

## REVENUE SHARING AGREEMENT

This Agreement, dated as of \_\_\_\_\_, 2021 (the “**Effective Date**”), is between the Town of East Hampton, New York (the “Town”), and the Trustees of the Freeholders and Commonalty of the Town of East Hampton (the “Trustees”) (hereinafter collectively the “Parties” and each a “Party”).

WHEREAS, Deepwater Wind South Fork, LLC (“Deepwater”), which recently changed its name to South Fork Wind, LLC (“South Fork Wind” or “SFW”), has been proposing to develop an offshore wind farm, to be comprised of up to 15 wind turbine generators, in federal waters over 30 miles east of Montauk Point, New York (the “Wind Farm”), to deliver power to the existing Long Island Power Authority (“LIPA”) East Hampton substation located on Cove Hollow Road in East Hampton, NY (the “Substation”); and

WHEREAS, the Wind Farm will deliver its output to the Substation via a single 138-kilovolt transmission line and associated equipment and facilities (collectively the “Cable”) and Interconnection Facilities (as hereinafter defined; and, together with the Cable, the “Project”), portions of which Cable are planned to be installed within rights-of-way of certain Town-owned roads and beneath the public beach and parking lot at the end of Beach Lane in Wainscott in the Town, including lands owned and/or controlled by the Trustees; and

WHEREAS, portions of the Cable installation and construction of the Interconnection Facilities will require, among other permits and consents, approval by the New York State Public Service Commission (the “Commission”) in accordance with SFW’s filing under Article VII of the New York State Public Service Law in Case No. 18-T-0604 (the “Proceeding”); and

WHEREAS, SFW, the Town and the Trustees intend to enter into a Host Community Agreement (“HCA”) to memorialize the Parties’ commitments in connection with the development of the Project; and

WHEREAS, the proposed HCA, in Section 2.4 (entitled, “Annual Payments), provides that within six (6) months after the Project’s commercial operation date (“COD”), SFW shall pay to the Town and the Trustees the amount of seven hundred thousand dollars (\$700,000.00) as the first of twenty-five annual installments, and shall thereafter pay such amount, plus a 2% per year escalation factor, as set forth in Exhibit D of the HCA (“Operation Payments”), to the Town and the Trustees within thirty (30) days of each anniversary of the COD for each of the twenty-four (24) subsequent calendar years; and

WHEREAS, the proposed HCA, in Section 2.5, further provides that within ninety (90) days of the Effective Date of that Agreement SFW shall make a non-refundable payment of five hundred thousand dollars (\$500,000.00) to the Town and the Trustees (“First Milestone Payment”), and that within ninety (90) days of the COD SFW shall pay an additional five hundred thousand dollars (\$500,000.00) to the Town and the Trustees (“Second Milestone Payment”); and

WHEREAS, the proposed HCA further provides, in Section 2.5 (entitled, “Milestone Payments”), that SFW shall pay, within 90 days of the COD and again within thirty (30) days following the first anniversary of the COD, additional annual payments in the amount of two million seven hundred and fifty thousand dollars (\$2,750,000.00) each, for a total of an additional five million five hundred thousand dollars (\$5,500,000.00), which the Town will utilize for improvements and projects which benefit the Wainscott hamlet area (the “Wainscott Fund”); and

WHEREAS, the “Wainscott Fund” shall be utilized for projects occurring within the hamlet area of Wainscott; and

WHEREAS the total annual payment installments (“Operation Payments”) over the twenty-five year period will total \$22,421,210.00, together with Milestone Payments (“Pre-Operation Payments” on HCA Exhibit D) in the amount of one million dollars (\$1,000,000.00), the total Wainscott Payments in the amount of five million five hundred thousand dollars (\$5,500,000.00), and the Geotech Access/License Fee of \$100,000.00, for a total of payments in the amount of twenty-nine million twenty-one thousand two hundred ten dollars (\$29,021,210.00), as specified in Exhibit D of the HCA; and

WHEREAS, the proposed HCA, in Section 2.6 (entitled, “Payments”), provides that all payments pursuant to Article 2 of that agreement shall be made by wire transfer to a single account designated by the Town, and, except for the First Milestone Payment and the Second Milestone Payment, which shall each be distributed 50% to the Town and 50% to the Trustees and paid directly to each, funds shall be distributed from such account to the Town and Trustees in accordance with a separate agreement between them. Each recipient of funds shall deliver to SFW such documentation as SFW may reasonably request to administer such payments, including, without limitation, a form W-9 if applicable and, upon receipt, written acknowledgment of such payment;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Town and Trustees hereby agree as follows:

1. PAYMENT.

- A. The Town and Trustees agree that all payments distributed by SFW under the proposed HCA except for the First Milestone Payment and the Second Milestone Payment (“Pre-Operation Payments”, HCA Exhibit D), which shall be distributed 50% to the Town and 50% to the Trustees and paid directly to each, shall be made by wire transfer to a single account designated by the Town.
- B. All payments under the proposed HCA, other than the First and Second Milestone Payments (“Pre-Operation Payments”, HCA Exhibit D) and the Wainscott Fund, received by the Town shall distributed as follows:
- To the Town, such that the Town receives sixty percent (60%), and the Trustees receive forty percent (40%) of each such payment. The Town shall immediately upon receipt of any payment under the proposed HCA transfer the Trustees’ portion to an account designated by the Trustees.
- C. The Wainscott Fund shall be held in a special account established by the Town, and shall be utilized for purposes of funding projects and improvements which benefit the Wainscott hamlet area.
- D. The parties acknowledge that the Town provides financial support to the Trustees and that the parties cannot bind a future Town Board in the creation of a budget or allocation of Town funds. The parties agree that the Trustees shall deposit funds received by them from the HCA into a dedicated account for purposes of funding environmental projects of the Trustee’s choosing and shall utilize such funds only for such purposes, and that the Town shall not, during the term of this Agreement, consider the funds provided to the Trustees from the HCA in determining the

Town's annual budget to fund the Trustee's annual costs for salaries, employee benefits, supplies, equipment, and other typical annual expenses presently funded by the Town in the Trustee's portion of the Town's annual budget.

2. LIMITATION OF LIABILITY. Neither party will have any liability to the other party for any consequential, indirect, punitive or other similar damages incurred by such other party in connection with this Agreement, unless such party engages in intentional misconduct.
  
3. TERM. The term of this Agreement shall begin on the Effective Date and end upon receipt of all payments due under the Host Community Agreement.
  
4. AMENDMENTS. No course of performance or other conduct subsequently pursued or acquiesced in, and no oral agreement or representation subsequently made, by Town or Trustees, whether or not relied or acted upon, and no usage of trade, whether or not relied or acted upon, shall amend this Agreement or impair or otherwise affect any of Town's or Trustees' obligations, or any of Town's or Trustees' rights and remedies, pursuant to this Agreement. No amendment to this Agreement shall be effective unless made in a writing duly executed by Town and Trustees.
  
5. WAIVER. No failure of Town or Trustees to exercise, and no delay by Town or Trustees in exercising, any right or remedy under this Agreement shall constitute a waiver of such right or remedy. No waiver by Town or Trustees of any such right or remedy under this Agreement shall be effective unless made in a writing duly executed by the party giving such waiver.

6. SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this Agreement shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law, or if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any other such provision being prohibited or invalid.
7. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument. After executing this Agreement, any party may deliver to the other party an executed copy of this Agreement using e-mail or other electronic means, and the other party shall be entitled to rely on such delivery as evidence that this Agreement has been duly executed and delivered by such party for all purposes.
8. MISCELLANEOUS. This Agreement (a) contains the entire agreement between Town and Trustees with respect to the subject matter of this Agreement, and supersedes each course of conduct previously pursued or acquiesced in, and each oral agreement and representation previously made, by Town or Trustees with respect thereto, whether or not relied or acted upon, (b) shall be binding upon and inure to the benefit of Town and Trustees, and each successor and assignee of Town and Trustees, (c) shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without regard to principles of conflict of laws.

*[The remainder of this page is intentionally left blank. A signature page follows this page.]*

IN WITNESS WHEREOF, the Town and Trustees have indicated their conclusive acceptance of the terms and conditions of this Agreement by executing this Agreement below on the Effective Date.

THE TOWN OF EAST HAMPTON

By \_\_\_\_\_

Name:

Title:

THE TRUSTEES OF THE FREEHOLDERS AND  
COMMONALTY OF THE TOWN OF EAST  
HAMPTON

By \_\_\_\_\_

Name:

Title: