

#20-81

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Escrow Agreement") dated November 12~~—~~, 2020 is entered into by, between, and among Marshall County, Illinois (the "Road Authority"), Minonk Stewardship Wind LLC, a Delaware limited liability company, doing business as and referred to herein as "Bennington Wind," and the Marshall County Treasurer (the "Escrow Agent"). The Road Authority, Bennington Wind, and the Escrow Agent may each be referred to herein as a "Party" and together, as the "Parties."

### *BACKGROUND RECITALS*

- A. The Road Authority and Bennington Wind have entered into a Road Use Agreement dated June 11, 2020 (the "Road Use Agreement").
- B. The Road Use Agreement requires Bennington Wind to provide financial security to the Road Authority in the form of a letter of credit.
- C. Bennington Wind has delivered to Road Authority that certain Irrevocable Standby Letter of Credit, Number 2020101401, issued by Morgan Stanley Bank, N.A. (the "Issuer") on October 14, 2020 (the "Letter of Credit").
- D. The Road Authority desires to ensure that it will be reimbursed for attorney's fees, court costs and other expenses incurred by the Road Authority in enforcing the terms of the Letter of Credit if Issuer wrongfully dishonors any demand presented by the Road Authority under the Letter of Credit and Bennington Wind has agreed to establish an escrow account for that purpose.
- E. The Escrow Agent is willing to establish an escrow account on the terms and subject to the conditions set forth in this Escrow Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, the Parties hereto agree as follows.

- 1. Appointment of the Escrow Agent. Bennington Wind and the Road Authority appoint the Escrow Agent as their agent for the purpose of receiving, depositing, and disbursing the funds on deposit in the Escrow Account (as defined below) and the Escrow Agent hereby accepts such designation and appointment and agrees to accept, deposit, and disburse on the terms hereof the funds that are delivered to it.
- 2. Establishment of the Escrow Account. The Escrow Agent shall (a) establish and maintain an interest bearing special segregated escrow account (the "Escrow Account") in the name of "Bennington Wind for the benefit of Marshall County," (b) receive cash deposits as described in Section 3 hereof; and (c) make disbursements of funds on deposit in the Escrow Account in accordance with the provisions of Section 4. The Escrow Agent agrees to maintain the Escrow Account pursuant to the terms and conditions of this Escrow Agreement until the Escrow Account is terminated in accordance with Section 7.

3. Initial Funding of the Escrow Account. Within three (3) business days of its execution of this Escrow Agreement, Bennington Wind shall either tender to the Escrow Agent or shall cause to be wired to a bank account in accordance with wire transfer instructions provided by the Escrow Agent, the sum of ~~Fif~~Thirty Thousand Dollars (\$30,000.00) (the "Escrow Funds"). The Escrow Agent shall deposit the Escrow Funds in an account at a financial institution located in Marshall County, Illinois, and by the execution of this Escrow Agreement, the Parties agree that such funds will only be disbursed in accordance with the instructions set forth in this Escrow Agreement. The amount on deposit in the Escrow Account shall not be deemed to be the limit of Bennington Wind's financial responsibilities under this Escrow Agreement. Should the fees, costs, and expenses incurred by the Road Authority to enforce the terms of the Letter of Credit exceed the amount of the Escrow Funds, Bennington Wind shall remain liable for any additional fees, costs, and expenses. If the Road Authority, in an action to enforce the terms of the Letter of Credit, actually recovers attorney's fees, court costs, and other expenses from the Issuer, and such fees, court costs, and other expenses had previously been disbursed to the Road Authority from the Escrow Account pursuant to this Escrow Agreement, then the Road Authority will deposit such recovered sums in the Escrow Account to be held in accordance with the terms of this Escrow Agreement.

4. Disbursements from the Escrow Account. The Escrow Agent shall make disbursements from the Escrow Account for the following reasons.

(a) Upon receipt of a disbursement direction by both the Road Authority and Bennington Wind giving notice that the Road Work Warranty Period has expired and the Escrow Account can be closed, the Escrow Agent shall disburse all remaining funds, including any accrued interest, in the Escrow Account to Bennington Wind and shall close the Escrow Account. A disbursement direction shall be substantially in the form of Exhibit A hereto.

