing in English, and may be sent by (i) secure file transfer or (ii) electronic mail with a scanned attachment thereto of an executed notice or instruction, and shall be effective upon actual receipt by the Bank in accordance with the terms hereof. Any notice or instruction must be executed (which execution may be manual or affixed by DocuSign) by an authorized person of the Depositor (the person(s) so designated from time to time, the "Authorized Persons"). Each of the applicable persons designated on Schedule B have been duly appointed to act as Authorized Persons hereunder and individually have full power and authority to execute any notices or instructions, to amend, modify or waive any provisions of this Agreement, and to take any and all other actions permitted under this Agreement, all without further consent or direction from, or notice to, it or any other party. Any notice or instruction must be originated from a corporate domain. Any change in designation of Authorized Persons shall be provided by written notice, signed by an Authorized Person, and actually received and acknowledged by the Bank. Any communication from the Bank that the Bank deems to contain confidential, proprietary, and/or sensitive information shall be encrypted in accordance with the Bank's internal procedures. The Depositor agrees that the above security procedures are commercially reasonable. All notices to be provided by or to Depositor hereunder shall also be provided to the PUC, expressly including but not limited to any notices sent pursuant to Sections 2, 7, and 9 of this Agreement, and the PUC agrees upon execution of this Amendment to provide a certificate of incumbency to the Bank, in a form satisfactory to the Bank, providing the names and signatures of the Authorized Persons of the PUC to give any notices and instructions pursuant to the Agreement.

(b) Each of the Depositor and PUC understands and agrees that the Bank cannot determine the identity of the actual sender of any notice or instruction and that the Bank shall be entitled to conclusively presume that notices or instructions that purport to have been sent by an Authorized Person have been sent by such Authorized Person. Each of the Depositor and PUC agrees: (i) to assume all risks arising out of the use of electronic means (including electronic mail, secure file transfer or such other method or system specified by the Bank as available for use in connection with its services hereunder) to submit instructions to the Bank, including without limitation the risk of the Bank acting on unauthorized instructions, and the risk of interception or misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Bank and that there may be more secure methods of transmitting instructions than the method(s) selected by the Depositor or PUC, as applicable; (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Bank immediately upon learning of any compromise or unauthorized use of the security procedures. The Depositor and PUC agree that the security procedures set forth in Section 12(a) and this Section 12(b) are commercially reasonable.

If to the Depositor:

North Bend Wind Project, LLC  
1360 Post Oak Blvd., Suite 400  
Houston, TX 77056  
Attn.: Dakota Range III Asset Manager  
Phone: 713.636.0000  
Email: erik.emerick@engie.com

With a copy to:

North Bend Wind Project, LLC  
1360 Post Oak Blvd., Suite 400  
Houston, TX 770056  
Attn.: General Counsel, Renewables  
Telephone: 713-636-0000  
Email: engiena-legal@engie.com

If to the Bank:

Citibank, N.A.  
Agency & Trust  
388 Greenwich Street  
New York, NY 10013  
Attn.: Nerlie Delly  
Telephone: 212-816-6846  
E-mail: cts.spag@citi.com

If to the PUC:

500 E. Capitol Ave.  
Pierre SD 57501  
Attn: Executive Director  
Telephone: 605-773-3201  
E-Mail: PUC@state.sd.us

(b) Any funds to be paid by the Bank hereunder shall be sent by wire transfer pursuant to the instructions set forth on Schedule C, or as otherwise may be instructed by the Depositor.

(c) Payments to the Bank shall be sent by wire transfer pursuant to the following instructions: **CITIBANK, N.A.**, ABA: 0210-0008-9; Account Name: [●]; A/C#: [●].

**13. Amendment, Waiver.** Any amendment of this Agreement shall be binding only if evidenced by a writing signed by each of the parties to this Agreement. No waiver of any

provision hereof shall be effective unless expressed in writing and signed by the party to be charged.

**14. Severability.** The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity, legality or enforceability of any other provision. If any provision of this Agreement is held to be unenforceable as a matter of law, the other provisions shall not be affected thereby and shall remain in full force and effect.

