

## EASEMENT AGREEMENT

This EASEMENT AGREEMENT ("Easement Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of East Hampton (the "Grantor"), a municipal corporation with offices at 159 Pantigo Road, East Hampton, New York 11932, and South Fork Wind, LLC, a Delaware limited liability company with offices at 56 Exchange Terrace, Suite 300, Providence, Rhode Island 02903 (the "Grantee"). Each of Grantor and Grantee is/are sometimes referred to herein as a "Party," or, collectively, as the "Parties."

### RECITALS

A. Grantor is the owner of certain real property located in the Town of East Hampton, County of Suffolk, and State of New York (the "Grantor Property"), that is particularly described in the attached Schedule A.

B. Grantee desires to receive, and Grantor is willing to grant, upon satisfaction of and subject to certain conditions set forth in this Easement Agreement, certain easements for a term of years, subject to the terms, conditions, and limitations of this Easement Agreement, on, over, under, and through the Grantor Property described and depicted in the attached Schedule A (the "Easement Area"), for ingress, egress, and access, and for construction, operation, maintenance, and repair of a certain export cable and associated equipment and facilities (collectively referred to hereinafter as the "Cable"), to be installed, owned, and maintained by Grantee, to connect Grantee's South Fork Wind Farm (the "Wind Farm"), an offshore wind farm to be constructed and operated in the Atlantic Ocean waters under Federal jurisdiction, to the existing Long Island Power Authority ("LIPA") East Hampton Electric Substation located on Cove Hollow Road in East Hampton, New York (the "Substation"). The Wind Farm will deliver its electric output to the Substation via the aforesaid Cable installed in the Easement Area, which Easement Area consists of portions of certain Grantor-owned roads, as described and depicted in Schedule A to this Easement Agreement. The construction, operation, maintenance, repair, removal, and decommissioning of the Wind Farm, the Cable, and the interconnection between the Cable and the Substation are collectively referred to, in this Easement Agreement and its Schedules, as the "Project."

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual benefits to be derived herefrom and under the Host Community Agreement, dated \_\_\_\_\_, 20\_\_ (the "Host Community Agreement"), among the Parties to this agreement and the Trustees of the Freeholders and Commonalty of the Town of East Hampton (the "Trustees"), a copy of which shall be filed in the office of Grantor's Town Clerk, and other good and valuable consideration paid to Grantor, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Grant of Easement. Grantor, effective upon satisfaction of and subject to the terms and conditions of this Easement Agreement, grants, conveys, and transfers to Grantee the following non-exclusive easements on, over, under, and through the Easement Area, as defined herein.

1.1. Transmission Easement. Grantor, for consideration paid, hereby grants to Grantee, for the “Term,” as defined in Section 2.1 of this Easement Agreement, a non-exclusive easement, for a term of years, in the Grantor Property that is 20 feet wide, except that, within the most southerly 1,000 feet of Beach Lane, as measured from the most northern extent of the edge of pavement at the southerly end of Beach Lane, such easement shall cover the full width of Beach Lane, subject to possible early termination of such Term as set forth in this Easement Agreement, for ingress to, egress from, access to, and use of the Easement Area, as described and defined in Schedule A hereto, and limited by the provisions of Subsection 1.5, below, for the limited purposes of constructing, reconstructing, installing, repairing, replacing, maintaining, operating, using, inspecting, patrolling, decommissioning, and removing, under and through the Easement Area, the aforesaid Cable, which shall consist of a single 138-kilovolt transmission line and all ducts, raceways, conductors, terminals, sustaining and protective fixtures, underground expansion stabilizers, manholes, hand holes, junction boxes, foundations, fittings, and all housings, connectors, switches, and any other equipment or appurtenances for (a) the transmission of high- and low-voltage electric energy, (b) the transmission of intelligence, by any means, whether now existing or hereafter devised, that are reasonably required to connect the Wind Farm to the Substation and to monitor the condition of such facilities. It is the intention of Grantor to grant to Grantee, for the term of this Easement Agreement and subject to the terms and conditions set forth in Subsection 1.4, below, and the provisions and specifications referenced in such Subsection, all the aforesaid rights and any and all additional and/or incidental rights required to construct, reconstruct, install, repair, replace, maintain, operate, use, inspect, patrol, and remove the Cable under and through the Easement Area, and Grantor hereby agrees to execute, acknowledge, and deliver to Grantee and its successors and permitted assigns such further instruments as may be necessary to secure to them the rights intended to be granted herein. Within 120 days after completion of installation of the Cable, Grantee shall provide to Grantor’s Superintendent of Highway an as-built survey or surveys showing (a) the locations of the 20-foot-wide Transmission Easement within each of the Grantor-owned roads described in Schedule A hereto, and (b) the physical components of the Cable located within each portion of the Transmission Easement.

1.2. Temporary Installation Easement; Post-Installation Restoration; Performance Bond. In addition, Grantor hereby grants to Grantee a temporary installation easement (the “Temporary Installation Easement”), solely during the “Temporary Installation Easement Period,” as defined in this Section 1.2, and within the Grantor-owned roads described in Schedule A hereto, for the limited purposes of (a) placing and maintaining temporary field offices; (b) construction laydown, marshaling, staging, storage, and fabrication of vessels, pipes, valves, meters, and other equipment; (c) parking of motor vehicles; and (d) any other lawful use necessary for installation of the Cable in the Easement Area. None of the temporary easement rights granted under this Section 1.2 may be exercised by Grantee unless and until (a) Grantee shall have completed design and construction plans for construction and installation of the Cable, (b) Grantee shall have submitted to Grantor a survey or surveys, as well as metes and bounds descriptions, depicting, defining, and delineating the areas to be covered by the Temporary Installation Easement, and (c) Grantor shall have approved, in writing, such surveys and descriptions of the specific areas to be covered by the Temporary Installation Easement. Upon such approval of the said survey(s) and descriptions, the temporary easement granted under this Section 1.2 shall be deemed to attach to and cover only the easement areas depicted, defined, and delineated in the said survey(s) and descriptions, which

areas shall collectively constitute the “Temporary Installation Easement Area.” The “Temporary Installation Easement Period” shall commence on the Exercise of Rights Date, as defined in Section 2.0 of this Easement Agreement, and shall terminate on the “Commercial Operation Date,” which is defined as the date on which the Wind Farm commences the sale of electricity other than electricity generated and delivered solely for test purposes.

1.3. Restoration of the Easement Area and the Temporary Installation Easement Area. Grantee shall, within 90 days (exclusive of days when (i) work is prohibited by either the Host Community Agreement, the “Article VII Certificate,” as defined in this Easement Agreement, or this Easement Agreement or Schedule B to this Easement Agreement, or (ii) work is technically infeasible due to seasonal weather conditions or seasonal unavailability of necessary materials) after all installation of the Cable has been completed (which period is hereinafter referred to as the “Restoration Period”), restore the Easement Area and the Temporary Installation Easement Area to their pre-easement conditions, including, without limitation, grading, slope, sub-pavement, pavement, and vegetation, to the reasonable satisfaction of Grantor, such that the only above-ground difference in the Easement Area and Temporary Installation Easement Area prior and subsequent to the Temporary Installation Easement Period will be manhole covers located in the Easement Area. To ensure satisfactory completion of the restoration work required in the preceding sentence, Grantee shall, prior to commencement of clearing, excavation, or any other work for installation of the Cable, deliver to Grantor a performance bond, for a term of five (5) years, in the amount of \$1,500,000.00, and secured by cash or a certified check, payable to Grantor, drawn on a New York State clearinghouse bank with an office in the State of New York. Such performance bond shall provide that, in the event of Grantee’s default in completing the restoration work within the Restoration Period, such default to be evidenced by a resolution of Grantor’s Town Board declaring that such default has occurred, Grantor and/or its employees or contractors may enter the Easement Area and/or the Temporary Installation Easement Area and complete the aforesaid restoration work using the security supplied with the performance bond to pay the cost of such work. In the event the performance bond security is drawn upon, Grantee shall have no further liability relating to the restoration work for which the performance bond was provided. In the event that the aforesaid restoration work is not completed within the five-year period of the aforesaid performance bond, Grantee shall renew such performance bond or provide to Grantor a replacement performance bond or bonds, in the total amount of the aforesaid performance bond, to remain in effect until the aforesaid restoration work is fully completed. In the event that the foregoing restoration work shall be completed, to the reasonable satisfaction of Grantor, prior to expiration of the aforesaid performance bond or bonds or any extension or replacement of such performance bond or bonds, the Town Board shall release the bonds then in force and any security therefor that is being held by Grantor.

1.4. Conditions as to Construction, Installation, Maintenance, Repair, Replacement, Removal, and Decommissioning of the Cable and Restoration of the Grantor Property. The Cable shall be constructed, installed, maintained, repaired, replaced, removed, and decommissioned, and the Easement Area and Temporary Installation Easement Area shall be used, maintained, and restored, in compliance with the provisions and specifications set forth in this Easement Agreement, including Schedule B hereto, the Host Community Agreement, the certificate of environmental compatibility and public need for the Cable issued under Article VII of the New York State Public

Service Law (“the “Article VII Certificate””), and the Environmental Management and Construction Plan (the “EM&CP”) for the Cable, prepared pursuant to the Article VII Certificate.

1.5. Limitation of Transmission Easement to Selected Route. The Parties acknowledge and agree that Schedule A specifies the Grantor-owned roads, or portions thereof, over, under, and within which the aforesaid Transmission Easement shall run.

2. Effectiveness, Exercise of Rights under, Continuation, and Termination of This Easement Agreement and the Easements Granted Hereunder. Notwithstanding any other provisions of this Easement Agreement, or when this Easement Agreement shall have been executed delivered, or recorded, none of the rights granted to Grantee under this Easement Agreement and the easements provided for herein may be exercised by Grantee unless and until the date (the “Exercise of Rights Date”) when all of the following conditions shall have been met: (1) Grantee shall have executed and delivered to Grantor the Host Community Agreement and this Easement Agreement; (2) Grantee shall have obtained all final approvals, permits, easements, leases, licenses, and authorizations required for the commencement of construction of the Wind Farm, installation of the Cable in the Easement Area and across or beneath other lands, as necessary, and connection of the Cable to the Substation, including, but not limited to, the Article VII Certificate, the Record of Decision issued by the United States Department of the Interior’s Bureau of Ocean Energy Management (“BOEM”) approving or authorizing the Wind Farm and the Cable, and all other required BOEM, Federal, New York State, Long Island Rail Road, Long Island Power Authority, PSEG, and local approvals, and no administrative or judicial stay, restraining order, or injunction shall be in force with respect to any such approval, permit, easement, lease, license, or authorization or any of the construction or other activities authorized thereby; (3) Grantor’s Town Board shall have adopted a resolution authorizing this Easement Agreement, and the easements granted thereunder, subject to a permissive referendum and all other approvals, authorizations, and environmental reviews required for this Easement Agreement, as set forth on Schedule C of this Agreement, and the easements granted thereunder; (4) all requirements for such permissive referendum shall have been satisfied; (5) any required permission or authorization of this Easement Agreement and the easements granted thereunder shall have been obtained from the New York State Legislature, if applicable; and (6) this Easement Agreement shall have been duly executed on behalf of Grantor and delivered to Grantee. This Easement Agreement and the easements granted hereunder shall terminate automatically and without the need for any further action by Grantor or Grantee if the foregoing conditions have not been met by December 31, 2024.

2.1. Term of This Easement Agreement and the Transmission Easement Hereunder; Early Termination. This Easement Agreement, and the Transmission Easement established hereunder, shall remain in force from the Effective Date, as defined and set forth in the preamble to this Easement Agreement, until the expiration of 25 years following the Commercial Operation Date (the “Term”), unless it or they shall sooner expire or terminate pursuant to this Easement Agreement or otherwise, and, except as otherwise provided herein, the Transmission Easement and other rights and obligations of this Easement Agreement shall, upon the end of such Term or upon sooner expiration or termination of this Easement Agreement, be immediately and automatically of no further force and effect. The foregoing notwithstanding, Grantee may terminate and release the Transmission Easement by written notice to Grantor at any time and for

any reason. In the event Grantee terminates or releases the Transmission Easement, Grantor authorizes Grantee to execute and record a notice of termination evidencing such termination.

2.2. Early Termination of Easements. Notwithstanding any other provisions of this Easement Agreement, this Easement Agreement, and all easements established thereunder, shall immediately and automatically expire, terminate, and come to an end, and the Parties shall have no further rights or obligations under this Easement Agreement (except for such rights and obligations that are expressly stated to survive termination of this Easement Agreement), if (1) the Article VII Certificate, or any of the other approvals, permits, easements, licenses, and authorizations required for the construction installation, operation, and maintenance of the Cable in the Easement Area, or any provision thereof that materially affects Grantor's rights under this Easement Agreement, be revoked or terminated, be annulled, reversed, invalidated, or declared invalid or unenforceable; (2) Grantee shall be in default of any term or provision of this Easement Agreement or the Host Community Agreement, and such default shall not have been cured within any applicable cure period; or (3) the number of wind turbines in the Wind Farm shall exceed 15, the total amount of power generated by the Wind Farm shall exceed 136 megawatts (MW), or the total capacity of the Cable and any additional transmission cables for the Wind Farm shall exceed 138 kilovolts (kV) "nominal voltage," which contemplates that the actual voltage of such cables may fluctuate between 90% and 105% of 138 kilovolts (kV) due to voltage fluctuations during operation of the LIPA system.

3. Use of Easement Area and Temporary Installation Easement Area.

3.1. Non-Exclusive Use; Limitations. Grantee shall have the non-exclusive right and easement to use the Easement Area and Temporary Installation Easement Area for the limited purposes, and subject to the limitations, set forth in this Easement Agreement. Except as otherwise provided in this Easement Agreement, Grantee (and/or others to which Grantee may assign or convey rights or an interest under this Agreement) shall retain title to, and possession of, the Cable placed within the Easement Area (including, without limitation, all additions, alterations, and improvements to the Cable, all replacements of the Cable, and all appurtenant fixtures, machinery, and equipment installed for the Cable), and, except as otherwise provided in this Easement Agreement, the Cable shall remain the personal property of Grantee and shall not attach to or be deemed a part of, or fixture to, the Grantor Property, and Grantee shall have the right to remove the Cable from the Easement Area at any time, subject to the decommissioning provisions of the Article VII Certificate, the EM&CP, and the provisions of Section 3.4 and Schedule B hereto. Except as otherwise provided in this Easement Agreement, Grantor shall have no ownership interest in or to any of the Cable. This Easement Agreement is not intended to limit Grantor's use of the Grantor Property, including the Easement Area and the Temporary Installation Easement Area, except as specifically provided herein, and Grantee hereby acknowledges that Grantor and/or other persons or entities to which Grantor has heretofore granted or may hereafter grant rights in the Grantor Property ("Other Right Holders") has or have or may have in the future rights to install, construct, reconstruct, operate, maintain, repair, replace, relocate, inspect, and remove its or their own facilities and improvements on, over, under, across, and through the Grantor Property, including the Easement Area and the Temporary Installation Easement Area (collectively, the "Grantor Property Facilities"). Nothing in this Easement Agreement shall be construed as requiring Grantee to install or operate the Cable.

3.2. Ownership of Power Generated by the Wind Farm. All electrical output from the Wind Farm belongs solely to Grantee.

3.3. No Interference/Use Agreement. Grantee's use and right to use of the Easement Area and the Temporary Installation Easement Area are non-exclusive, and Grantee expressly acknowledges that Grantor has previously granted, is currently granting, or may hereafter grant rights to Other Right Holders over, upon, within, beneath, across, and/or through the Easement Area and/or the Temporary Installation Easement Area. Grantor agrees that, except in exercise of Grantor's governmental or administrative functions, rights, or obligations, Grantor shall not, in the exercise of its rights hereunder or its use of the Grantor Property, including the Easement Area and the Temporary Installation Easement Area, conduct any activity, nor grant any rights to or otherwise permit to exist any action by a third party, that would unreasonably interfere with the rights granted to Grantee hereunder in and to the Easement Area and the Temporary Installation Easement Area, or with Grantee's installation, use, maintenance, and operation of the Cable. Grantee covenants that, in the exercise of its rights hereunder or in the Grantee's use of the Easement Area and the Temporary Installation Easement Area, Grantee shall not conduct any activity, nor grant any rights to a third party, that would unreasonably interfere with (a) Grantor's use of the Grantor Property, including the Easement Area and the Temporary Installation Easement Area, or (b) the installation, use, maintenance, and operation of any facilities of Grantor or Other Right Holders over, upon, within, beneath, across, and/or through the Easement Area or the Temporary Installation Easement Area. Grantor hereby consents to Grantee entering into an agreement or series of agreements with Other Right Holders specifying the rights, obligations, duties, and separation of responsibilities as between Grantee and such Other Right Holders with respect to the Easement Area and the Temporary Installation Easement Area, provided, however, that no such agreement shall actually or purport to expand, limit, amend, or otherwise modify the rights, obligations, covenants, and terms of this Easement Agreement or the Host Community Agreement, or materially interfere with Grantor's use of the Grantor Property, the public's use of the Easement Area or Temporary Installation Easement Area, or Grantor's exercise of Grantor's governmental or administrative functions, rights, or obligations, and the Parties acknowledge and agree that any such agreement that actually materially interferes or may materially interfere with Grantor's use of the Grantor Property, the public's use of the Easement Area or Temporary Installation Easement Area, or Grantor's exercise of Grantor's governmental or administrative functions, rights, or obligations, shall be null and void.

3.4. Removal of the Cable upon Termination of This Easement Agreement. Upon any termination of this Easement Agreement, whether at the end of its Term or sooner, Grantee or its employees or contractors shall, at Grantee's sole cost and expense, (a) remove the Cable from the Easement Area pursuant to the decommissioning requirements set forth in Schedule B hereto (provided that any and all of the Cable not removed from the Easement Area shall be deemed abandoned by Grantee and become immediately the property of Grantor); (b) provide to Grantor, at Grantee's expense, Phase 1 and Phase 2 Environmental Site Assessments, in accordance with the United States Environmental Protection Agency (USEPA) Standards and Practices for All Appropriate Inquiries (included in 40 C.F.R. Part 312) and applicable American Society for Testing and Materials (ASTM) guidelines for such environmental assessments, with respect to the entire Easement Area and Temporary Installation Easement Area; (c) remediate in full any and all Hazardous Materials, as defined in Section 5.3 of this Easement Agreement, and contamination

of any kind or nature that have been identified or otherwise determined to exist, solely as a result of construction, installation, maintenance, repair, replacement, decommissioning, or other activities of Grantee or any of its employees or contractors, and/or Grantee's use of the Easement Area and/or the Temporary Installation Easement Area, on, over, in, or beneath (i) the Easement Area and/or the Temporary Installation Easement Area, (ii) any of the lands, and/or waters on, over, in, or beneath the Easement Area and/or the Temporary Installation Easement Area, and/or (iii) any other lands or waters; and (d) restore the Easement Area to as close to its condition prior to installation of the Cable pursuant to this Easement Agreement as is reasonably practical.

4. Grantor's Representations. Grantor hereby represents to Grantee:

4.1. Authority. Grantor understands, to the best of its knowledge after reasonable inquiry, that it is the owner of the Grantor Property in fee simple, subject to no liens or encumbrances, as of the date of this Easement Agreement other than the liens or encumbrances held by Other Right Holders. Grantor shall reasonably cooperate in any title report or other title investigation that Grantee shall obtain or undertake to confirm such state of facts. Grantor represents that each person executing this Easement Agreement on behalf of Grantor is duly and validly authorized to do so.

4.2. Cooperation. Grantor, upon request of Grantee, shall cooperate with Grantee, but at no out-of-pocket expense to Grantor, in helping Grantee obtain signatures of any of Grantor's grantees and lenders on non-disturbance agreements or subordination agreements, as set forth herein. The foregoing notwithstanding, in the event Grantor's cooperation would materially harm the interest of an Other Right Holder, Grantor shall not be obligated to cooperate with such request.

4.3. Quiet Enjoyment. Grantee shall peacefully hold and enjoy all of the rights granted by this Easement Agreement without hindrance or interruption by Grantor or any person lawfully or equitably claiming by, through, or under Grantor, or as Grantor's successor(s) in interest. Notwithstanding the foregoing, Grantee agrees not to contest, object to, or interfere with any rights Grantor has heretofore granted, or now or hereafter shall grant, to Other Right Holders, provided that any present or future grants of rights to Other Right Holders shall not unreasonably interfere with the Grantee's rights under this Easement Agreement.

5. Grantee's Representations, Warranties, and Covenants. Grantee hereby represents, warrants, and covenants to Grantor:

5.1. Special Covenants. Grantee will adhere to and abide by the restrictions, schedules, and agreements set forth in the Host Community Agreement and the Article VII Certificate.

## 5.2. Indemnity.

5.2.1. Indemnification by Grantee. Grantee shall indemnify, defend, and hold harmless Grantor and Grantor's officers, officials, agents, contractors, and employees from and against any and all claims, liabilities, and losses arising from (i) any damage, interruption, or impairment to Grantor's and/or Other Right Holders' rights, improvements, and/or facilities on, over, beneath, across, and/or through the Grantor Property, including the Easement Area and the Temporary Installation Easement Area; and (ii) physical injuries or death, to the extent caused by Grantee's construction, maintenance, use, operation, management, or removal of the Cable on, over, beneath, across and/or through the Grantor Property, including the Easement Area and the Temporary Installation Easement Area, except to the extent such damages or injuries are caused or contributed to by Grantor's negligence or willful misconduct. This provision shall survive any termination of this Easement Agreement or any easement thereunder.

5.2.2. Indemnification by Grantor. Grantor shall indemnify, defend, and hold harmless Grantee against any and all liability, actions, damages, claims, demands, judgments, losses, costs, reasonable expenses, and fees, including reasonable attorneys' fees, resulting solely from (a) the negligent acts or omissions or willful misconduct of Grantor, (b) breach of any obligation, covenant, or undertaking of Grantor contained herein, or (c) any misrepresentation or breach of warranty on the part of the Grantor pursuant to this Agreement. For the sake of clarity, Grantor shall have no indemnity obligation for any liability, actions, damages, claims, demands, judgments, losses, costs, reasonable expenses, and fees, including reasonable attorneys' fees, that arise, in whole or in part, out of Grantee's conduct, act or omissions. Notwithstanding the foregoing, in no event shall Grantor indemnify, defend, or hold harmless Grantee against any claim for consequential, incidental, indirect, punitive, exemplary, or special damages.

5.3. Hazardous Materials. Grantee covenants, warrants, represents, and agrees that it (a) shall not use, store, dispose of, or release on or in the Grantor Property or (b) cause or permit to exist or be used, stored, disposed of, or released on or in the Grantor Property, any Hazardous Material (as defined below), except in such quantities as may be required in Grantee's normal business operations and only if such use is in full compliance with all Environmental Laws (as defined below) applicable at the time of use, storage, disposal, and release. For purposes hereof, the term "Environmental Laws" means all state, federal, and local laws, statutes, ordinances, rules, regulations, and orders pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as each may be amended, supplemented, expanded, or replaced from time to time; and the term "Hazardous Material" means (1) any substance that requires investigation, remediation, or other response or corrective action under any Environmental Laws, or (2) any substance that is or hereafter becomes defined as a hazardous waste, hazardous substance, extremely hazardous substance, hazardous material, hazardous matter, hazardous chemical, toxic substance, toxic chemical, pollutant, contaminant, or other similar term in or pursuant to any Environmental Laws, or (3) any asbestos or asbestos-



containing material, polychlorinated biphenyls (“PCBs”) or equipment or articles containing PCBs, petroleum, diesel fuel, gasoline, or other petroleum hydrocarbons.

5.4. Hazardous Materials Indemnification. If Grantee breaches any of its covenants, warranties, or representations in Section 5.3, above, or if a release of a Hazardous Material is caused, exacerbated, or permitted by Grantee or its agents, employees, or contractors and results in contamination of the Grantor Property or any other lands or waters, except to the extent such release is caused or exacerbated by Grantor or its agents, employees, or contractors, Grantee shall indemnify, defend, protect, and hold harmless Grantor, and Grantor’s officials, boards, board members, employees, agents, and contractors, from and against any and all claims, actions, suits, proceedings, losses, costs, damages, liabilities (including, without limitation, sums paid in settlement of claims), deficiencies, fines, penalties, and expenses (including, without limitation, reasonable attorneys’ fees and consultants’ fees, investigation and laboratory fees, court costs and litigation expenses) that arise during or after, and as a result of, such breach, release, or contamination. This indemnity shall include, without limitation, and Grantee shall pay all costs and expenses relating to, (a) any claim, action, suit, or proceeding for personal injury (including sickness, disease, or death), property damage, nuisance, pollution, contamination, spill, or other effect on person(s), animal(s), crop(s), vegetation, land(s), water(s), or the environment; (b) any investigation, monitoring, repair, clean-up, treatment, detoxification, or remediation of the Grantor Property or any other lands or waters that may be required by law; and (c) the preparation and implementation of any closure plan, remediation plan, or other required action in connection with the release of a Hazardous Material by Grantee, or a Grantee agent, employee, or contractor, on or in the Grantor Property or any other such lands or waters. This provision shall survive any termination of this Easement Agreement or any easement thereunder.

5.5. Authority of Grantee and the Signatories to This Easement Agreement. Grantee and the signatories to this Easement Agreement hereby represent that they, and each of them, are fully authorized and empowered to bind themselves, and their respective successors, assigns, and affiliated and associated entities, and do hereby bind themselves, and their respective successors, assigns, and affiliated and associated entities, to each and every term, provision, condition, obligation, and representation set forth in this Easement Agreement.

6. Insurance. Grantor and Grantee shall each maintain the following insurance coverage in full force and effect throughout the term of this Easement Agreement, either through insurance policies issued by New York State-licensed or authorized insurance companies or acceptable self-insured retentions: Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence; Automobile Liability Insurance with a limit not less than \$1,000,000; and Umbrella/Excess Coverage Insurance with a limit not less than \$5,000,000. Grantee shall also maintain in full force and effect throughout the term of this Easement Agreement (i) adequate property loss insurance on any property of Grantee, its employees, agents, and contractors, and (ii) worker’s compensation and employer’s liability insurance covering all persons employed by Grantee or its agents or contractors in connection with the activities of Grantee under this Easement Agreement or in the Easement Area or Temporary Installation Easement Area, satisfying the requirements of New York State worker’s compensation laws. Grantor may, at its option, bring its obligations to insure under this Section 6 within the coverage of one or more “blanket” policies of insurance Grantor may now or hereafter carry, by appropriate amendment, rider, endorsement, or otherwise. Each Party’s insurance policies shall be written on

an occurrence basis and shall include the other Party as an additional insured as its interests may appear.

7. Requirements of Governmental Agencies. Grantor and Grantee shall comply in all material respects with all valid laws applicable to their activities on the Easement Area and the Temporary Installation Easement Area, but shall have the right, in their sole discretion and at their sole expense, to contest the validity or applicability of any law, ordinance, order, rule, request, or regulation of any governmental agency or entity that is sought to be applied to their activities.

8. Mechanics' and Construction Liens. Grantor and Grantee shall keep the Grantor Property and Grantee's interest in the Grantor Property free and clear of any mechanics' or construction liens. Should a lien be filed, the Party whose actions or alleged actions have resulted in a lien may contest such lien, so long as, within sixty (60) days after it receives notice of the lien, that Party shall provide a bond or other security as the other Party may reasonably request, or otherwise remove such lien from the Grantor Property pursuant to applicable law.

9. Taxes. The Grantor Property is currently wholly exempt from real property taxes. It is the understanding of the Parties that the proposed use of the Easement Area and the Temporary Installation Easement Area, pursuant to this Easement Agreement, shall not affect the tax-exempt status of the Grantor Property. If the Grantor Property may no longer be wholly tax exempt and any real property taxes become due as a result of any of the uses proposed or made of, or structures or facilities placed on or in, the Easement Area or the Temporary Installation Easement Area by Grantee, then Grantee shall be responsible for the payment of the taxes due as a result of said uses, structures, or facilities.

10. Assignment; Successors and Assigns.

10.1. Assignment by Grantee; Conveyances by Grantor. Grantee shall have the right, with the prior written consent of Grantor, which consent shall not be unreasonably withheld or delayed, to assign to an assignee that is financially viable and that has suitable business experience and capability to satisfy Grantee's obligations under this Easement Agreement and the Host Community Agreement, hypothecate, mortgage, pledge, alienate, or otherwise convey or transfer all or any portion of its rights and interests under this Easement Agreement, including, without limitation, in connection with any investment by a third party in, or the financing or sale of, in whole or in part, (a) Grantee's rights in the Grantor Property, and/or (b) any of Grantee's equipment, fixtures, facilities, structures, or improvements located upon the Grantor Property, including, without limitation, the Cable. Notwithstanding the foregoing, Grantee shall have the right, without Grantor's prior consent, to assign, hypothecate, mortgage, or pledge, all or any portion of its rights and interests under this Easement Agreement to a lender for the purpose of securing Project Financing as that term is defined in the Host Community Agreement. Grantor may sell, mortgage, lease, license, or transfer any portion(s) of the Grantor Property to others without the consent of Grantee, so long as any such sale, mortgage, lease, license, or transfer by Grantor is subject to this Easement Agreement and does not unreasonably interfere with Grantee's rights hereunder and Grantee's use of the Easement Area and the Temporary Installation Easement Area.

10.2. Estoppel Certificate. Within thirty (30) days of its receipt of written request therefor from Grantee or from any existing or proposed Lender, mortgagee, or permitted assignee of Grantee, Grantor shall execute an estoppel certificate (a) certifying that this Easement Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Easement Agreement), (b) certifying that, to the best of Grantor's knowledge, there are no uncured events of default under this Easement Agreement (or, if any uncured events of default exist, stating with particularity the nature thereof), and (c) containing any other certifications as may reasonably be requested. Any such statement may be conclusively relied upon by Grantee or any existing or proposed mortgagee, tax equity provider, or permitted assignee. The failure of Grantor to deliver such statement within such time shall be conclusive evidence, upon Grantor, that this Easement Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Grantee under this Easement Agreement.

10.3. Non-Disturbance Agreements. Upon the written request of Grantee, Grantor shall enter into a non-disturbance and attornment agreement with a permitted assignee of this Easement Agreement, or the Cable, or both, which agreement shall provide, in substance, that, so long as such assignee complies with all of the terms, covenants, and conditions of its assignment and this Easement Agreement, and the term of this Easement Agreement shall not have expired or come to an end, Grantor, in the exercise of any of its rights or remedies under this Easement Agreement, shall not deprive the assignee of possession, or the right of possession, of the Easement Area or the Cable, subject to the terms and limitations of this Easement Agreement, during the term of the assignment.

10.4. Rights of Assignees. Any permitted assignee or transferee of Grantee shall have the same rights as Grantee under this Section 10 to further assign or transfer its interest in this Easement Agreement, subject to the same conditions and provisions applicable to Grantee.

11. Default. In the event of any alleged failure to perform any obligation under this Easement Agreement ("Default"), the non-defaulting Party shall give the alleged defaulting Party written notice thereof, which notice shall include a description of the acts required to cure the same with reasonable specificity. The defaulting Party shall have a period of thirty (30) days from receipt of such notice to cure such Default. If the Default is not capable of cure within thirty (30) days, and if the defaulting Party has commenced to cure and proceeded diligently to effect such cure, then the defaulting Party may request additional time to effect such cure, and the non-defaulting Party shall have sole discretion, reasonably exercised, to extend the time to complete such cure. Any prohibited conduct under this Easement Agreement may be enjoined and this Easement Agreement shall be specifically enforceable.

12. Covenants for Lenders' Benefit. Upon any assignment or transfer of Grantee's interest in connection with any investment by a third party, financing, or tax equity transaction to any lender, bank, financial transferee, tax equity provider, or similar party (any of which are hereinafter referred to as a "Lender"), Grantee and Grantor expressly agree as follows (for purposes of this Section 12, "Grantee" includes any permitted assignee of Grantee's interest, or a portion thereof, in this Easement Agreement):

12.1. Neither party shall modify or cancel this Easement Agreement without the prior written consent of each Lender, which consent shall not be unreasonably conditioned, withheld or delayed, but this provision shall not delay or preclude termination of this Easement Agreement, pursuant to the provisions of this Easement Agreement or otherwise, prior to the end of the Term, and any such early termination shall not require, and shall be effective without, prior consent of any Lender.

12.2. Each Lender shall have the right to perform any act or thing required to be performed by Grantee under this Easement Agreement or law, and any such act or thing performed by a Lender shall be as effective to prevent a default under this Easement Agreement and/or a forfeiture of any of Grantee's rights under this Easement Agreement as if done by Grantee itself.

12.3. Provided Grantee has provided Grantor with notice of the identity and address, for notices, of every Lender, if Grantor is entitled to terminate this Easement Agreement due to default by Grantee, Grantor shall not terminate this Easement Agreement unless and until Grantor has first given written notice of such default and of Grantor's intent to terminate this Easement Agreement to each Lender and have given each Lender at least thirty (30) days to cure the default to prevent such termination of this Easement Agreement. Upon the sale or other transfer of all of a Lender's interest in the easements and rights granted hereunder, such Lender shall not be entitled to notice or an opportunity to cure, as provided in this Section 12.3, and shall have no other rights, duties, or obligations under this Section 12.3. Nothing in this provision shall delay or preclude automatic termination of this Easement Agreement and the easements provided therein, pursuant to the provisions of this Easement Agreement or otherwise, prior to the end of the Term, and any such early termination shall not require, and shall be effective without, prior notice to, or consent of, any Lender with respect to such automatic termination.

12.4. Grantor hereby agrees to execute any estoppel certificates and other documents as may reasonably be requested by any Lender pursuant to this Section 12 or Section 10.2.

13. Easement Fees. Grantee shall pay fees to Grantor for the easements provided under this Easement Agreement pursuant to the terms of the Host Community Agreement.

14. Notices. All notices, other communications, and deliveries required or permitted under this Easement Agreement shall, unless otherwise provided herein, be in writing, and shall be personally delivered, delivered by reputable overnight courier, or sent by registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

If to Grantor, to:

Town of East Hampton  
Town Attorney  
159 Pantigo Road  
East Hampton, NY 11932

If to Grantee, to:

South Fork Wind, LLC  
107 Selden Street  
Berlin, CT 06037  
Attention: General Counsel

and

Town Clerk of the Town  
of East Hampton  
159 Pantigo Road  
East Hampton, NY 11932

Notices personally delivered shall be deemed given on the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the date such notice was provided to the overnight courier prior to such courier's latest time for overnight delivery. Notices mailed as provided herein shall be deemed given on the third business day following the mailing date. Any Party may change its address for purposes of this Section by giving written notice of such change to the other Parties in the manner provided in this Section.

15. Miscellaneous.

15.1. Entire Agreement; Incorporation of Recitals and Schedules. This Easement Agreement constitutes the entire agreement between the Parties respecting the subject matter hereof and supersedes all negotiations, agreements, and understandings had or made prior to this Easement Agreement. The recitals set forth above, and all Schedules attached hereto, are hereby incorporated in and made a part of this Easement Agreement as though fully set forth herein.

15.2. No Admission. Nothing herein shall be construed as an admission by any of the Parties of any liability of any kind to the other Party.

15.3. Binding Effect. This Easement Agreement shall, during the effectiveness of this Easement Agreement, be binding upon, and inure to the benefit of, the Parties and their respective successors in interest, administrators, and assigns.

15.4. Governing Law; Venue; Recordation. The construction and performance of this Easement Agreement shall be governed by the laws of the State of New York without regard to its principles of conflicts of law, and any legal action or proceeding with respect to this Easement Agreement or the easements established thereunder shall be commenced and maintained in the County of Suffolk, State of New York. This Easement Agreement may be recorded at any time, by any Party, in the official records of the Suffolk County Clerk's Office, Suffolk County, New York.

15.5. Conflict or Inconsistency. In the event of any conflict or inconsistency between the terms or conditions of the Host Community Agreement and this Easement Agreement, on the one hand, and the Article VII Certificate or its Conditions and the EM & CP, on the other, the terms and conditions of the Host Community Agreement and this Easement Agreement shall prevail.

Moreover, in the event of any conflict or inconsistency between the terms or conditions of the Host Community Agreement and the terms or conditions of this Easement Agreement, the terms and conditions of this Easement Agreement shall prevail.

15.6. Grantor shall have the right to enforce, in or before any court, commission, agency, mediator, or other tribunal with competent jurisdiction, the terms and conditions of the Article VII Certificate and/or the EM & CP.

15.7. Arguments and Claims Not to Be Asserted. Grantee, its successors, assigns, and affiliated and associated entities, and all officers, directors, shareholders, members, representatives, agents, legal counsel, employees, and contractors of Grantee and Grantee's successors, assigns, and affiliated and associated entities, shall not assert, argue, or claim, in any action or proceeding or before any court, commission, agency, mediator or other tribunal, that the New York State Public Service Law, any federal law applicable to the Project, any regulations promulgated under any such State and/or federal laws, the Article VII Certificate, and/or any condition of the Article VII Certificate preempts, supersedes, nullifies, or renders unenforceable in whole or in part any right under, or provision of, the Host Community Agreement or this Easement Agreement.

15.8. Condemnation. All payments made on account of any taking or threatened taking of the Grantor Property or any part thereof by a condemning authority may be made to Grantor, except that Grantee shall be entitled to compensation, from the condemning authority, for (1) the reasonable removal and relocation costs of any of the Cable located on the Grantor Property, (2) loss of or damage to any of the Cable that Grantee is not required to remove, and (3) loss of use of the Grantor Property by the Grantee, provided, however, that, should such condemning authority make all payments to Grantor, Grantor shall forthwith make payment to Grantee of the award to which it is entitled. Grantee shall have the right to participate in any condemnation settlement proceedings and Grantor shall not enter into any binding settlement agreement without the prior written consent of Grantee, which consent shall not be unreasonably withheld. Grantee shall cooperate with all Other Right Holders in determining what amounts from any condemnation proceeding are allocable to the Cable and the facilities of such Other Right Holders, if such condemnation proceeding does not allocate such amounts among Grantee and Other Right Holders.

15.9. No Partnership. Nothing contained in this Easement Agreement is intended to create, nor shall anything contained in this Easement Agreement be deemed or construed to create, the relationship of principal and agent, partnership, joint venture, or any other business or financial association between the Parties.

15.10. Waiver. A waiver of a breach of any of the provisions of this Easement Agreement shall not be deemed to be a waiver of any succeeding breach of the same or any other provision of this Easement Agreement.

15.11. Severability. If any one or more of the provisions contained in this Easement Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of this Easement Agreement shall not in any way be affected or impaired thereby, and the Parties hereto shall enter into good faith negotiations to replace the invalid, illegal, or unenforceable provision(s).

15.12. Amendment. This Easement Agreement shall be modified or amended only by a written instrument signed and notarized by or on behalf of Grantor and Grantee, or their successors or permitted assigns, and recorded in the Office of the Clerk of Suffolk County.

15.13. No Merger. There shall be no merger of the easement and other rights granted in this Easement Agreement, or of any easement estate created by this Easement Agreement, with the fee estate in the Grantor Property by reason of the fact that any such easements or easement estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Grantor Property and all persons (including, without limitation, any Lender) having an interest in the easements or in the estate of the affected Grantor or Grantee shall enter into a written instrument effecting such merger and shall duly record the same.

15.14. Interpretation. Any reference herein to the singular shall, as appropriate, include the plural, and any reference herein to the plural shall, as appropriate, include the singular. Any reference herein to Grantee shall include any and all permitted assignee(s) of Grantee, and any and all successors, assigns, heirs, and transferees of same. Any references herein to Grantor shall, as appropriate, include Grantor and any other parties holding any title, interest, or right in the Grantor Property and any and all successors, assigns, and transferees of same.

15.15. Headings. The headings of the sections and subsections of this Easement Agreement are for convenience purposes only and shall have no effect upon the construction or interpretation of any part of this Easement Agreement.

15.16. Counterparts. This Easement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the Parties have caused this Easement Agreement to be executed as of the date first above written.

**GRANTOR:**

**TOWN OF EAST HAMPTON**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**GRANTEE:**

**SOUTH FORK WIND, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_







## SCHEDULE A

### DESCRIPTION OF THE GRANTOR PROPERTY: GRANTOR-OWNED ROADS

The Cable shall be installed within a 20-foot-wide corridor -- which corridor alone shall be covered by and subject to the Transmission Easement created under this Easement Agreement -- within portions of the following Grantor-owned roads, the names of which roads are in bold print below, so as to permit the Cable to follow the following route, which is depicted on the Route Maps included in this Schedule A, so as to permit the Cable to follow the following route:

- From the Atlantic Ocean Beach at the southerly end of Beach Lane, along **Beach Lane** to its intersection with Wainscott Main Street;
- Then along **Wainscott Main Street**, from its intersection with Beach Lane to its intersection with Sayre's Path;
- Then along **Sayre's Path**, from its intersection with Main Street to its intersection with Wainscott Stone Road;
- Then along **Wainscott Stone Road**, from its intersection with Sayre's Path to its intersection with Wainscott Northwest Road;
- Then along **Wainscott Northwest Road**, from its intersection with Wainscott Stone Road, and after crossing New York State Route 27, to its intersection with the MTA Long Island Rail Road right-of-way;
- Then, after passing eastward along the MTA Long Island Rail Road right-of-way, crossing **Daniels Hole Road**, adjacent to the said MTA Long Island Rail Road right-of-way;
- Then, after passing farther eastward along the MTA Long Island Rail Road right-of-way, crossing **Stephen Hands Path**, adjacent to the said MTA Long Island Rail Road right-of-way;
- Then, after passing farther eastward along the MTA Long Island Rail Road right-of-way, crossing **Buckskill Road**, adjacent to the said MTA Long Island Rail Road right-of-way; and
- Then passing farther eastward along the MTA Long Island Rail Road right-of-way to the lands containing the Long Island Power Authority's East Hampton Substation.

## **SCHEDULE B**

### **CONDITIONS AS TO CONSTRUCTION, INSTALLATION, MAINTENANCE, REPAIR, REPLACEMENT, REMOVAL, AND DECOMMISSIONING OF THE CABLE AND RESTORATION OF THE GRANTOR PROPERTY**

#### **GENERAL CONDITIONS**

1. Grantee shall construct, install, operate, maintain, repair, replace, and decommission the Cable,<sup>1</sup> and restore the Easement Area, in accordance with the Article VII Certificate and its Conditions, the Joint Proposal for the Article VII Certificate (the “Joint Proposal”) and the attachments thereto, the approved EM&CP, and any subsequent orders of the New York State Public Service Commission (“PSC”), and the terms and conditions of this Schedule B. In the event of any inconsistency between (a) the aforesaid Article VII Certificate or its Conditions, the Joint Proposal or its attachments, the approved EM&CP, or any subsequent orders of the PSC and (b) the terms, provisions, or standards of this Schedule B, the terms, provisions, and standards of this Schedule B shall prevail. For any proposed revision, change, amendment, or modification of the EM&CP, Grantee shall comply with the notice and other procedures to be followed by the “Certificate Holder” under proposed Condition 11 of the “Proposed Certificate Conditions” included in Appendix D to the Joint Proposal.

2. Each substantive Federal, State, and local law, regulation, code, and ordinance applicable to the Project shall apply, except to the extent that the PSC has expressly refused to apply any substantive local law or regulation as being unreasonably restrictive.

3. Prior to commencing construction or installation of the Cable in the Easement Area, Grantee shall seek and obtain all required road-opening permits from Grantor for such construction and installation.

4. Prior to undertaking any activities authorized by the Easement Agreement, Grantee shall enter into a Road Use and Crossing Agreement, in the form attached to this Schedule B as Exhibit 1, with Grantor with respect to Grantor-owned roads; such agreement shall include the

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<sup>1</sup> Terms in this Schedule B that are not otherwise defined in this Schedule B shall have the same meanings and definitions as they have elsewhere in the Easement Agreement to which this Schedule B is annexed.

usual and customary provisions typically included by Grantor in such agreements, including a provision that Grantee shall be liable for any damage to Grantor-owned property caused by the activities of Grantee or its employees or contractors.

5. Construction and installation of any part of the Cable shall not commence until Grantee has received from the New York State Department of Transportation (“NYSDOT”), the New York State Department of Environmental Conservation (“NYSDEC”), the Grantor, and all other Federal, New York State, and Grantor agencies with jurisdiction of such construction, all permits and authorizations necessary to permit such construction.

6. All equipment for construction, installation, operation, maintenance, repair, replacement, and decommissioning of the Cable as well as restoration of the Easement Area, shall be located at marshaling yard(s), laydown area(s), or within the Easement Area, provided, however, that, if a local contractor is used for the construction work, the local contractor’s facility shall be considered as a marshaling yard or laydown area.

7. Grantee’s employees, contractors, and subcontractors assigned to construction in the Easement Area shall be properly trained in their respective responsibilities.

8. If an accident occurs in connection with construction or other work in the Easement Area, Grantee shall report any such accident to Grantor as soon as possible, but no later than twenty-four (24) hours after Grantee becomes aware of such accident. A copy of the final accident report, if any, shall be provided to Grantor.

9. If a contractor installs materials, structures, or components on or in the Easement Area that do not meet or exceed the specifications for the same described in the Article VII Certificate and its Conditions or the EM&CP, Grantee shall, within thirty (30) days after becoming aware of any such deviation, prepare and deliver to New York State Department of Public Service Staff (“DPS Staff”) and Grantor a summary report detailing the deviation and any steps to will be, or have been, taken to address the deviation.

10. Grantee shall not restrict access to, physically disturb, or use any properties adjacent to the Easement Area in the course of any of its activities in the Easement Area.

11. After prior consultation with Grantor, Grantee shall provide details in the EM&CP of street work to be undertaken for the construction, maintenance, repair, replacement, and decommissioning of the Cable, as well as restoration of the Easement Area, including, but not limited to, provisions for minimizing the duration and extent of open pits within and adjoining

public streets and rights-of-way, and Grantee and its employees and contractors shall comply with such provisions.

12. Grantee's construction and other employees and contractors shall park only in designated areas that do not interfere with normal traffic, cause any safety hazard, or interfere with existing land uses. Where practicable, Grantee shall minimize worker parking in the Easement Area.

13. Grantee shall design, engineer, construct, and install the Cable in accordance with the applicable and published planning and design standards of the New York Independent System Operator, Inc., New York State Reliability Council, the Northeast Power Coordinating Council, the North American Electric Reliability Corporation, and successor organizations.

14. Grantee shall comply with the requirements for the protection of underground facilities set forth in 16 NYCRR Part 753 ("Protection of Underground Facilities").

15. Grantee shall coordinate the construction, installation, connection, testing, and energizing of the Cable with LIPA and/or PSEG-LI so as to minimize outages.

16. Grantee shall have a professional engineer, licensed in the State of New York, inspect the Cable prior to the Commercial Operation Date and certify that it fully complies with the New York State Uniform Fire Prevention and Building Code, and shall provide a copy of such certification to Grantor. Grantee may seek an appropriate variance of such Code if any of the Cable does not comply with such Code, and shall advise Grantor of the outcome of any and all such variance requests.

17. Deliveries related to construction, installation, operation, maintenance, repair, replacement, and decommissioning activities shall take place between 7:00 a.m. and 7:00 p.m., except for cable or other oversized deliveries. This condition is not intended to prohibit nighttime deliveries that are reasonably necessary to facilitate compliance with NYSDOT restrictions on daytime construction in or along roadways or public access areas or to require the cessation of construction activities that require a continuous work effort once started.

18. Grantee shall use best efforts to minimize vegetation disturbance and removal within and adjacent to the Easement Area.

19. Grantee shall coordinate its construction, maintenance, and other activities with other construction, maintenance, and other activities being undertaken at or about the same time and in or about the same vicinity by Grantor, the Trustees, and the NYSDOT.

20. All sampling, disposal, and construction activities must be performed in a manner consistent with NYSDEC standards, criteria, or guidance in effect at the time of such activities, including, but not limited to the NYSDEC Part 375 Remedial Program's Sampling Protocol concerning Sampling for 1,4-Dioxane and per- and polyflouroalkyl substances (PFAS).

21. Markers used to define or delineate the boundary(ies) of Federally-, State-, or Grantor-regulated freshwater and tidal wetlands, and also the limits of disturbance for Grantee's construction and other activities within and adjacent to the Easement Area, shall be left in place, or restored if disturbed, until completion of Grantee's construction, remediation, and other activities in the Easement Area.

22. Grantee shall thoroughly clear the Easement Area of all debris created by or related to construction, installation, operation, maintenance, repair, removal, and decommissioning of the Cable, as well as restoration of the Easement Area.

23. Any debris or excess construction materials shall be removed to a facility that is duly authorized to receive such material; burying of construction debris or excess construction materials in the Easement Area, and any burning of construction debris or construction materials, including, but not limited to, removed trees or other vegetation, is strictly prohibited.

### **CONSTRUCTION TIME LIMITATIONS**

24. Commencement of Construction (as defined herein) of the Cable shall take place within eighteen (18) months after the later of approval of the EM&CP by the PSC or receipt of all applicable federal permits and approvals for the Wind Farm. As used in this Schedule B, "Commencement of Construction" shall be defined as the beginning of tree clearing, site clearing, ground disturbance, and site preparation and grading activities related to installation of the Cable, but shall not include soils or groundwater testing, surveying (such as geotechnical drilling), similar pre-construction activities to determine the adequacy of the site for construction, and other activities, such as limited staging and limited tree cutting, that are required to perform such pre-construction activities.

25. All construction activities, excluding horizontal directional drilling ("HDD"), for the Cable in the Easement Area shall be completed within thirty (30) months, not including the

duration of any *force majeure* events, after Commencement of Construction of the Cable in the Easement Area.

26. Notwithstanding the foregoing, Grantee shall diligently pursue completion of construction of the Cable in the Easement Area within nine (9) to twelve (12) months after Commencement of Construction of the Cable.

27. With respect to the Cable installation in the Easement Area, Grantee may request that Grantor extend the aforesaid 18-month Commencement of Construction deadline and/or the aforesaid 30-month construction completion deadline. Any request for such extension must be in writing, must include a justification for the extension, and must be filed with Grantor at least five (5) business days prior to the deadline sought to be extended. Grantor may approve or disapprove of any such extension request in the reasonable exercise of its sole discretion.

28. Except as set forth in Paragraph 30, below, construction, maintenance, restoration, remediation, and decommissioning work in the Easement Area shall be confined to the period beginning October 1 and ending on, but inclusive of, April 30 of the succeeding calendar year. Notwithstanding the foregoing, if Grantee expects to complete horizontal direction drilling (“HDD”) construction work, as defined below, by May 15 of the current calendar year if Grantee is allowed to continue such construction up to and including May 15, Grantee is authorized to continue HDD construction work in the HDD Work Zone, as defined below, through May 15 provided that (i) notice of Grantee’s intention to continue HDD construction work beyond April 30 and defining the scope of work to be performed is provided to Grantor on or before April 1 (the “HDD Work Notice”); (ii) Grantor has approved the HDD Work Notice within five (5) business days, provided that such approval shall be granted where Grantee meets the other requirements herein; (iii) Grantee shall have, prior to April 30, delivered to Grantor an irrevocable letter of credit or other form of financial guarantee, in a form acceptable to Grantor’s Attorney, for the sole benefit of Grantor in the amount of two hundred and fifty thousand dollars (\$250,000.00) (the “Acceptable Financial Guarantee”); (iv) pedestrian, bicycle, and other vehicular access to Wainscott Beach and residences along Beach Lane shall remain open throughout the period of such extended construction; and (v) Grantee shall demobilize and remove all equipment from the HDD Work Zone by May 15. Construction work between May 1 and May 15 shall not include accessing the splice vaults of the Cable during construction for purposes of splicing, hook-up, testing, repair or energization. Installation of the HDD conduit for the Sea-to-Shore Transition between the offshore

bore hole and the Sea-to-Shore Transition vault in the Easement Area, may be performed on a 24x7 basis, subject to any applicable construction date restrictions and compliance with the Construction Noise Control Plan (Exhibit J to the Joint Proposal), if necessary to prevent damage to or loss of the offshore bore hole. Pulling the cable through the HDD conduit and cable splicing may be performed on a 24x7 basis subject to any applicable construction date restrictions and compliance with the Construction Noise Control Plan (Exhibit J to the Joint Proposal). Grantee shall provide notice to Grantor and the Trustees at least forty-eight (48) hours prior to the commencement of HDD drilling, installation of the HDD conduit, and pulling of cable through the HDD conduit to the Sea-to-Shore Transition vault.

(a) For purposes of this Paragraph, “complete HDD construction work” shall mean complete all the HDD work set forth in the HDD Work Notice. The HDD Work Notice shall include HDD drilling and installation of HDD conduit, and may include pulling of cable through the HDD conduit to the Sea-to-Shore Transition vault. HDD construction work shall be considered complete, pursuant to this condition, if it will not be necessary, except as a result of a *force majeure* event, for Grantee or any of its employees or contractors to remobilize HDD equipment for performance of any additional HDD construction work during any following construction season. The “HDD Work Zone” is defined as the area of Beach Lane, within the Easement Area, on which is located (i) equipment for HDD drilling and installation of HDD conduit (ii) the Sea-to-Shore Transition vault, (iii) the first onshore cable vault, and (iv) the cable duct bank work area between the Sea-to-Shore Transition vault and the first onshore cable vault.

(b) To the extent Grantee performs HDD construction work, under this Paragraph, after April 30 of any calendar year but does not complete HDD construction work on or before May 15, Grantor may call and draw upon the aforesaid Acceptable Financial Guarantee. In the event that (1) Grantee certifies to Grantor that it has completed HDD construction work on or before May 15 and no mobilization will be required to complete the HDD construction work in the future, and (2) no further HDD construction work shall commence, and no mobilization for such HDD construction work shall occur, during the next-succeeding construction window (i.e., the window beginning the following October 1), Grantee shall be thereafter entitled, upon application to Grantor’s Town Board, to release of the aforesaid Acceptable Financial Guarantee.

29. Construction activities shall be restricted to the hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday, except for activity in connection with HDD, cable pulling, cable joint



splicing, and other activities reasonably necessary to comply with NYSDOT restrictions on daytime construction in or along roadways or public access areas. This restriction shall not require the cessation of construction activities that require a continuous work effort once started. In such an event, except in cases of emergency, Grantee shall notify DPS Staff, Grantor, and adjacent landowners and businesses of the proposed work beyond the days and hours set forth above. Such notice shall be given at least twenty-four (24) hours in advance of the proposed work unless Sunday or after-7:00 p.m. construction activities are required for safety reasons that arise less than 24 hours in advance. Construction activities extending beyond 8:30 p.m. shall be performed only Monday through Thursday, except for operations that must be continued (a) for safety reasons, (b) to protect life and/or property, and/or (c) to protect the structural integrity of the HDD bore hole or to prevent damage to or loss of the bore hole.

30. Except as set forth in Paragraph 28, above, all drilling operations associated with HDD drilling for installation of the HDD conduit and Cable beneath the Wainscott Beach and Beach Lane shall be confined to the period beginning November 1 and ending on, but inclusive of, April 30 of the succeeding year. Such drilling operations are defined as actual drilling of the HDD bore. During the periods described above, HDD drilling operations will be conducted between 7:00 a.m. and 7:00 p.m., except when necessary (i) for safety reasons, (ii) to protect life and/or property, or (iii) to protect the structural integrity of the bore hole or to prevent damage to or loss of the bore hole.

### **CONSTRUCTION LIMITS AND STANDARDS**

31. Grantee and its employees and contractors shall confine all their clearing, construction, and other activities to the Easement Area and Temporary Installation Easement Area, as defined in Schedule A and Section 1.2 of the Easement Agreement, Grantee shall install no more than one Cable in the Easement Area, the Cable and any conduit through which it shall pass shall, with the exception of access structures, be installed and maintained no less than three (3) feet beneath the post-construction ground surface, and as otherwise described in the EM&CP, throughout the Easement Area, and the nominal voltage across such Cable shall not exceed 138 kilovolts (kV).

32. The Cable in the Easement Area may be installed in an underground duct bank consisting of concrete-encased conduits, utilizing cable vaults for installation and maintenance

access. Following initial installation, the only visible portions of the Cable in the Easement Area shall be manhole covers used to access the subsurface cable vaults. Grantee shall design and install such manholes so that, following their installation, they shall not present any danger or obstruction to pedestrian, vehicular, or bicycle traffic passing upon and within the Easement Area and the roadways and walkways upon and within the Easement Area.

33. Grantee shall design, engineer, construct, install, operate, maintain, repair, and replace the Cable in conformance with all applicable national and international electrical codes and standards.

34. Grantee shall design, engineer, and construct the Project and the Cable such that their operations shall, comply with the electric and magnetic field (“EMF”) guidelines and standards established by the PSC in Opinion No. 78-13, issued June 19, 1978, and the Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities, issued September 11, 1990, or the PSC’s most recent electric and magnetic field guidelines and standards in effect at the time the PSC grants the Article VII Certificate.

35. During and upon completion of all construction, maintenance, repair, replacement, decommissioning, restoration, and other activities in the Easement Area, Grantee shall check and ensure that all culverts within and adjacent to the Easement Area that convey streams or provide hydrologic connection between wetland areas are not crushed or blocked, either completely or partially, during or after such activities. If any such culvert is blocked, crushed, or otherwise damaged during or after such activities, Grantee shall, where feasible, immediately repair the culvert or replace it with alternative measures appropriate to maintaining proper hydrological connectivity and stream flow. Where feasible, culvert repairs or replacements must not result in reduced opening width or height of the pre-existing culvert.

36. The method for installation of the Cable in the Easement Area shall be detailed in the EM&CP and shall comply with all NYSDOT and Grantor specifications. Prior to filing the EM&CP, Grantee shall consult with Grantor’s Superintendent of Highway and the NYSDOT regarding feasibility and consistency of the EM&CP with existing Grantor and NYSDOT highway and roadway construction standards and practices.

37. Within 60 days of commencing construction and installation of the Cable beneath Wainscott Beach and the southerly extent of the Easement Area, Grantee shall (i) determine the then profile of Wainscott Beach, referenced to the North American Vertical Datum of 1988, and

(ii) define a reference point on the beach to measure beach height; and shall thereafter ensure that the Cable, as well as any conduit through which the Cable shall pass, shall be installed a minimum of thirty (30) feet beneath the surface of Wainscott Beach at each point along the Cable's path beneath such beach. Thereafter, as soon as practicable after each significant coastal erosion event that causes the loss of five (5) feet or more of sand (measured vertically from the aforesaid reference point) from Wainscott Beach, Grantee shall monitor and certify to Grantor that the Cable and its conduit remain buried a minimum of thirty (30) feet beneath the surface of Wainscott Beach at each point along the Cable's path beneath such beach. In the event that such monitoring determines that the Cable or its conduit is buried, at any point along the Cable's path beneath Wainscott Beach, fewer than 25 feet beneath the then surface of Wainscott Beach, Grantee shall, as soon as practicable and at its cost, (i) consult with Grantor, the United States Army Corps of Engineers, the NYSDEC, and the New York State Department of State ("NYSDOS") as to an appropriate methodology (e.g., beach nourishment) for restoring the burial depth of the Cable and its conduit to a minimum of thirty (30) feet beneath Wainscott Beach, at all points along the Cable's path beneath such beach, without creating visible berms or other raised features upon such beach, (ii) diligently obtain all permits necessary for such restoration work, and (iii) conduct and complete such restoration work, in compliance with all permits for such work, during the first off-season (i.e., the period commencing October 1 and ending May 1) following Grantee's receipt of all permits for such work.

### **NOISE STANDARDS AND CONTROLS**

38. Grantee and its employees and contractors shall comply with the Construction Noise Control Plan (Exhibit J to the Joint Proposal) for all their construction, installation, operation, maintenance, repair, replacement, and decommissioning activities in the Easement Area.

### **TRAFFIC MANAGEMENT**

39. Grantee shall include in the EM&CP a detailed Roadway Work Plan governing activities within the Easement Area, which Roadway Work Plan shall be prepared in coordination with Grantor's Superintendent of Highway and shall include, at a minimum:

- (a) a schedule showing the sequence and duration of trenching, drilling and/or pipe-jacking, and cable delivery, laying, backfilling, splicing, and testing;
- (b) details of construction schedule planning and coordination with Grantor, the Trustees, and the NYSDOT;
- (c) a traffic diversion/lane closure plan, which shall identify procedures to be used to maintain traffic flow and provide a safe construction zone for activities within a roadway right-of-way; such plan shall describe temporary signage, lane closures, placement of temporary barriers, and traffic diversion procedures, including, but not limited to, requiring use of flagging personnel whenever equipment is crossing any road, equipment is being loaded or unloaded, and multi-lane traffic is reduced to one lane;
- (d) required coordination with planned highway and bridge construction and repair projects;
- (e) a map or maps showing the locations of (i) each trench with reference to the paved roadway surface, (ii) all laydown and mobilization areas, (iii) drilling and exit pits, (iv) pipe-jacking entry and exit pits, and (v) splicing locations;
- (f) a trench profile;
- (g) a plan for trench backfilling, marking, protection, and temporary covering;
- (h) a plan for conducting trenching and cable laying in the vicinity of other underground utility lines, conduits, and pipes;
- (i) a Soil Handling and Erosion Control Plan, which shall include, among other things, a plan for the handling of any contaminated materials (described elsewhere in this Schedule B);
- (j) a Vegetation Management Plan, which shall include, among other things, a post-completion assessment of the need for remedial vegetation plantings (described elsewhere in this Schedule B);
- (k) a plan for minimizing construction-related noise during the hours between 7:00 p.m. and 7:00 a.m. (described elsewhere in this Schedule B);
- (l) a plan for minimizing construction-related lighting impacts on surrounding areas (described elsewhere in this Schedule B);

(m) a plan for minimizing disruption of vehicle, bicycle, and pedestrian traffic and recreational use (which shall include at least the traffic management restrictions and conditions set forth in this Schedule B); and

(n) a design plan for emergency access during any local road closures and also during any construction work, staging, storage of materials, and parking of construction and/or construction worker vehicles on any local roads, which plan shall be fully-compliant with all New York State and local fire, building, and safety codes. Such design plan shall be subject to the review and approval of Grantor's Chief Fire Marshal.

40. Grantee and its employees and contractors shall comply with the aforesaid Roadway Work Plan, and shall also comply with the following specifications and requirements:

(a) Except as obstruction of such access may be temporarily unavoidable during delivery and installation of the Sea-to-Shore Transition vault to and in the Easement Area, Grantee shall maintain continual pedestrian, bicycle, and vehicular use of and access to Wainscott Beach.

(b) All work zones within the Easement Area shall comply with the Manual of Uniform Traffic Control Devices ("MUTCD") and the NYS Supplement to the National MUTCD. Among other things, the minimum-lane-width standard shall be 10 feet on local roads as measured from the near edge of any channelizing devices to the edge of the pavement or the outside edge of the paved shoulder, or such other minimum width specified in the approved design plan for emergency access referenced in Paragraph 39(n), above.

(c) To the extent required for delivery or transport of oversized components, supplies, or equipment for construction, maintenance, repair, replacement, and/or decommissioning of the Cable, or restoration of the Easement Area, Grantee or its suppliers shall obtain any required permits from applicable State or local agencies, including, but not limited to, Grantor and the NYSDOT.

(d) Oversized/overweight delivery or transport of cable and other components, supplies, equipment, or materials for construction, maintenance, repair, replacement, and/or decommissioning of the Cable, or restoration of the Easement Area, shall be coordinated with the NYSDOT and Grantor's Superintendent of Highway and shall occur in accordance with traffic controls specified herein and in the EM&CP, and along only those specific routes designated by

Grantor for such oversized/overweight deliveries, to minimize disruption of traffic, damage to roadway infrastructure, and harm to public safety and welfare to the maximum extent practical.

(e) Grantee and its employees and contractors shall not construct, improve, or use any access roads not described in the EM&CP except in the case of emergency situations; Grantee shall promptly notify Grantor of any such alleged emergency situations.

(f) Without prior consultation with Grantor's Superintendent of Highway (with respect to Grantor-owned roads) and the NYSDOT (with respect to State-owned roads), and express prior written consent to such closure by the Superintendent of Highway (for Grantor-owned roads) or the NYSDOT (for State-owned roads), there shall be no closure of any public roadway, but traffic shall be shifted as necessary to maintain at least one minimum-12-foot lane (for State-owned roads), or (for Grantor-owned roads) at least one lane that is at least 10 feet in width or such other such minimum width as is specified in the approved design plan for emergency access referenced in Paragraph 39(n), above, for vehicular passage, and flagging personnel shall be utilized to control access to, and prevent conflicts between opposing traffic, in such lane.

(g) Grantee and its employees and contractors shall not work on both sides of a roadway in the same area at the same time.

(h) Grantee shall coordinate all construction, maintenance, repair, replacement, restoration, and decommissioning activities in the Easement Area roadways with the appropriate State and municipal officials, including Grantor's Superintendent of Highway, and shall obtain all required authorizations for such activities.

(i) Grantee shall consult, not less than weekly, with State and local transportation agencies and officials, including, but not limited to, the NYSDOT and Grantor's Superintendent of Highway, about traffic conditions on and near the Easement Area, and shall implement appropriate modifications to traffic management protocols as necessary to minimize disruption to traffic circulation during the activities of Grantee and its employees and contractors on or in the Easement Area.

(j) For scheduled maintenance activities, Grantee shall notify local transportation agencies, including Grantor's Superintendent of Highway, at least seven (7) days in advance of the date manhole-related work will begin within roadways and highways under their respective jurisdictions.

(k) At least seven (7) calendar days prior to implementing same, Grantee shall notify Grantor's Superintendent of Highway, the Suffolk County Highway Department, the Suffolk County Police Department, Grantor's Police Department, Grantor's Fire Department, and the NYSDOT Inform Center of all detours, proposed road closings, or any other work that might affect the mobility or access of emergency vehicles.

(l) Grantee shall ensure that all fire hydrants and alarm boxes are kept continuously clear and available.

(m) Grantee shall schedule its operations so as to minimize interruption of pedestrian traffic. The sidewalk on one side of any roadway on which work is being performed shall remain open and passable at all times.

(n) During the reconstruction of sidewalks and driveways, pedestrian safety and property access shall be continually maintained.

(o) Grantee shall not access to any public or private driveway or accessway within or along the Easement Area without prior coordination with, and consent of, the owner of such driveway or accessway.

(p) Grantee shall maintain uninterrupted access to, and on-street parking for, the farm stand located at the intersection of Beach Lane and Wainscott Main Street.

(q) Prior to any delivery, between 7:00 p.m. and 7:00 a.m., of any components, supplies, or equipment for construction, maintenance, repair, replacement, and/or decommissioning of the Cable, or restoration of the Easement Area, Grantee shall consult with Grantor's Town Supervisor and Superintendent of Highway as to the routes to be used for such deliveries, whether or not using oversized/overweight vehicles, and no such deliveries shall take place using any roadways other than those designated by Grantor's Town Supervisor and Superintendent of Highway.

(r) Grantee shall use best efforts to coordinate its construction schedule with the East Hampton Public School District to ensure that such that construction operations will not interfere with the District's start and dismissal times.

(s) With respect to snow and ice conditions on or in the Easement Area:

(i) Grantee and its employees and contractors shall place drums, barricades, and other traffic control equipment so as to minimize interference with snow-plowing

operations, and shall, as necessary, reset or replace any such devices and features that are disturbed or damaged by snow and ice control operations as soon as possible;

(ii) Except in the HDD work zone on Beach Lane, drainage frames, grates, and covers and other castings shall not be adjusted in a travel lane unless the final pavement course is to be placed prior to the onset of snow and ice weather;

(iii) Steel plates, manhole covers, and other objects shall not protrude above any traveled roadway or driveway pavement; if any of these protrusions exist in a non-travel lane prior to a snow and ice condition, then temporary asphalt ramps shall be placed so that, for every one (1) inch of rise, there is a six (6)-foot run of ramp;

(iv) All pavement cuts shall be restored to the grade of the surrounding pavement to eliminate recessed areas where snow cannot be plowed or where snow plows may snag; and

(v) Where work zone traffic control schemes require installation of single or multiple runs of temporary concrete barrier, Grantee shall remove any snow remaining along the temporary barrier.

## **ANIMAL, PLANT, AND HABITAT PROTECTION**

41. Grantee shall refer to 6 NYCRR Part 182 and <http://www.dec.ny.gov/animals/7494.html> for lists of Threatened and Endangered (“T&E”) animal species and to 6 NYCRR Part 193 for T&E plant species. Prior to the commencement of construction of the Cable, Grantee shall provide all workers with pertinent information on potential T&E species in the Project area.

42. If any T&E animal or plant species, or its associated habitat, are observed from the Easement Area, laydown yards, or any other areas where activities related to the Cable are conducted, Grantee shall immediately notify the environmental monitor to determine the appropriate actions, if any, to protect the identified species or its habitat from immediate harm, and shall also notify DPS Staff and the NYSDEC within 24 hours of such observation.

43. If any activity results in or is likely to result in an incidental take of an Endangered or Threatened species, as defined in 6 NYCRR §182, Grantee must stop work where the take occurred or is likely to occur (“Stop Work Area”) and must submit an to the NYSDEC an Endangered or Threatened Species Mitigation Plan and Implementation Agreement (“T&E



Plan/Agreement”) demonstrating proposed mitigation measures that will result in a Net Conservation Benefit to that species. Such T&E Plan/Agreement must be prepared in accordance with 6 NYCRR §182.11. Work must not recommence in the Stop Work Area until the T&E Plan/Agreement is accepted by the NYSDEC and such T&E Plan/Agreement is implemented.

44. Except as otherwise specified regarding bird species, if any T&E species, as defined in 6 NYCRR Part 182 or plant species identified under 6 NYCRR Part 193 are encountered in or on the Easement Area, access roads, marshaling yards, and any other areas where activities associated with the Cable are being conducted:

(a) Grantee shall notify the NYSDEC, Grantor, and DPS Staff within 24 hours of the encounter.

(b) To protect such T&E species or its habitat from immediate harm from activities associated with the Cable, Grantee shall secure the area where such species or its habitat exists and safely cease construction and other activities in that area until DPS Staff, in consultation with the NYSDEC and Grantor, authorizes recommencement of activities. Prior to the recommencement of construction or other activity in the secured area, Grantee shall provide all workers with pertinent information on the species encountered and indicate measures to minimize risks to the T&E species or its habitat during construction or other such activities.

45. Grantee, in consultation with the appropriate regulatory agencies, including the NYSDEC, shall develop and include in the EM&CP an Avian Management Plan for rare, threatened, and endangered (“RTE”) avian species, to address residual risk to these species, and shall thereafter comply with such Plan.

46. To minimize impacts to threatened and endangered shorebirds, no construction, maintenance, repair, restoration, or decommissioning activities shall occur within 500 feet of the southern pavement edge between Beach Lane and Wainscott Beach between April 1 and November 1 of every year.

47. To avoid potential impacts to the Northern Long-Eared Bat (“NLEB”), Grantee and its employees and contractors shall perform tree-clearing activities between December 1 and February 28, except that Grantee and its employees and contractors may perform tree-clearing activities outside of such December 1-February 28 window if they conduct, prior to any such clearing activities, roosting tree surveys in accordance with an NLEB Monitoring and Impact Minimization Plan that has been prepared for the Easement Area and the facility connecting the

Cable to the Substation in coordination with the NYSDEC and that has been included in the EM&CP.

48. At a minimum the aforesaid NLEB Monitoring and Impact Minimization Plan included in the EM&CP shall provide that:

(a) As part of any tree roosting survey, biological monitors shall identify and evaluate any potential roosting trees for the NLEB;

(b) Emergence counts (through a combination of acoustic and visual surveys) shall be taken no more than 24 hours before tree removal to confirm no NLEB roosting; and

(c) If Grantee or the NYSDEC identify roosting trees within 150 feet of the Easement Area, Grantee shall coordinate with the NYSDEC regarding any potential minimization and mitigation measures required to comply with 6 NYCRR §182 and applicable federal laws and regulations promulgated by the United States Fish and Wildlife Service.

## **WATERCOURSE AND WETLANDS PROTECTION**

49. Grantee's activities upon and within the Easement Area shall not occur within any Federal, New York State, or Grantor-regulated tidal or freshwater wetlands, and no construction materials, equipment, or vehicles shall be allowed to enter upon such wetlands.

50. Grantee shall perform all construction, operation, maintenance, restoration, and decommissioning activities in the Easement Area in a manner that avoids or minimizes adverse impacts to waterbodies, wetlands, and (a) the one hundred (100)-foot adjacent area associated with regulated freshwater wetlands; (b) the three hundred (300)-foot adjacent area associated with any regulated tidal wetlands; and (c) the one hundred (100)-foot adjacent area associated with the Grantor-regulated Wainscott Stone Road and Stephen Hands Path wetlands. Any such activities shall be performed in accordance with a Wetland Impact Minimization and Mitigation Plan that shall be included in the EM&CP.

51. Grantee shall notify DPS Staff, Grantor, the Trustees, and the NYSDEC within two (2) hours after Grantee or Grantee's employees or contractors observe or are made aware of a discharge to a wetland or waterbody resulting in a violation of NYS Water Quality Standards.

52. Grantee shall take all necessary precautions to preclude contamination of any wetland or waterbody by suspended solids, sediments, fuels, petroleum products, pesticides,

fungicides, herbicides, solvents, lubricants, epoxy coatings, paints, concrete, leachate, washings from transit mix trucks, mixers, or other devices or any other environmentally deleterious materials. If concrete batch plant operations and concrete washout areas are required for any activities in the Easement Area, (a) they shall be located a minimum of three hundred (300) feet away from any wetland or waterbody, (b) the locations of such operations and areas, and appropriate measures for avoiding adverse impacts from such operations and areas, restoring such areas upon completion of construction, installation, maintenance, and other activities in the Easement Area, and complying with local code requirements for such operations and areas shall be included in the EM&CP and complied with by Grantee.

53. Grantee shall secure and safely contain all equipment and machinery at least one hundred (100) feet landward of all wetlands and waterbodies and at least three hundred (300) feet from all tidal wetlands and waterbodies, at the end of each day, unless moving the equipment or machinery will cause additional environmental impact.

54. All mobile equipment, excluding dewatering pumps, must be fueled, repaired, and maintained in a location at least one hundred (100) feet from all wetlands and waterbodies and at least 300 feet from all tidal wetlands, any water supply wells that can be identified from publicly-available information or from information obtainable through “Freedom of Information” requests to the NYSDEC or the Suffolk County Department of Health Services (“SCDHS”), and any other water supply wells that are identified to Grantee by landowner(s) pursuant to the requirements of Paragraph 76 of this Schedule B, unless (a) such equipment fueling, repair, or maintenance activities are conducted in a manner that fully ensures there will be no impacts on any wetlands, waterbodies, or water supply wells, or (b) moving the equipment will cause additional environmental impact. Dewatering pumps operated closer than 100 feet from any wetland or waterbody, or within 300 feet of any tidal wetland or any water supply well that can be identified from publicly-available information or from information obtainable through “Freedom of Information” requests to the NYSDEC or the SCDHS, or is identified to Grantee by landowner(s) pursuant to the requirements of Paragraph 76 of this Schedule B, must be within secondary containment, constructed of impervious materials and large enough to hold the pump and accommodate refueling.

55. If it is necessary for any of the Cable to be installed on the east side of Wainscott Stone Road, wire reinforced silt mesh fencing, and not haybales, shall be used to prevent adverse impacts (e.g., from sedimentation) to wetlands.

56. To minimize the risk of introducing invasive species, the use of hay is strictly prohibited.

### **SOIL HANDLING AND EROSION CONTROL**

57. Grantee shall prepare and include in the EM&CP a detailed Soil Handling and Erosion Control Plan, which shall include, at a minimum, requirements for testing, stockpiling, reuse or removal from site, storage, erosion control for, and restoration of soils, and shall also require adequate compaction of backfill in trenches to ensure there shall be no subsidence of such backfill after repaving or other restoration of trench areas. Such Soil Handling and Erosion Control Plan shall be consistent with all State Pollutant Discharge Elimination System (“SPDES”) permits and Stormwater Pollution Prevention Plans (“SWPPPs”) applicable to construction, installation, operation, maintenance, repair, replacement, and decommissioning of the Cable, and restoration of the Easement Area.

58. Grantee and its employees and contractors shall comply with the aforesaid Soil Handling and Erosion Control Plan in connection with all their construction and other activities in the Easement Area.

59. Prior to commencement of construction in any portion of the Easement Area, Grantee shall install, and thereafter inspect daily and repair promptly, temporary erosion control measures in accordance with any and all provisions for such measures in the EM&CP and in any other storm water and erosion control plans.

60. Except for geotextiles used for road construction and temporary erosion control devices such as silt fence and silt sock, all erosion control fabric or netting used for slope or soil stabilization shall be 100% biodegradable natural product (not photodegradable fabric).

61. In all portions of the Easement Area where these measures may prove beneficial:  
(a) Topsoil shall be removed from the combined width of the subsoil stockpile area, trench, construction assembly, and traffic zones;

- (b) The depth of such topsoil removal shall include all of the “A” horizon down to the beginning of the subsoil “B” horizon, generally not to exceed a maximum of 12 inches;
- (c) All removed topsoil shall be stockpiled separate from other excavated materials;
- (d) The exposed surface of the subsoil shall be the work surface;
- (e) All topsoil material shall be stripped, stockpiled, and, upon completion of construction/installation, returned, in its natural sequence, to restore the original soil profile;
- (f) During the clearing/construction phase, site-specific depths of topsoil stripping shall be monitored by Grantee; and
- (g) Where construction in the Easement Area includes cut-and-fill of the soil profile across grades, all topsoil shall be stripped and separately stockpiled, where practical, on the upslope edge of the Easement Area.

62. Except where otherwise required to comply with design specifications, to restore roadway and shoulder surfaces, and to reuse uncontaminated excavated materials, all fill material used during construction, installation, maintenance, repair, replacement, removal, decommissioning, and restoration activities in the Easement Area shall consist of clean soil, sand, and/or gravel that is free of asphalt, slag, broken concrete, demolition debris, garbage, household refuse, tires, woody materials, including tree or landscape debris, and metal objects, and shall be suitably compacted to prevent post-placement settlement or subsidence of same.

63. Grantee and its employees and contractors shall use best efforts to use only fill materials that are visually free of invasive species.

### **PETROLEUM AND HAZARDOUS WASTE PROVISIONS**

64. Except as may be specifically permitted herein, there shall be no storage, release, disposal, or burial of hazardous chemicals, materials, or wastes (a) upon or within the Easement Area and (b) upon or within three hundred (300) feet of any stream, waterbody, or Federal, New York State, or Grantor-regulated wetland.

65. Stationary fuel tanks and hazardous chemical storage shall be appropriately contained and shall be located a minimum of 300 feet from all streams, waterbodies and wetlands, unless adequate secondary containment, constructed of impervious material(s) and containing at

least 110% of the volume stored, is provided, in which case such storage can occur within three hundred (300) feet of such resources.

66. Uncontaminated drill cuttings and drilling muds from drilling processes that utilize only air, water, or water-based drilling fluids are considered construction and demolition debris under 6 NYCRR Part 360 (Solid Wastes) and may be disposed of at either construction and demolition debris landfills or at municipal solid waste (“MSW”) landfills. Drill cuttings from drilling processes that utilize polymer-based mud containing mineral oil lubricant are considered contaminated and may only be disposed of at MSW landfills. Dewatered drilling muds including polymer-based mud containing mineral oil lubricant may only be disposed of at MSW landfills.

67. Chemicals and petroleum products shall not be stored, mixed, or loaded, nor shall equipment be refueled, within three hundred (300) feet of any watercourse or wetland.

68. Refueling within 100 feet of wetlands or streams shall be allowed only under the following conditions, which shall be specified in the EM&CP:

(a) Refueling of handheld equipment will be allowed within one hundred (100) feet of wetlands or streams only when secondary containment is used; such secondary containment shall be constructed of an impervious material capable of holding the handheld equipment to be refueled and at least 110% of the fuel storage container capacity.

(b) Fuel tanks of handheld equipment shall be initially filled in an upland location greater than one hundred (100) feet from wetlands or streams in order to minimize the amount of refueling within these sensitive areas.

(c) Crews shall have sufficient spill containment equipment on hand at the secondary containment location to provide prompt control and cleanup in the event of a release of fuel or other hazardous substance.

(d) Refueling of other than handheld equipment will be allowed within one hundred (100) feet of wetlands or streams only when necessary to maintain continuous operations and where removing equipment from a sensitive area for refueling would increase adverse impacts to the sensitive area. Fuel tanks of such equipment shall be initially filled in an upland location greater than one hundred (100) feet from wetlands or streams in order to minimize the amount of refueling within one hundred (100) feet of wetlands and streams. All refueling of equipment within one hundred (100) feet of wetlands or streams shall be conducted under the direct supervision of an environmental monitor. Absorbent pads or portable basins shall be deployed under the refueling

operation. In addition, the fuel nozzle shall be wrapped in an absorbent pad and the nozzle shall be placed in a secondary containment vessel (e.g., a bucket) when moving the nozzle from the fuel truck to the equipment to be refueled. All equipment operating within one hundred (100) feet of a wetland or stream shall have sufficient spill containment equipment on board to provide prompt control and cleanup in the event of a release of fuel or other hazardous substance.

69. Grantee shall comply with the following spill requirements at all times:

(a) Grantee shall include in the EM&CP a Spill Prevention, Control, and Countermeasure (“SPCC”) Plan to minimize the potential for unintended releases of petroleum and other hazardous chemicals during construction, installation, operation, maintenance, and decommissioning of the Cable.

(b) All non-passenger vehicles shall be equipped with a spill kit that is appropriate for the volume of fuel carried by the vehicle. Any leaks must be stopped and cleaned up immediately.

(c) Any and all spillage of fuels, waste oils, other petroleum products, and/or hazardous materials shall be reported to the NYSDEC’s Spill Hotline (1-800-457-7362) within two hours of the initial spillage, in accordance with the NYSDEC’s Spill Reporting and Initial Notification Requirements Technical Field Guidance ([http://www.dec.ny.gov/docs/remediation\\_hudson\\_pdf/1x1.pdf](http://www.dec.ny.gov/docs/remediation_hudson_pdf/1x1.pdf)).

(d) Grantee shall report all spills encountered, or learned of, regardless of whether Grantee is the spiller, to both the NYSDEC Spill Hotline and DPS Staff, in accordance with all Federal and State regulations, and provide a copy of such notification contemporaneously to Grantor and any and all affected property owners.

70. Grantee acknowledges that Grantor will not undertake or accept financial responsibility for any remediation or similar activity with respect to the removal of hazardous wastes (6 NYCRR Parts 373 and 374) and non-hazardous solid industrial wastes (6 NYCRR Part 360), which, under law, would not be required at the time but for the accommodation of the Cable within the Easement Area. Grantee shall bear such responsibility and associated costs.

71. Grantee shall comply with the Initial Hazardous Waste and Petroleum Work Plan attached to the Joint Proposal.

72. Grantee shall provide, in the EM&CP, a Final Hazardous Waste and Petroleum Work Plan for testing and treatment and/or disposal of soil and groundwater in the Entire Easement

Area, as described in subparagraphs (a)-(d), below, and shall comply with such Plan. The findings from implementing the Initial Hazardous Waste and Petroleum Work Plan, described above, shall inform the requirements for the Final Hazardous Waste and Petroleum Work Plan. Grantee shall provide the Final Hazardous Waste and Petroleum Work Plan to DPS Staff and the NYSDEC, for review and comment, at least forty-five (45) days prior to filing the EM&CP. The Final Hazardous Waste and Petroleum Work Plan shall be consistent with NYSDEC guidance, including, but not limited to, the Division of Environmental Remediation's Technical Guidance for Site Investigation and Remediation (DER-10), and shall, at a minimum:

(a) Include, as an exhibit, a report of the Initial Hazardous Waste and Petroleum Work Plan consistent with reporting requirements of DER-10;

(b) Provide protocols for sampling to be completed during construction, including sampling if visibly-contaminated material is encountered or if groundwater is encountered in areas that were not previously sampled as part of the Initial Hazardous Waste and Petroleum Work Plan;

(c) Identify location(s) where all material exceeding NYSDEC standards, criteria, or guidance values will be disposed; and

(d) Identify source(s) of clean backfill (clean sand, gravel, or soil) to be used wherever contaminated material is encountered and removed.

73. Grantee shall notify all fire department and emergency management services that serve the Easement Area of the presence of any hazardous chemicals and waste on or in the Easement Area.



## **DEWATERING**

74. Grantee shall perform no permanent water withdrawal activities, and shall neither install nor use any permanent dewatering equipment or facilities, in connection with the Project, unless authorized by Grantor, in writing, prior to installation or use (for purposes of this paragraph, “permanent” shall refer to activities, equipment, or facilities that (i) are undertaken or used, except as set forth below, for more than 30 calendar days at a single location, or (ii) continue beyond the completion of construction of the Cable). The EM&CP shall identify any temporary water withdrawal activities (including, but not limited to, dewatering activities extending for more than 30 days, as set forth in the last sentence of this paragraph) that Grantee anticipates will be regulated pursuant to 6 NYCRR §§601.3 and 601.6, including dewatering directly from the excavation in the Easement Area not meeting the exemption criteria pursuant to 6 NYCRR §601.9(o). The EM&CP shall also provide the information outlined in 6 NYCRR §601.10 for any such activities. Notwithstanding any other provision of this paragraph, dewatering activities (a) where horizontal directional drilling or another trenchless installation method takes place or (b) for construction of the interconnection between the Cable and the Substation may be conducted for more than 30 days provided that such dewatering activities are fully completed and discontinued at the end of the construction activities that require dewatering.

75. The EM&CP shall identify the locations, if any, where Grantee anticipates it will install one or more wells to conduct temporary dewatering activities for Grantee’s construction activities in the Easement Area, and specifically identify any such wells or group of wells on any one property that will draw in excess of 45 gallons per minute (with such capacity to be based on the capacity of the pumps to be installed, not on the contemplated draft). The EM&CP shall also provide the substantive information outlined in 6 NYCRR §602.3(c)-(d) for any such dewatering activities.

76. Grantee shall provide a Dewatering Plan to DPS Staff, Grantor, and the NYSDEC, for review and comment, at least forty-five (45) days prior to filing the EM&CP. The Dewatering Plan shall be filed with the EM&CP and shall include, at a minimum:

(a) groundwater sampling results from the Initial Hazardous Waste and Petroleum Work Plan, which is attached as an appendix to the Joint Proposal;

(b) evaluation of any site that is known by either Grantee, Grantor, or the NYSDEC to be contaminated to determine if proposed dewatering operations will influence or draw in any contaminants from any such sites, and the expected maximum concentrations of the contaminants (for the purposes of this paragraph, “known” means that such site has been noted in any NYSDEC database of contaminated sites, including spill sites [open and closed], Inactive Hazardous Waste Disposal Sites [all classifications], Voluntary Cleanup Program Sites, and Brownfield Cleanup Program Sites, and the term “site” includes all areas of offsite contamination attributed to or downgradient of the site);

(c) locations where dewatering will be required, including the anticipated depth of groundwater and the installation depth of the Cable and vaults at those locations;

(d) measures, including, but not limited to, sheeting, shoring, and trenchboxing, that will be utilized, during construction, to minimize the need for dewatering and/or the extent, intensity, and/or volume of dewatering required;

(e) the method of dewatering, including the number and depth of the well points (if applicable);

(f) the pump capacity, rate, and estimated daily pumpage and duration of dewatering for each location requiring dewatering, irrespective of whether such pumpage equals or exceeds 45 gallons per minute;

(g) the anticipated drawdown of the water table and the area of influence of each dewatering point or group of dewatering points (as outlined in 6 NYCRR §602.3[c]-[d] or any successor to such regulation in effect at the Commencement of Construction and determined in accordance with generally-accepted practice in the field of water supply well analysis at the Commencement of Construction), irrespective of whether the pumpage at such dewatering point or group of dewatering points equals or exceeds 45 gallons per minute;

(h) the location(s) of all water supply wells that can be identified from publicly-available information or from information obtainable through “Freedom of Information” requests to the NYSDEC or the SCDHS, or that are identified to Grantee by landowner(s) in response to inquiries from Grantee, which inquiries shall be made by Grantee, by certified mail, to the owners of all lands located within 500 feet of the dewatering locations, not later than six (6) months prior to the start of dewatering activities at each such location, and an evaluation of whether the dewatering pumping will affect water quality or quantity in the water supply wells (as outlined in

6 NYCRR §602.3[c]-[d] or any successor to such regulation in effect at the Commencement of Construction and determined in accordance with generally-accepted practice in the field of water supply well analysis at the Commencement of Construction);

(i) if uncontaminated water from dewatering operations will be discharged to groundwater or surface water:

(i) a map showing proposed discharge location points;

(ii) if discharging to a storm drain or recharge basin, confirmation that these drainage systems are designed to handle the proposed rate for the duration of the discharge and that the substantive requirements for all state, county, and Grantor approvals are being met for such discharges;

(iii) if discharging to a storm drain, identification of the ultimate surface water outfall location;

(iv) if discharging to an existing recharge basin or creating a new recharge basin, evaluation of mounding effects to ensure that mounding does not adversely affect any surrounding properties and underground structures (as outlined in 6 NYCRR §602.3[c]-[d]);

(v) if discharging to a facility within the Town of East Hampton that recharges to groundwater, identification of the location(s) of any water supply wells that can be identified from publicly-available information or from information obtainable through “Freedom of Information” requests to the NYSDEC or the SCDHS, or that are identified to Grantee by landowner(s) in response to inquiries from Grantee, which inquiries shall be made by Grantee, by certified mail, to the owners of all lands located within 500 feet of the discharge location(s), not later than six (6) months prior to the start of such discharging activity(ies), and evaluation of whether the discharge will affect water quality or quantity in any of such water supply well(s) (as outlined in 6 NYCRR §602.3[c]-[d] and determined in accordance with generally-accepted practice in the field of water supply well analysis at the Commencement of Construction); and

(vi) best management practices to prevent erosion and sedimentation from dewatering operations;

(j) maps of areas requiring dewatering with wells (if applicable), and maps showing the location(s) of all water supply wells that can be identified from publicly-available information or from information obtainable through “Freedom of Information” requests to the NYSDEC or the SCDHS, or that are identified to Grantee by landowner(s) in response to inquiries

from Grantee, which inquiries shall be made by Grantee, by certified mail, to the owners of all lands located within 500 feet of the dewatering locations, not later than six (6) months prior to the start of dewatering activities at each such location;

(k) confirmation that dewatering operations conducted using wells will be carried out by a well driller that is duly registered in accordance with Environmental Conservation Law (“ECL”) § 15-1525;

(l) effluent limits provided by the NYSDEC based on applicable regulations, standards, criteria, and guidance values;

(m) a treatment and disposal plan for contaminated water generated from the dewatering operations;

(n) a sampling plan that will be followed during dewatering operations of influent and effluent; and

(o) a sampling plan that will be followed in the event dewatering is required in locations that were not anticipated.

77. Grantee shall comply with the terms and provisions of the aforesaid Dewatering Plan.

78. Grantee shall comply with the following conditions for all dewatering operations:

(a) Grantee shall utilize measures, during construction, including, but not limited to, sheeting, shoring, and trenchboxing, that will minimize the need for dewatering and/or the extent, intensity, and/or volume of dewatering required;

(b) to the extent dewatering operations include pumpage that meets or exceeds 45 gallons per minute in any location, Grantee shall comply with the substantive provisions of 6 NYCRR Part 602 notwithstanding any waivers or exemptions that may have been granted from such provisions by the Article VII Certificate or otherwise;

(c) dewatering operations shall be pumped into one or more frac tanks or similar containers;

(d) if dewatering operations occur in separate locations, a separate container shall be used for water from each location;

(e) a sample of the water from each container shall be tested for emerging contaminants according to the most recent version of the NYSDEC’s Guidelines for Sampling and Analysis of 1,4-Dioxane and PFAS;

(f) if the quality of water from any container is found to exceed NYSDEC standards, criteria, or guidance values for PFAS in effect at the time of dewatering operations, the water from each such container shall be treated with granular activated carbon (“GAC”) or another treatment method approved by NYSDEC and tested, in accordance with then-current NYSDEC protocols for PFAS testing, to confirm that the treated water does not contain PFAS above NYSDEC standards, criteria, or guidance values for PFAS in effect at the time of dewatering operations before the water is discharged;

(g) water generated from dewatering operations that exceeds NYSDEC standards, criteria, or guidance values in effect at the time of dewatering operations shall be treated and disposed of in compliance with the approved Dewatering Plan; and

(h) best management practices shall be used to prevent erosion and sedimentation from discharge operations.

## **STORMWATER MANAGEMENT**

79. Grantee shall develop the EM&CP in accordance with the Stormwater Pollution Prevention Plan (“SWPPP”) requirements set forth in the NYSDEC’s State Pollutant Discharge Elimination System (“SPDES”) General Permit for Stormwater Discharges from Construction Activity in effect at the time of filing of the EM&CP.

80. The Dewatering Plan included in the EM&CP, as set forth above, shall include the following information, for Grantor’s review and approval, prior to any proposed discharge into Grantor’s drainage system by reason of Grantee’s activities in the Easement Area:

(a) The proposed method of conveyance of stormwater into Grantor’s drainage system;

(b) The proposed flow rate of discharge of such stormwater to Grantor’s drainage system;

(c) The proposed duration of such discharge; and

(d) Sampling of such proposed discharge.

81. Grantor shall have the right to terminate or restrict discharge flow conveyed into Grantor’s drainage system, resulting from Grantee’s activities in the Easement Area, during and after any storm event to prevent overburdening of Grantor’s drainage system.

## **GROUNDWATER AND WELL PROTECTION**

82. Within one hundred twenty (120) days prior to the commencement of construction along each Grantor-owned road, Long Island Rail Road (LIRR) right-of-way, or portion of Grantor-owned road or LIRR right-of-way, included in the Cable route, as such route is set forth in Schedule A to the Easement Agreement, (a) Grantee shall determine the depth of groundwater beneath such proposed construction by means of field testing at monitoring wells installed, in compliance with the soil boring requirements of Paragraph 83, at intervals of five hundred (500) feet or less along such entire Cable route, and also at each location where any vault or other Cable component is installed ten (10) feet or more beneath the pre-existing ground surface (i) more than 100 feet from any of the foregoing interval test locations, and (ii) more than 100 feet from any other field test location for such vault or other Cable component; and (b) wherever the groundwater depth at any location along the Cable route, as determined by the monitoring well or wells nearest to such location, shall be less than four (4) feet below the proposed maximum depth of construction/installation activities for the Cable (including associated vaults and other components) at that location (as set forth in Grantee's construction plans, copies of which shall be provided to Grantor), Grantee shall test the groundwater, using the monitoring well, previously installed pursuant to this Paragraph and Paragraph 83, below, that is nearest to such location, and, if Grantor's or Grantee's consultants determine that specific site conditions (e.g., the presence of a topographical low point along the alignment) dictate additional sampling, using a new well installed at such location, or within 150 feet of such location if the location is not accessible, for the presence of Per- and Polyfluoroalkyl Substances; 1,4-Dioxane; all substances in the EPA Method 624 List plus MTBE and Naphthalene, analyzed in a manner consistent with EPA Method 624 plus MTBE and Naphthalene; DEET; Dichlorvos; Didealkylatrazine; Imidachlopid; Aldicarb; Dacthal; and Simazine.

83. In connection with the groundwater depth and quality testing described in Paragraph 82, above, Grantee shall perform a continuous soil boring so as to document soil composition, pursuant to the Unified Soil Classification System, at each testing location, shall perform such groundwater quality testing in accordance with the NYSDEC's DER-10 Technical Guidance and the January 2020 NYSDEC "Guidelines for Sampling and Analysis of PFAS under

NYSDEC's Part 375 Remedial Programs," or any updates or replacements of such guidelines in effect at the time of testing, and shall provide Grantor the results of all groundwater depth, soil composition, and groundwater quality tests that are performed (including, for each test performed, the location and date of the test, the person[s] and laboratory[ies]who performed the test, and the methodology used to perform the test). Should any such test of groundwater quality reveal concentrations of any of the above contaminants exceeding the NYSDEC's Class GA ambient water quality standards or guidance, as set forth in 6 NYCRR Part 703 ("Surface Water and Groundwater Quality Standards and Groundwater Effluent Limitations") or any successor regulation in effect at the Commencement of Construction, the thresholds set forth in the January 2020 NYSDEC "Guidelines for Sampling and Analysis of PFAS under NYSDEC's Part 375 Remedial Programs," or any other applicable New York State or Federal drinking water standards in effect at the time of testing, Grantee shall not commence any such construction activities until Grantee shall have (a) reported to Grantor, as required above, all such groundwater depth, soil composition, and groundwater quality test results (including, for each test performed, the location and date of the test, the person[s] and laboratory[ies]who performed the test, and the methodology used to perform the test); and (b) demonstrated to Grantor's satisfaction that the proposed construction activities, including, but not limited to, any dewatering activities, at the location of the test in question will comply with all applicable laws and regulations governing the concentration of contaminants in the groundwater at such location and will not significantly adversely affect water quantity (i.e., by reducing the level of groundwater within any such well by more than one foot) or quality (i.e., by causing an exceedance or a significant increase [i.e., an increase of one order of magnitude or more, or, for substances now or hereafter known to be human carcinogens, as designated in the latest report of the United States National Toxicology Program, an increase of 10% or more] in any existing exceedance of Class GA ambient water quality standards) in any water supply wells within 500 feet of such location that are located within the extent of influence, as determined by a zone-of-influence/capture analysis, performed in accordance with generally-accepted practice in the field of water supply well analysis at the Commencement of Construction. In conjunction with such reporting, for each location Grantee shall report to Grantor the method used to perform the zone-of-influence/capture analysis, the data used to perform the analysis, including identification of the closest water supply well(s) determined in accordance with Paragraph 76, above.

84. Grantee may, in its discretion, perform the foregoing continuous soil boring at any time prior to commencement of construction, including during periods when construction activities are otherwise prohibited, and install and maintain wells for purposes of meeting the groundwater level and sampling requirements of Paragraphs 76 and 82 of this Schedule B. Grantee may also perform the groundwater sampling and measurement activities, as well as the zone-of-influence-measurement-related activities necessary to comply with the requirements of Paragraphs 76, 82, and 83 of this Schedule B, at any time during which construction activities are otherwise prohibited. In any circumstance, Grantor shall in good faith facilitate and expedite the process by which Grantee obtains the Grantor approvals necessary for Grantee to perform its obligations under Paragraphs 76, 82, and 83 of this Schedule B and this paragraph.

85. If, pursuant to Paragraph 83, above, Grantee identifies any well or wells that may be affected by proposed construction activities, Grantee may satisfy its obligation, under Paragraph 83, above, to demonstrate no adverse effect on such well or wells by sampling the water quality and quantity of such well or wells prior to commencement of construction, and resampling the water quality and quantity of such well or wells, within thirty (30) days after completion of construction activities, within the distances from such wells specified in Paragraph 83, above. If any such post-construction sampling shows that the water in the well or wells either (a) exceeds, or exceeds to a significantly greater degree (i.e., by one order of magnitude or more, or, for substances now or hereafter known to be human carcinogens, as designated in the latest report of the United States National Toxicology Program, by 10% or more) any one or more Class GA ambient water quality standards than it did pre-construction, or (b) has significantly dropped in level (i.e., by more than one foot), then, except in the case(s) of a well or wells with water that did not comply with the GA standards pre-construction, Grantee shall, within 60 days after any such adverse sampling, pay the affected property owner for the actual costs of replacing the affected well or wells with public drinking water supply service provided that such affected property owner elects to replace the affected well or wells with public drinking water supply service. With respect to any well with water that did not comply with the Class GA ambient water quality standards pre-construction and either (i) exceeds one or more additional Class GA standards post-construction, or (ii) shows a significant increase (i.e., one order of magnitude or more, or, for substances now or hereafter known to be human carcinogens, as designated in the latest report of the United States National Toxicology Program, 10% or more) in any preconstruction exceedance of a Class GA



standard, Grantee and Grantor shall, within 60 days after any such adverse sampling, each pay the affected property owner for fifty percent (50%) of the actual costs of replacing the affected well or wells with public drinking water supply service, provided that such affected property owner elects to replace the affected well or wells with public drinking water supply service.

86. Grantee shall not have any obligation to perform the foregoing sampling of potentially-affected wells for any well where the owner(s) of the well does not agree to provide Grantee access, and shall not have any obligation to pay the actual costs of providing public drinking water supply service if the owner(s) elects or elect not to allow pre-construction testing or not to replace the affected well(s).

87. Provided Grantee makes the demonstration required by subsection (b) of Paragraphs 83, above, by showing no specified effect, or commits to the well replacement obligations of Paragraph 85, above, nothing in Paragraphs 83 through this paragraph shall be construed as preventing Grantee from commencing construction. Grantor agrees to timely review of Grantee's submittals made pursuant to Paragraphs 76 and 82 through 87 of this Schedule B such that the review by Grantor does not delay the commencement of construction.

88. If environmental or engineering constraints require siting of the Cable within one hundred (100) feet of an existing, active drinking water supply well, Grantee shall perform pre- and post-construction turbidity testing through a New York State Department of Health ("NYSDOH") certified laboratory, provided that Grantee is granted access by the affected property owner for such testing. The results of such tests and reports shall be made available to Grantor upon Grantor's request.

89. Should such NYSDOH-certified laboratory testing conclude that the water turbidity from an existing, active drinking water supply well was less than the New York State standard of 5 Nephelometric Turbidity Units prior to construction of the Cable, but failed to meet such standards post-construction, Grantee shall cause a new water well to be constructed, in consultation with the property owner, at least one hundred (100) feet from the Cable, as practicable given siting constraints and landowner preferences. Such protocols shall be included in the EM&CP.

## **PROTECTION OF OTHER UTILITY FACILITIES**

90. Grantee shall design, engineer, construct, and install the Cable so as to be fully compatible with the operation and maintenance of any nearby electric, gas, telecommunication, cable, internet, water, sewer, and related facilities, and details of such nearby facilities and measures to protect the integrity, operation, and maintenance of those facilities shall be included in the EM&CP. Grantee shall use best efforts to avoid any thermal or capacity derating of any existing or proposed Long Island Power Authority (“LIPA”) transmission and distribution cables or adjacent to the Easement Area.

### **VEGETATION, TREE, PEST, AND INVASIVE SPECIES MANAGEMENT**

91. Grantee shall prepare and include in the EM&CP a Vegetation Management Plan (which shall include a Tree Protection Plan). At least forty-five (45) days prior to filing the EM&CP, Grantee shall submit the Vegetation Management Plan, for review and comment, to DPS Staff, the NYSDEC, Grantor, and the Trustees. Prior to filing the Vegetation Management Plan with any proposed EM&CP, Grantee shall explain to Grantor, in writing, why any changes suggested by Grantor were not incorporated in the Vegetation Management Plan.

92. Grantee shall comply with all terms and conditions of the Vegetation Management Plan filed with the EM&CP, except for any such terms of conditions that are inconsistent with those set forth in this Schedule B.

93. Grantee shall use best efforts to maximize the use of mechanical vegetation management techniques and avoid use of pesticides, fungicides, and herbicides. Where, despite such best efforts, use of pesticides, fungicides, and herbicides is unavoidable, Grantee and its employees and contractors shall use only organic pesticides, fungicides, and herbicides that are specified in the EM&CP, provided such use is consistent with the labeling of such products.

94. Grantee shall comply with the currently-effective NYSDEC General Permit for Vegetation Maintenance for pesticide applications in regulated wetlands and the 100-foot adjacent areas associated with those wetlands.

95. In using any pesticides, fungicides, or herbicides in the Easement Area, Grantee shall use only certified applicators who are familiar with and understand the applicable provisions of the Article VII Certificate and the most recent version of the aforesaid Vegetation Management Plan.

96. All trees over four (4) inches in diameter (measured four feet above ground) and shrubs over four feet in height that are damaged or destroyed by Grantee's activities in the Easement Area, including, but not limited to, clearing, construction, installation, operation, maintenance, repair, replacement, or decommissioning of the Cable, or restoration of the Easement Area following any of the foregoing activities, regardless of where such trees and shrubs are or were formerly located, shall be, at Grantee's sole expense, and, as designated by Grantor or any affected property owner, easement holder, or license holder, either (i) relocated by Grantee, or (ii) replaced by Grantee with equivalent-type and comparably-sized trees or shrubs, subject to the provisions of 6 NYCRR Part 575 (Prohibited and Regulated Invasive Species) , except where:

(a) equivalent-type or comparably-sized replacement trees or shrubs would interfere with proper clearing, construction, operation, or maintenance of or for the Cable;

(b) such relocation or replacement would be contrary to sound management practices or to any approved Vegetation Management Plan applicable to the Cable or

(c) a property owner, easement holder, or license holder, on whose land or easement or license area the damaged or destroyed trees or shrubs are or were formerly located declines such relocation or replacement.

97. There shall be no clearing of natural vegetation in connection with Grantee's activities on or adjacent to the Easement Area except as shall be provided in the Vegetation Management Plan and with respect to vegetation that poses a hazard or hindrance to Grantee's construction and/or operation of the Cable.

98. Grantee shall prepare and include in the EM&CP an Invasive Species Control and Management Plan in accordance with the applicable requirements of ECL Article 9, 6 NYCRR Parts 575 and 663, and the specifications attached to the Joint Proposal.

99. Forty-five (45) days prior to filing the EM&CP, Grantee shall submit the Invasive Species Control and Management Plan, for review and comment, to DPS Staff, the NYSDEC, Grantor, and the Trustees.

100. Grantee shall comply with the terms and provisions of the aforesaid Invasive Species Control and Management Plan at all times during the term of the Easement Agreement.

101. To minimize the risk of introducing invasive species, use of hay and haybales is strictly prohibited during Grantee's activities in the Easement Area.

## **AIRBORNE DUST AND DEBRIS CONTROL**

102. Grantee shall take appropriate measures, as outlined in the EM&CP, to minimize fugitive dust and airborne debris from construction and other activities. Except where such actions may create ice, exposed soils and roadways shall be wetted, as needed, during extended dry periods to minimize dust generation. To the extent practicable, water for dust control shall come from municipal water supplies/sources. If contamination in the ground is detected during construction of the Cable and/or the facility connecting the Cable to the Substation, and such contamination is of the kind that will lead to volatilization or off-gassing of such contamination or chemical constituents thereof, Grantee shall contact the New York State Department of Health (“NYSDOH”), the NYSDEC, and DPS Staff prior to further disturbance. Additionally, Grantee shall conform to practices and procedures described in the DER-10/Technical Guidance for Site Investigation and Remediation and the NYSDOH Generic Community Air Monitoring Plan (“CAMP”), to the extent applicable.

## **LIGHTING PROVISIONS**

103. Grantee shall include, in the EM&CP, a Lighting Plan, which Plan shall include, at a minimum:

- (a) security lighting needs at the Substation and switchyard sites, and any exterior equipment storage yards;
- (b) plan and profile figures to demonstrate the lighting area needs and proposed lighting arrangement at the Substation, switchyard sites, and any exterior equipment storage yards;
- (c) lighting designed to provide safe working conditions at appropriate locations;
- (d) an explanation of how all exterior lighting shall avoid off-site lighting effects, by, at a minimum:
  - (i) using task lighting only as needed and as appropriate to perform specific installation, maintenance, repair, or emergency-response tasks;
  - (ii) designing and using task lighting that is capable of being activated or shut off by manual or auto-shut off switch rather than by motion detection;

(iii) requiring full cutoff fixtures, with no drop-down optical elements (that can spread illumination and create glare) for all permanent exterior security lighting; and

(e) manufacturer's cut sheets of all proposed lighting fixtures.

104. Grantee shall comply with the aforesaid Lighting Plan.

### **PROTECTION OF CULTURAL, HISTORIC, AND ARCHAEOLOGICAL RESOURCES AND HUMAN REMAINS**

105. Grantee shall not undertake construction or other ground-disturbing activities in previously-undisturbed areas where archeological surveys have not been completed until such time as the appropriate authorities, including the New York State Office of Parks, Recreation, and Historic Preservation ("OPRHP") and DPS Staff, have reviewed the results of any required historic properties and archeological surveys. After review by OPRHP and DPS Staff and before Grantee undertakes construction or other ground-disturbing activities, Grantee shall provide Grantor the results of such historic properties and archaeological surveys, subject to OPRHP's discretion to withhold, in whole or in part, any information contained in such surveys pursuant to 54 U.S.C. §307103 and Title 9 NYCRR Part 427.8.

106. Should any archeological material, feature, or resource be encountered during construction or other ground-disturbing activities in or adjacent to the Easement Area, and continuing construction or other ground-disturbing activities in the immediate vicinity (within 150 feet) of such material, feature, or resource would be incompatible with the objective of preserving the quality and integrity of the material, feature, or resource, Grantee shall stabilize the area and cease all ground-disturbing activities in the immediate vicinity (within 150 feet) of the encountered material, feature, or resource and protect such material, feature, or resource from further damage. The restricted area shall extend from the maximum discernable limit of the archaeological material, feature, or resource. The only ground-disturbing activities that may occur within such restricted area prior to the notifications set forth below are those necessary for immediate stabilization of the exposed archaeological material, feature, or resource. Grantee shall flag, fence off, or securely cover with steel plates the location of the encountered archaeological material, feature, or resource and take reasonable measures to ensure security of such location. Within twenty-four (24) hours after the first encounter of such archaeological material, feature, or resource, Grantee shall notify and consult with DPS Staff and the OPRHP to determine the best

course of action. Any archaeological material, feature, or resource that is encountered during a weekend shall be protected until DPS Staff and the OPRHP are notified of the encounter. No construction activities shall be permitted in the vicinity (within 150 feet) of the encountered material, feature, or resource until such time as the significance of the material, feature, or resource has been evaluated by the OPRHP and the need for and scope of impact mitigation has been determined by DPS Staff, in consultation with the OPRHP and Grantee. Grantee may engage qualified archaeologists to assist in preliminary visual assessments and documentation, consultations with the OPRHP and DPS Staff, and development of appropriate treatment/mitigation measures.

107. Should human remains or evidence of human burials be encountered during the conduct of archaeological data recovery fieldwork or during activities on or in the Easement Area, all work in the immediate vicinity (within 150 feet) of the encountered remains or evidence shall be halted immediately to allow for the remains or evidence to be protected from further disturbance. Immediately after such encounter, Grantee shall notify and consult with DPS Staff and the OPRHP. Grantee shall ensure that human remains are treated in accordance with the OPRHP's Human Remains Discovery Protocol (dated August 2018).

108. Grantee shall ensure that all archaeological or remains-related encounters and their handling are reported in the status reports summarizing Grantee's construction activities. Grantee shall provide Grantor copies of such status reports, subject to the OPRHP's discretion to withhold, in whole or in part, any information contained in such status reports pursuant to 54 U.S.C. §307103 and Title 9 NYCRR Part 427.8.

109. Grantee shall have a continuing obligation throughout its activities on and within the Easement Area to respond promptly to complaints of negative archeological impacts and, if necessary, to mitigate any actual impacts through on-site design modifications and off-site mitigation techniques developed in consultation with the OPRHP.

## **POST-CONSTRUCTION RESTORATION AND REMEDIATION**

110. Following construction and installation of the Cable in the Easement Area and any repair, replacement, or removal of the Cable, Grantee and its employees and contractors shall restore all areas, pavement, curbs, driveways, sidewalks, drainage and erosion control structures

and measures, vegetation, landscaping, and other features disturbed during such construction, installation, repair, replacement, or removal of the Cable to their pre-construction contours and condition, or improved over their pre-construction condition, as detailed in the EM&CP and as further specified in this Schedule B.

111. In the event that, during the term of the Transmission Easement, there is any settlement or subsidence of backfilled trenches in the Easement Area, or any settlement, subsidence, or other defect or failure of repaired or replaced pavement, sidewalks, and/or other features, structures, or facilities in or adjacent to the Easement Area, and the work on such backfilling of trenches, pavement, sidewalks, and or other features, structures, or facilities was performed by Grantee or its employees or contractors, Grantee shall, at its own cost, remediate such settlement, subsidence, or other defects or failures so as to restore all surfaces, roadways, sidewalks, and other structures and features upon and within the Easement Area to their conditions prior to the start of construction of the Cable. Grantee's repair requirement shall not apply if the settlement, subsidence, defect or failure occurs solely as a result of excessive use or wear and tear by others.

112. Grantee shall use best efforts to ensure that all restoration activities are completed within one hundred and twenty (120) days of the completion of construction of the Cable, exclusive of (i) construction window restrictions (ii) other construction restrictions specified herein; (iii) weather conditions preclude planting activities; and (v) seasonal restrictions for paving.

113. No restoration or remediation activities shall take place between May 1 and September 30 of any year unless Grantor consents to such out-of-season work by a duly-adopted resolution of Grantor's Town Board or such activities are necessary to address an emergency situation or to make emergency repairs.

### **ELECTROMAGNETIC FIELD MONITORING**

114. Grantee shall conduct an off- and on-shore study of electromagnetic fields ("EMF") (the "EMF Study") as detailed below and in a plan included as part of the EM&CP. The EMF Study shall occur prior to and during commercial operation of the Wind Farm and be performed no later than thirty (30) days after the Project has achieved Commercial Operation. The EMF measurements will establish the relationship between EMF level and Wind Farm output. Grantee

shall file a written report of the results of the EMF Study with the PSC Secretary and the Grantor within six (6) months of the conclusion of the measurements. Such written report shall include a tabular summary of the known biological sensitivities of marine species common in the Project area.

115. As part of the EMF Study, measurements of EMF shall be taken every one thousand (1,000) feet along the route of the Cable within the Easement Area.

116. Should the EMF Study described in this Schedule B indicate that the EMF from the Cable exceeds or otherwise fails to comply with the EMF guidelines and standards established by the PSC in Opinion No. 78-13, issued June 19, 1978, or the Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities, issued September 11, 1990, or the PSC's most recent electric and magnetic field guidelines and standards in effect at the time the PSC grants the Article VII Certificate, Grantee shall immediately investigate the cause(s) of all such exceedances or non-compliances and resolve all such exceedances or non-compliances



## **DECOMMISSIONING**

117. Grantee shall prepare and include in the EM&CP a Decommissioning Plan for the Project. Grantee shall provide the Decommissioning Plan to Grantor, the Trustees, DPS Staff, the NYSDEC, the New York State Office of General Services (“NYSOGS”), and the NYSDOS, for review and comment, at least forty-five (45) days prior to filing the EM&CP. The Decommissioning Plan shall include (i) the anticipated life of the Project; (ii) estimates of the decommissioning costs (in current dollars) for each of (a) that portion of the Project located between the boundary of New York State territorial waters and the mean high water line on Wainscott Beach (the “New York State Project Area”); and (b) those portions of the Project between the mean high water line on Wainscott Beach and the sea-to-shore Transition vault for the Cable on Beach Lane, the Cable between the said transition vault and the facilities connecting the Cable to the Substation, and the said connection facilities (the “Local Project Area”); (iii) the method of ensuring that funds will be available for decommissioning and restoration as provided in the Plan; (iv) an analysis of the options for decommissioning the Project, including any cable protection measures used, and restoring the Project areas, including any decommissioning methods and potential impacts to the environment and fishermen for each option; (v) if applicable, how Grantee will address impacts of leaving any portion of the Project in place, including but not limited to, potential impacts to fishermen, fisheries, and other environmental resources, etc.; and (vi) procedures and timeframes for notifying landowners along the Cable route about decommissioning activities.

(a) The decommissioning estimates contained in the Decommissioning Plan shall be updated by a qualified independent engineer, licensed in the State of New York, to reflect inflation and any other changes after one year of Project operation, and every fifth year thereafter. Such updates shall be filed with the PSC Secretary, and copies thereof shall be provided to Grantor, within 10 days of their preparation. No offset for projected salvage value is permitted in the calculation of the estimates.

(b) Grantee shall work with Grantor and the Trustees, in consultation with DPS Staff, to craft an irrevocable letter of credit that Grantor and the Trustees may draw upon in the event of Grantee’s failure to timely decommission the Cable facilities located in the Local Project Area, to restore that area in accordance with the Decommissioning Plan, or to remedy a Cable exposure, or to maintain required Cable burial depth, beneath Wainscott Beach, as provided in the

Article VII Certificate and this Schedule B (the “Local Project Area Letter of Credit”). The Local Project Area Letter of Credit shall state, on its face, that it is issued by and for the sole benefit of Grantor and the Trustees jointly, unless Grantor, the Trustees, and Grantee agree on separate irrevocable letters of credit.

(c) Grantee shall also work with DPS Staff, and/or the NYSOGS to craft an irrevocable letter of credit that the PSC and/or NYSOGS may draw upon in the event of Grantee’s failure to timely decommission the Project facilities located in the New York State Project Area and restore that area in accordance with the Decommissioning Plan (the “New York State Project Area Letter of Credit”). The New York State Project Area Letter of Credit shall state, on its face, that it is issued by and for the sole benefit of the PSC and/or NYSOGS.

(d) Prior to the commencement of construction, Grantee shall file with the PSC Secretary proof that the Local Project Area Letter of Credit and the New York State Project Area Letter of Credit (collectively, the “Letters of Credit”) have been obtained in the amounts of the aforesaid initial decommissioning estimates and have been delivered, respectively to Grantor, the PSC, and/or NYSOGS. The Letters of Credit shall remain in place for the life of the Project, until it is decommissioned, and shall be periodically updated to reflect updated decommissioning estimates, as set forth above, and such updated Letters of Credit shall be delivered to Grantor, the PSC, and/or NYSOGS.

(e) Grantee shall engage the services of a trustee and enter into Standby Trust Agreements for the administration of the funds from the Letters of Credit. The form of the Standby Trust Agreements shall be included as part of the EM&CP.

(f) Each of the Letters of Credit shall provide that the beneficiaries thereof may, subject to the cure provisions set forth in Paragraph 118, below, exercise their right to draw on it following the occurrence of any of the events set forth in subsections (i) through (iv), below:

(i) Grantee provides notice to the PSC of its intent to decommission the Project and either (i) does not, within twelve (12) months of the date of such notice, begin implementing the Decommissioning Plan, or (ii) ceases to diligently implement the Decommissioning Plan; or

(ii) The Project ceases commercial operation for twelve (12) months and Grantee does not, within such twelve (12)-month period, provide notice to the PSC of Grantee’s intent to decommission the Project or to restore commercial operations; or

(iii) For the Local Project Area Letter of Credit, Grantee does not address a Cable exposure or a failure to maintain required Cable burial depth on or beneath Wainscott Beach, as required by the Article VII Certificate or this Schedule B; or

(iv) The PSC vacates the Article VII Certificate and Grantee has not provided the PSC a notice of intent to decommission the Project.

118. Prior to exercising the right to draw on a Letter of Credit, the beneficiaries thereof shall provide Grantee written notice, by certified mail, of their intent to draw on such Letter of Credit. If within ninety (90) days of the date of such written notice, Grantee has documented to the reasonable satisfaction of the beneficiaries of such Letter of Credit, that Grantee is, as applicable (i) diligently implementing the Decommissioning Plan; (ii) diligently acting to restore commercial operations; or (iii) diligently addressing the subject Cable exposure or reduction in Cable burial depth, then the Letter of Credit shall not be drawn upon. If, after ninety (90) days, the beneficiaries thereof determine that Grantee has not met the requirements set forth in (i) through (iii), above, the beneficiaries may, in their sole individual discretion, draw on the Letter of Credit. In the event that a Letter of Credit is drawn upon, Grantee shall have no further liability relating to the activities for which the Letter of Credit was drawn.

### **OVERSIGHT/SUPERVISION**

119. During the term of this Easement Agreement, Grantee shall retain at least the following monitors to oversee Cable construction, installation, restoration, and decommissioning activities within the Easement Area:

(a) One (1) independent, third party environmental monitor assigned full-time to the Project, which monitor shall be on-site during all construction activities that take place outside of the 7:00 a.m. to 7:00 p.m. time period;

(b) One (1) construction supervisor assigned full-time to the Project;

(c) One (1) safety inspector who shall inspect the work site full time; and

(d) One quality assurance inspector who shall inspect the work site full time.

120. Grantee shall provide the aforesaid environmental monitor(s) and construction supervisor(s) with sufficient documentation, transportation, and communication equipment to effectively monitor contractor compliance with the provisions of the Article VII Certificate,

applicable sections of the New York State Public Service Law and Environmental Conservation Law, the EM&CP, every PSC order issued for the Project, Grantor's Codes, and the §401 Water Quality Certificate for the Project.

121. The aforesaid environmental monitor(s) shall have stop-work authority over all aspects of the Project that could violate the terms of the Article VII Certificate or its Conditions, the EM&CP, Grantor's Codes (except as waived pursuant to the Article VII Certificate), and this Schedule B.

122. Grantee shall provide DPS Staff, Grantor, and the Trustees the cell phone numbers and weekly schedules of Grantee's aforesaid environmental monitor(s), safety inspector(s), quality assurance inspector(s), and construction supervisor(s).

### **ADDITIONAL CONDITIONS OF EASEMENTS**

123. Prior to filing the EM&CP, Grantee shall consult with Grantor's Architectural Review Board regarding the design of the wall to surround the facilities for connection of the Cable to the Substation.

124. The height of lightning masts constructed or installed at the Substation shall not exceed 45 feet unless required by any applicable safety code. The height of any fences or wall constructed or installed at the Substation shall not exceed 12 feet.

125. Preservation of Rights/No Preemption: Grantee and its employees, contractors, agents, and representatives shall not assert, argue, or claim, in any action or proceeding or before any court, commission, agency, mediator, adjudicator, or other tribunal, that the New York State Public Service Law, any federal law applicable to the Project, any regulations promulgated under any such State and/or federal laws, the Article VII Certificate, and/or any condition of the Article VII Certificate preempts, supersedes, nullifies, or renders unenforceable, in whole or in part, any right under, or provision of, this Schedule B or the Easement Agreement to which it is annexed.

**EXHIBIT 1 TO SCHEDULE B**

**SAMPLE ROAD USE AND CROSSING AGREEMENT**

**(TO BE COMPLETED)**

**SCHEDULE C**

**GRANTOR REQUIRED APPROVALS, AUTHORIZATIONS,  
AND ENVIRONMENTAL REVIEWS**

**(TO BE COMPLETED)**