(b) Upon receipt of a disbursement direction by the Road Authority, in the form of the disbursement direction attached hereto as Exhibit B, directing the Escrow Agent to disburse Escrow Funds for attorney's fees, court costs and other expenses incurred and to be incurred by the Road Authority in enforcing the terms of the Letter of Credit if Issuer wrongfully dishonors any demand presented by the Road Authority under the Letter of Credit.

Disbursements shall be made within five (5) business days. Nothing in this Agreement will limit the Road Authority's rights under Section 5-111 of the Uniform Commercial Code as in effect in the State of Illinois.

5. Duties of the Escrow Agent. The duties and obligations of the Escrow Agent shall be determined solely by the express provisions of this Agreement and the Escrow Agent shall not be liable except for the performance of such duties and obligations as are expressly and specifically set out in this Escrow Agreement.

- (a) Within five (5) business days of receipt of a statement from the financial institution where the Escrow Account is established, the Escrow Agent will mail to Bennington Wind a copy of the bank statement received by the Escrow Agent.
- (b) The Escrow Agent shall not be under any duty to give the amounts on deposit in the Escrow Account any greater degree of care than it gives its own similar property and shall not be required to invest any funds held hereunder.
- (c) The Escrow Agent shall not be required to inquire as to its performance or observation of any obligation, term, or condition under any other agreement or arrangement between Bennington Wind and the Road Authority.
- (d) The Escrow Agent shall not have any responsibility to determine the authenticity or validity of any notice, direction, instructions, instruments, documents, or other items delivered to it by any Party, and the Escrow Agent shall be fully protected in acting in accordance with any written direction or instructions given to it under, or pursuant to, this Escrow Agreement and believed by it to be authentic unless it shall have been guilty of gross negligence or willful misconduct.
- (e) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Escrow Agent hereunder, the Escrow Agent may, in its sole discretion, refrain from taking any action other than retaining the amounts on deposit in the Escrow Account, unless the Escrow Agent receives (i) written instructions, signed on behalf of the Party who delivered the ambiguous or uncertain notice, instruction, or other communication originally, which eliminates such ambiguity or uncertainty or (ii) security or an indemnity satisfactory to it sufficient to hold it harmless from and against any and all losses it may incur by reason of so acting.
- (f) The Escrow Agent is not a party to, and is not bound by, any agreement or other document out of which this Escrow Agreement may arise. The Escrow Agent shall be under no liability to any Party hereto by reason of any failure on the part of any Party hereto or any maker, guarantor, endorser or other signatory of any document or any other person to perform such person's obligations under any such document. Except for amendments to this Escrow Agreement, and except for notices or instructions to the Escrow Agent under this Escrow Agreement, the Escrow Agent shall not be obligated to recognize any agreement to which Bennington Wind or the Road Authority is a party, notwithstanding that references thereto may be made herein and whether or not the Escrow Agent has knowledge thereof.
- (g) The Escrow Agent shall not be bound by any waiver, modification, termination, or rescission of this Escrow Agreement or any of the terms hereof, unless evidenced by a writing delivered to the Escrow Agent signed by the proper Party or Parties and, if the duties or rights of the Escrow Agent are affected, unless it shall give its prior written consent thereto.

- (h) This Agreement shall not be deemed to create a fiduciary relationship among the Parties hereto under state or federal law.
- (i) The Escrow Agent shall not be responsible in any manner for the validity or sufficiency of this Escrow Agreement or for any property delivered hereunder, or for the value or collectability of any note, check or other instrument, if any, so delivered, or for any representations made or obligations assumed by any Party other than the Escrow Agent. Nothing herein contained shall be deemed to obligate the Escrow Agent to deliver any cash, instruments, documents or any other property referred to herein, unless the same shall have first been received by the Escrow Agent pursuant to this Escrow Agreement.
- (j) The Escrow Agent shall be and is hereby released from any and all liability for any disbursement of any amounts as may be made by the Escrow Agent in accordance with the Road Authority's instructions or direction pursuant to the terms and conditions of this Escrow Agreement, other than liability incurred as a result of its gross negligence or willful misconduct.
- (k) The Escrow Agent shall not be liable for any error of judgment, or for any act done or step taken or omitted by it in good faith or for any mistake in fact or law, or for anything which it may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct.
- (l) The Escrow Agent may seek the advice of legal counsel in the event of any dispute or question as to the construction of any of the provisions of this Escrow Agreement or its duties hereunder, and it shall incur no liability and shall be fully protected in respect of any action taken, omitted or suffered by it in good faith in accordance with the advice or opinion of such counsel except as a result of the Escrow Agent's gross negligence or willful misconduct.