**15. Mergers and Conversions.** Any corporation or entity into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or entity resulting from any merger, conversion or consolidation to which the Bank will be a party, or any corporation or entity succeeding to the business of the Bank will be the successor of the Bank hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

**16. Termination.** This Agreement shall terminate and the Account shall be closed upon the distribution of all Property from the Account established hereunder in accordance with the terms of this Agreement, subject, however, to the survival of obligations specifically contemplated in this Agreement to so survive.

**17. Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same agreement. Scanned signatures on counterparts of this Agreement executed and delivered in electronic format (i.e. "pdf") or by other electronic means (including DocuSign) shall be deemed original signatures with all rights accruing thereto except in respect to any non-US entity, whereby originals are required.

**18. Unencumbered Funds.** Depositor warrants and agrees that:

(a) it will not use the Property as security for any transaction, nor will it pledge the Escrow Funds or list the Account as an asset on any application to obtain credit or to obtain real or personal property;

(b) any rights that Depositor has to the Property and any associated revenue are contingent rights and receipt of any of the Property or associated revenue is subject to the satisfaction or waiver of such contingencies; and

(c) in the event of a bankruptcy filing or other insolvency proceeding commenced by or against Depositor prior to the satisfaction or waiver of such contingencies, the Property will not constitute property of the Depositor's bankruptcy estate or otherwise be reachable by Depositor's creditors.

*[Signatures on following page]*

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by a duly authorized representative as of the day and year first written above.

**CITIBANK, N.A.,**  
as Bank

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**NORTH BEND WIND PROJECT, LLC**  
as Depositor

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**SOUTH DAKOTA PUBLIC UTILITIES  
COMMISSION**

By: \_\_\_\_\_  
Name: Patricia VanGerpen  
Title: Executive Director  
Date:

**SCHEDULE A**  
**BANK FEE SCHEDULE**

**SCHEDULE B**

**AUTHORIZED LIST OF SIGNERS**

Each of the following person(s) is authorized to execute documents and to direct the Bank as to all matters, including funds transfers, on the Depositor's behalf. The Bank may confirm the instructions received by return call to any one of the telephone numbers listed below.

**DEPOSITOR**

NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
PHONE: \_\_\_\_\_  
CORPORATE EMAIL: \_\_\_\_\_

**Manual Specimen Signature**

**DocuSign Specimen Signature**

NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
PHONE: \_\_\_\_\_  
CORPORATE EMAIL: \_\_\_\_\_

**Manual Specimen Signature**

**DocuSign Specimen Signature**

View-Only Reporting Access via Citidirect for Securities:

Check here for same as above.

Please indicate those persons other than above requiring view access for statement reporting:

	<b>First Name</b>	<b>Last Name</b>	<b>Telephone</b>	<b>Corporate Email</b>
1				
2				
3				

**SCHEDULE C**

If to the [Depositor]:

Bank:  
ABA#:  
Account Name:  
A/C#:  
Ref:

**EXHIBIT A**

**FORM OF WITHDRAWAL CERTIFICATE**

[Date]

Citibank, N.A., as Bank  
Agency & Trust  
388 Greenwich Street  
New York, NY 10013  
Attn: Nerlie Delly  
Email: cts.spag@citi.com / nerlie.delly@citi.com

RE: Deposit Agreement, dated as of \_\_\_\_\_ [ ], 2023 (“Deposit Agreement”), by and between North Bend Wind Project, LLC (“Depositor”) and Citibank, N.A., as bank (“Bank”).

Dear Ms. Delly:

Pursuant to Section 2 of the Deposit Agreement, the Depositor hereby instructs the Bank to withdraw and transfer \$[ ] from the Account to:

[the Depositor in accordance with the wire payment instructions set forth in Schedule C to the Deposit Agreement][in accordance with the following payment instructions:]

*[Insert payment instructions]*

[the following Facility landowners in accordance with the following payment instructions:]

*[Insert payees and payment instructions]*

The Depositor confirms that it is unconditionally entitled pursuant to the terms of the Deposit Agreement to submit such Withdrawal Certificate and to request the transfer contained herein, which transfer is permitted pursuant to the Deposit Agreement.

Capitalized terms used but not defined herein shall have the meaning given to such terms in the Deposit Agreement.

Sincerely,

NORTH BEND WIND PROJECT, LLC

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

Name:

Title: