

AGREEMENT REGARDING DREDGED MATERIAL TRANSPORTATION

THIS AGREEMENT REGARDING DREDGED MATERIAL TRANSPORTATION (this “Agreement”) is made and entered into this ____ day of _____, 2020, by and between the **TRUSTEES OF THE FREEHOLDERS AND COMMONALITY OF THE TOWN OF EAST HAMPTON**, a body politic with offices at 267 Bluff Road, Amagansett, NY 11930, herein the “Landowner,” and **SOUTH FORK WIND, LLC**, a Delaware limited liability company with offices at 56 Exchange Terrace, Suite 300, Providence RI, 02903, herein “South Fork Wind.” Each of Landowner and South Fork Wind is referred to herein as a “Party,” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, Landowner and South Fork Wind have ~~been considering entered into~~ ~~that~~ certain Land Lease Agreement ~~dated _____, 2020~~ (the “Lease”) relative to certain real property located in the County of Suffolk, State of New York, as described with more particularity in the Lease (the “Premises); and

WHEREAS, the Lease ~~would~~ provides South Fork Wind with certain lease rights to the Premises for the purposes of constructing, operating, maintaining, repairing, and decommissioning certain transmission facilities to connect the South Fork Wind Farm, an offshore wind farm located or to be located in federal waters off of the coast of East Hampton, to the existing East Hampton Long Island Power Authority substation; and

WHEREAS, the Landowner is the owner of an approximately 290 acre body of water commonly known as Georgica Pond located within the Premises (the “Pond”); and

WHEREAS, the Landowner performs dredging and excavating (the “Dredging Work”) of accumulated sand (and associated materials) (the “Dredged Materials”) on a periodic basis, but no more than once in any calendar year, in the Landowner’s sole discretion; and

WHEREAS, Landowner and South Fork Wind desire to enter into an agreement relating to the Landowner’s right to conduct Dredging Work during the term of the Lease;

NOW, THEREFORE, for one dollar (\$1.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. All initially-capitalized terms used in this Agreement but not defined herein shall have the meaning ascribed thereto in the Lease.
2. The Parties agree that, in addition to the rights retained by Landowner in the Lease, Landowner will have the right to perform Dredging Work during the term of the Lease. Landowner will provide South Fork Wind advance notice of its intention to perform Dredging

Work and transiting of equipment and Dredged Material sixty (60) days prior to commencing the transit of such equipment and Dredged Material, and the Parties shall coordinate the transit of such equipment and Dredged Material to avoid material interference with South Fork Wind's use of the Premises.

3. In the event the transiting of equipment and Dredged Material in connection with the Dredging Work would cause unavoidable material interference with South Fork Wind's use of the Premises, Landowner agrees that it will forgo transiting of equipment and Dredged Material in connection with the Dredging Work during the time period requested, provided that South Fork Wind reimburses Landowner the value of its lost net revenue from the sale of the Dredged Material. Such reimbursement will be calculated based on the per cubic yard rate Landowner received multiplied by the total number of cubic yards of Dredged Material obtained and sold through the Dredging Work for the preceding year plus two percent (2%) escalation. Notwithstanding the forgoing, Landowner will not agree to postpone the Dredging Work more than once in consecutive years.

4. All notices or other communications required or permitted under this 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 Landlord:

Town of East Hampton Trustees
267 Bluff Road
Amagansett, NY 11930

If to Tenant:

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

Notices personally delivered shall be deemed given the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the mailing date. 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 party in the manner provided in this Section.

5. This Agreement constitutes the entire agreement between the Parties respecting the subject matter hereof. The Recitals set forth above are hereby incorporated and made a part of this Agreement as though fully set forth herein.

6. Nothing herein shall be construed as an admission by any of the Parties of any liability of any kind to any other Party.

7. This Agreement shall constitute a covenant running with the Landlord Property and shall be binding upon, and inure to the benefit of, the Parties and their respective successors, successors in interest, purchasers, heirs, executors, administrators, and assigns.

8. The construction and performance of this Agreement shall be governed by the laws of the State of New York without regard to its principles of conflicts of law. Venue for any dispute shall be in the federal or state courts in Suffolk County, New York. A memorandum of this Agreement shall be recorded in the official records of the Suffolk County Clerk's Office, Suffolk County, New York.

9. If any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions 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

10. This Agreement and the enforcement hereof are governed by and will be construed in accordance with the laws of the State of New York without regard to principles of conflicts of law.

11. In the event of any litigation concerning enforcement or interpretation of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and costs from the other Party or parties to such litigation, in addition to any other relief awarded.

12. Each party hereto represents that it has all necessary power and authority and have taken all action necessary to authorize, execute and deliver this Agreement, to consummate the transactions contemplated by this Agreement, and to perform its obligations under this Agreement.

13. This Agreement may be executed simultaneously or in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Any manual signature upon this First Agreement that is faxed, scanned or photocopied and delivered electronically shall for all purposes have the same validity, legal effect and admissibility in evidence as an original signature and the parties hereby waive any objection to the contrary.

~~13.~~14. This Agreement shall become effective upon the execution of the Lease.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the date first above written.

SOUTH FORK WIND, LLC

By _____
Name _____
Title _____

**TRUSTEES OF THE FREEHOLDERS AND
COMMONALITY OF THE TOWN OF EAST
HAMPTON:**

By _____
Name _____
Title _____