6. Resignation or Removal of the Escrow Agent.

- (a) The Road Authority may remove and replace the Escrow Agent at any time, with the written consent of the Bennington Wind, by giving to the Escrow Agent and Bennington Wind thirty (30) calendar days' prior written notice, which notice shall include the name of the successor Escrow Agent, if any, and if no successor Escrow Agent has been selected, the Road Authority and Bennington Wind shall jointly select a successor. If the Road Authority and Bennington Wind cannot agree as to a successor Escrow Agent within a reasonable time period either Party may apply to a court of competent jurisdiction for such appointment.
- (b) The Escrow Agent may resign at any time by giving to the Road Authority and Bennington Wind sixty (60) calendar days' prior written notice. A resignation shall not become effective until a successor Escrow Agent has been appointed. Within thirty (30) calendar days after the Road Authority's and Bennington Wind's receipt of the foregoing notice of resignation from the Escrow Agent, the Road Authority, with the written consent of Bennington Wind, shall appoint a successor Escrow Agent. If a successor Escrow Agent has not accepted such appointment by the end of such thirty (30) day period, the Escrow Agent may apply to a court of competent jurisdiction located in Marshall County

for the appointment of a successor Escrow Agent or for other appropriate relief. The costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Escrow Agent in connection with such proceeding shall be paid by Bennington Wind. Any successor Escrow Agent must be a creditworthy banking institution that is reasonably acceptable to the Road Authority and Bennington Wind.

- (c) Upon receipt of notice of the identity of the successor Escrow Agent, the Escrow Agent shall immediately deliver the funds on deposit in the Escrow Account then held hereunder to the successor Escrow Agent or otherwise cooperate with the successor Escrow Agent so that the successor Escrow Agent has authority over the account where the Escrow Funds are on deposit. Upon delivery of the funds on deposit in the Escrow Account to the successor Escrow Agent or transfer of authority over the Escrow Account, the Escrow Agent shall have no further duties, responsibilities, or obligations hereunder.
7. Termination. This Escrow Agreement shall terminate (a) upon the release of all funds on deposit in the Escrow Account to either the Road Authority or Bennington Wind in accordance with Section 4 of this Agreement or (b) upon notice from the Road Authority that the Escrow Account is no longer needed pursuant to the terms of the Road Use Agreement.
8. Miscellaneous.
- (a) The Recitals set forth above are hereby incorporated herein and made a part of this Escrow Agreement.
  - (b) Section headings contained in this Escrow Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Escrow Agreement for any purpose, and shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof.
  - (c) Bennington Wind shall reimburse the Escrow Agent for all reasonable and customary fees or costs incurred by the Escrow Agent.
  - (d) Bennington Wind agrees to indemnify and hold the Escrow Agent harmless against any liabilities, losses, claims, damages, and expenses, including reasonable attorneys' fees, the Escrow Agent may incur by reason of or under this Agreement other than as a result of willful misconduct or gross negligence of the Escrow Agent.
  - (e) Any capitalized term used but not defined herein shall have the meaning given to such term in the Road Use Agreement.
  - (f) This Escrow Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Delivery of an executed counterpart of a signature page to this Escrow

Agreement by electronic mail shall be as effective as delivery of a manually signed counterpart to this Escrow Agreement.

- (g) If any provision of this Escrow Agreement is held invalid under any applicable law, such invalidity shall not affect any other provision of this Escrow Agreement that can be given effect without the invalid provision and, to this end, the provisions hereof are severable.
- (h) This Escrow Agreement contains the entire understanding of the Parties as to the matters set forth herein, and this Escrow Agreement supersedes any prior agreements or understandings by and between the Parties. Any amendment or modification to this Escrow Agreement must be made in writing. This provision may not be orally waived.
- (i) The notice provisions and Parties' addresses as set forth in the Road Use Agreement shall apply to this Escrow Agreement as if set forth *verbatim* herein. Notices to the Escrow Agent shall be addressed as follows:

\*Name Cynthia Nighsonger  
Marshall County Treasurer  
122 North Prairie Street\*Address  
P.O. Box 328  
\*Lacon, IL 61540\*ZIP  
Telephone: 309-246-6085\*

- (j) This Escrow Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois, (the state in which this Escrow Agreement is deemed to have been executed and delivered), irrespective of any conflict of laws provisions. Any disputes arising out of, related to, or connected with this Escrow Agreement shall be litigated in the Circuit Court for the Tenth\*INSERT Judicial Circuit, Marshall County, Illinois.
- (k) This Escrow Agreement shall be deemed to have been prepared by Bennington Wind and shall be construed against Bennington Wind as the drafter, preparer, and producer of the language herein.

IN WITNESS WHEREOF, the parties hereto executed this Escrow Agreement as of the first date hereinabove written.

(SIGNATURES ON FOLLOWING PAGE)



EXHIBIT A: DIRECTION TO ESCROW AGENT PER SECTIONS 4(a)

INSERT DATE

Marshall County Treasurer  
122 North Prairie St.  
P.O. Box 328  
Lacon, IL 61540\*Address  
Lacon, IL \*ZIP

Dear Treasurer:

The undersigned, on behalf of Marshall County, Illinois (the "Road Authority") and Minonk Stewardship Wind LLC, referred to herein as "Bennington Wind," respectively, hereby certify to you in your capacity as Escrow Agent pursuant to an Escrow Agreement dated November 12~~September~~\*, 2020 and entered into by you, the Road Authority and Bennington Wind as follows herein.

The Road Work Warranty Period has expired and the Escrow Account can be closed. You are hereby directed to disburse all remaining funds, including any accrued interest and less any wire transfer fees, in the Escrow Account to Bennington Wind and to close the Escrow Account. Set forth below are wiring instructions for the transfer of funds to Bennington Wind.

[INSERT IF APPROPRIATE] Funds requested hereby shall be wire transferred to Bennington Wind in accordance with the following instructions:

IN WITNESS WHEREOF, the undersigned have executed and delivered this [disbursement or adjustment] direction on \_\_\_\_\_, 20 .

Marshall County, Illinois

Minonk Stewardship Wind, LLC

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title: County Engineer or County  
Board Chairman

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



EXHIBIT B: DISBURSEMENT DIRECTION UNDER SECTION 4(b)

INSERT DATE

Marshall County Treasurer  
122 North Prairie St.  
P.O. Box 328  
Lacon, IL 61540\*Address  
Lacon, IL \*ZIP

Copy to:  
Minonk Stewardship Wind, LLC  
415 N. LaSalle Street, Suite 501\*Address  
Chicago, IL 60654  
ATTN: Thomas Cote

Dear INSERT NAME:

The undersigned, on behalf of Marshall County, Illinois (the "Road Authority") hereby certifies to you in your capacity as Escrow Agent pursuant to an Escrow Agreement dated November 12 September \*, 2020, and entered into by you, the Road Authority and Minonk Stewardship Wind, LLC ("Bennington Wind") as follows herein.

- A) The Road Authority presented a demand in accordance with the terms and conditions of the Letter of Credit.
- B) The Issuer wrongfully dishonored such demand in breach of its obligation to the Road Authority.
- C) The Road Authority has incurred attorney's fees, court costs, or other expenses to obtain payment under the Letter of Credit by Issuer and will incur additional fees, costs, and expenses.

Based on the foregoing, the Road Authority hereby demands under the Escrow Agreement payment of INSERT AMOUNT Dollars (\$ \_\_\_\_\_), which amount does not exceed the available amount in the Escrow Account as of the date hereof.

Funds requested hereby shall be wire transferred to the Road Authority in accordance with the following instructions: For other delivery directions as appropriate]

IN WITNESS WHEREOF, the undersigned has executed and delivered this disbursement direction on \_\_\_\_\_, 20\_.

Marshall County, Illinois

By \_\_\_\_\_

Name \_\_\_\_\_

Title: County Engineer or County Board Chairman