

## LAND LEASE AGREEMENT

This LAND LEASE AGREEMENT (this "Lease Agreement"), is made and entered into as of this 9<sup>th</sup> day of March, 2021 (the "Effective Date"), 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 "Landlord," and South Fork Wind, LLC, a Delaware limited liability company with offices at 56 Exchange Terrace, Suite 300, Providence RI, 02903, herein the "Tenant." Each of Landlord and Tenant is referred to herein as a "Party," and collectively as the "Parties."

### RECITALS

A. Landlord is the owner of certain real property located in the County of Suffolk, State of New York (such real property being the "Landlord Property"), with Landlord holding all rights, titles and interests in and to the Landlord Property.

B. Tenant desires to lease from, and Landlord is willing to lease to, Tenant a portion of the Landlord Property described on attached Exhibit A and depicted on Exhibit B (the "Leased Area"), for purposes of constructing, installing, operating, maintaining, repairing, replacing and decommissioning the Tenant's Transmission Facilities to connect the South Fork Wind Farm ("Wind Farm"), an offshore wind farm located or to be located in federal waters 30 miles off of the coast of East Hampton, to the existing East Hampton Long Island Power Authority electric substation ("Substation") (hereinafter collectively the "Project"). The Wind Farm will deliver its electric output to the Substation via a new export cable that will be located in the Leased Area and installed beneath the public beach at the end of Beach Lane in Wainscott as further described and depicted on the map provided in Exhibit B, subject to the terms and conditions set forth below. Tenant's export cable shall constitute "Tenant's Transmission Facilities" or "Tenant's Facilities" as further defined below for the purposes of this "Lease Agreement."

C. Landlord has granted or is concurrently herewith, or otherwise anticipates hereafter, granting easement rights to third parties for the concurrent use of the Leased Area (such other third parties being collectively the "Other Easement Right Holders"). Tenant and the Other Easement Right Holders may enter into separate agreements by and between Tenant and the Other Easement Right Holders specifying the rights, obligations, and duties as between Tenant and the Other Easement Right Holders.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual benefits to be derived herefrom, and other good and valuable consideration paid to Landlord, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Leased Area; Use. Landlord, under and through this Lease Agreement, conditioned upon and subject to approval of this Lease Agreement, and the lease granted thereunder, by the New York State Legislature, if applicable, hereby leases to Tenant the Leased Area for purposes of

constructing, installing, operating, maintaining, repairing, replacing and decommissioning the Tenant's Transmission Facilities to connect the Wind Farm to the Substation.

**1.1. Transmission.** Tenant shall have the right in the Leased Area to construct, reconstruct, install, repair, replace, maintain, operate, use, inspect, patrol and remove, for the transmission and distribution of high and low voltage electric energy and for the transmission of intelligence, by any means, whether now existing or hereafter devised: lines of buried cables or conduits or both or any combination of the same (any of which may be erected and/or constructed at the same or different times), together with all ducts, raceways, conductors, terminals, sustaining and protective fixtures, underground expansion stabilizers, manholes, hand holes, foundations, fittings, and all housings, connectors, switches and any other equipment or appurtenances reasonably required (collectively, the "Tenant's Transmission Facilities" or "Tenant's Facilities") to connect the Wind Farm to the Substation. It is the intention of Landlord to grant to Tenant, its permitted successors and assigns, all the rights aforesaid and any and all additional and/or incidental rights needed to construct, reconstruct, install, repair, maintain, operate, use, inspect, patrol, renew, replace, add to, and otherwise change, for the transmission and distribution of high and low voltage electric energy and the transmission of intelligence, the Tenant's Facilities under, through, and within the Leased Area, and Landlord hereby agrees to execute, acknowledge, and deliver to Tenant, its successors and assigns, such further instruments as may be necessary to secure to them the rights intended to be herein granted.

**1.2. Rent.** The amount and payment of rent shall upon the terms set forth in that certain Host Community Agreement between Landlord, the Town of East Hampton (the "Town"), and Tenant, dated as of \_\_\_\_\_, 2020 (the "HCA").

**2. Term; Termination.** The term of this Lease Agreement (the "Term") shall commence following the later to occur of Tenant's receipt of the EM & CP (as defined below) or the Bureau of Ocean Energy Management's Record of Decision, and shall continue for a period of twenty-five years following the "Commercial Operation Date," which shall be defined as the date upon which energy from the Wind Farm is sold in commercial quantities, excluding test energy. The foregoing notwithstanding, Tenant may terminate this Lease Agreement in its entirety by written notice to Landlord at any time and for any reason. In the event Tenant terminates all or a portion of this Lease Agreement the Landlord authorizes Tenant to execute and record a notice of termination evidencing such termination, upon the completion of the Decommissioning required by this Lease.

**3. Use and Location of Leased Area.**

**3.1. Non-Exclusive Use; Limitations.** Tenant shall have the non-exclusive right to use the Leased Area for the purposes set forth in Section 1 hereof. Tenant (and/or others to which Tenant may assign or convey rights or an interest under this Lease Agreement) shall retain title and possession to all Tenant's Facilities placed within the Leased Area (including without limitation, the export cable, all additions, alterations, improvements thereto or replacements thereof, all appurtenant fixtures, machinery and equipment installed therein), and shall have the right to remove such facilities from the Leased Area at any time. Landlord shall have no ownership interest in or to any of Tenant's Transmission Facilities and hereby expressly waives any and all statutory

or common law claims or rights Landlord may otherwise have had in or to the Tenant's Facilities. All electrical output from the wind farm/transmission facility belongs solely to Tenant, shall remain the personal property of Tenant, and shall not attach to or be deemed a part of, or fixture to, the Landlord Property. Landlord further hereby acknowledges that the Tenant's Facilities may be removed from the Leased Area by Tenant in accordance with any applicable decommissioning provisions of this Lease Agreement, the HCA, and the conditions of any certificate of environmental compatibility and public need issued for the Project pursuant to Article VII of the New York State Public Service Law (the "Article VII Certificate"), and the environmental management and construction plan ("EM & CP") for the Project. This Lease Agreement is not intended to limit the Landlord's use of the Landlord Property, including the Leased Area, and Tenant hereby acknowledges that Landlord has or will install, construct, reconstruct, operate, maintain, repair, replace, relocate, inspect and remove its own improvements on, over, under, across and through the Landlord Property, including the Leased Area (collectively, the "Landlord's Facilities"). The Parties shall not create any hazard, or light any fires on, within or adjacent to the Leased Area. Nothing in this Lease Agreement shall be construed as requiring Tenant to install or operate the Tenant's Facilities.

**3.2. No Interference / Use Agreement.** Use of the Leased Area is non-exclusive, and Tenant expressly acknowledges that Landlord has previously, is concurrently, or may hereafter grant rights to Other Easement Right Holders in and to the Leased Area. Landlord covenants that, in the exercise of its rights hereunder or Landlord's use of the Landlord Property, including the Leased Area, Landlord shall not 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 Tenant hereunder in and to the Leased Area, or with Tenant's installation, use, maintenance, and operation of Tenant's Facilities. Tenant covenants that, in the exercise of Tenant's rights hereunder or Tenant's use of the Leased Area, Tenant shall not conduct any activity, nor grant any rights to a third party, that would unreasonably interfere with Landlord's use of the Landlord Property, including the Leased Area, or with the installation, use, maintenance and operation of Landlord's Facilities. Landlord hereby acknowledges and, to the extent required or desired by Tenant, consents, to Tenant entering into an agreement or series of agreements with Other Easement Right Holders specifying the rights, obligations, duties, and separation of responsibilities, with respect to the use of the Leased Area, provided however, that no such agreement shall expand, limit, amend, or otherwise modify the rights, obligations, covenants, and terms, as between Landlord and Tenant, specified herein.

**4. Landlord's Representations and Warranties.** Landlord hereby represents, warrants, and covenants to Tenant:

**4.1. Authority.** Landlord owns the Landlord Property in fee simple, subject to no liens or encumbrances except the liens or encumbrances held by Other Easement Right Holders as set forth on Exhibit C and other third party or parties as would be disclosed in a title report or other similar document, or as otherwise identified in writing to Tenant by Landlord prior to execution of this Lease Agreement. Landlord represents and warrants that each person executing this Lease Agreement on behalf of Landlord is duly and validly authorized to do so and that Landlord has the full right and authority to enter into this Lease Agreement, perform all of its obligations hereunder, and grant the interests herein granted.

**4.2. Environmental Matters.** Landlord represents and warrants to Tenant that, to Landlord's actual knowledge, the Leased Area is (a) not subject to, and Landlord has no notice of, any judicial or administrative action, investigation or order under any "Environmental Law" (as defined below), (b) free of all reportable levels of "Hazardous Materials" (as defined below), (c) free of any abandoned wells, solid waste disposal sites and underground storage tanks, and (d) not in violation of any Environmental Law. For purposes hereof, the term "Environmental Law" means all state, federal, or local laws, statutes, ordinances, rules, regulations or 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, the presence of which requires investigation, remediation, or other response or corrective action under Environmental Law, 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 Law, or (3) any asbestos or asbestos-containing material, PCBs or equipment or articles containing PCBs, petroleum, diesel fuel, gasoline, or other petroleum hydrocarbons.

**4.3. Hazardous Materials Indemnification.** If Landlord breaches a warranty or representation in Section 4.2, above, or if a release of a Hazardous Material is caused, exacerbated, or permitted by Landlord or Landlord's agent, employee, or contractor and results in contamination of the Leased Area, and except to the extent such release is caused or exacerbated by Tenant or its agents, employees or contractors, then Landlord shall, and hereby agrees to, indemnify, defend, protect, and hold Tenant, and Tenant's employees, agents, partners, members, officers and directors, harmless 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, or 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 or contamination. This indemnity shall include, without limitation, and Landlord 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 the environment, (b) any investigation, monitoring, repair, clean-up, treatment, or detoxification of the Leased Area 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 Leased Area.

**4.4. Cooperation.** Landlord shall cooperate with Tenant, but at no out-of-pocket expense to Landlord, in obtaining permits, signing documents reasonably requested by Tenant, helping Tenant with obtaining signatures of any of Landlord's lenders on non-disturbance agreements, subordination agreements, and any other documents or agreements reasonably required to protect Tenant's rights under this Lease Agreement. The foregoing notwithstanding, in the event Landlord's cooperation would materially harm the interest of an Other Easement Right Holder, then Landlord shall not be obligated to cooperate with such request.

**4.5. Quiet Enjoyment.** As long as Tenant is not in default under this Lease Agreement, Tenant shall peacefully hold and enjoy all of the rights granted by this Lease Agreement without hindrance or interruption by Landlord or any person lawfully or equitably claiming by, through, or under Landlord, or as Landlord's successor(s) in interest.

**5. Tenant's Representations, Warranties, and Covenants.** Tenant hereby represents, warrants and covenants to Landlord:

**5.1. Conditions as to Construction, Installation, Maintenance, Repair, and Replacement of Tenant's Facilities.** The Tenant's Facilities shall be constructed, installed, maintained, repaired, replaced, and removed, and the Leased Area shall be used, maintained, and restored, in compliance with the provisions and specifications set forth in this Lease Agreement, the HCA, the Article VII Certificate and the EM & CP for the Project (collectively the "Project Conditions"), which must be adhered to unless a short-term exemption is applied for in writing and granted by the Trustees' Clerk. The Trustees shall have the full authority to enforce the Project Conditions as they relate to the Leased Area.

**5.2. Restoration.** After all installation of the Tenant's Facilities has been completed, Tenant shall restore the Leased Area to pre-construction condition, including, without limitation, grading slop, sub-pavement, pavement and vegetation, to the reasonable satisfaction of the Landlord and as detailed in the EM & CP. Erosion controls and permanent re-vegetation shall be restored as appropriate for those locations. Disturbed pavement, curbs and sidewalks (if applicable) shall be restored to their original preconstruction condition or better. To ensure satisfactory completion of the restoration work required in the preceding sentence, Tenant shall, prior to commencement of clearing, excavation, drilling, or any other work for installation of the Tenant's Facilities, deliver to Landlord a performance bond, irrevocable letter of credit or similarly acceptable financial security, for a term of five (5) years (the "Restoration Period"), in the amount of \$50,000 (the "Restoration Security"). In the event of Tenant's default in completing the aforesaid restoration work within the Restoration Period, Landlord and/or its employees or contractors may enter the Leased Area and complete the aforesaid restoration work using the Restoration Security to pay the cost of such work. At any time prior to the expiration of the Restoration Period, Tenant may renew the Restoration Security, to remain in effect until the aforesaid restoration work is fully completed. Following completion of the restoration work, to the reasonable satisfaction of Landlord, within the Restoration Period, or as renewed, the Restoration Security shall be released by Landlord within five (5) business days.

**5.3. Cable Maintenance and Exposure.** Tenant shall be responsible for remedying any exposure of the Tenant's Facilities, including, but not limited to, the export cable, upon or within the Leased Area in accordance with the SFEC-NYS Maintenance Plan provided in the EM & CP. Pursuant to the conditions of the Article VII Certificate, the export cable shall be buried at a minimum depth of thirty (30) feet below the current profile of the beach and minimum of six (6) feet below the seafloor. The SFEC Sea to Shore Transition will follow a slope from the HDD Exit Pit to the Sea-to-Shore Transition vault such that the SFEC Sea to Shore Transition is buried at a depth greater than nine (9) feet five hundred (500) feet into the water from the Mean Low Water of Wainscott Beach. If Tenant does not begin implementing the SFEC-NYS Maintenance Plan within ten (10) days of the date Tenant is notified of an exposure of the export cable in the Leased Area, or if Tenant ceases to diligently implement the SFEC-NYS Maintenance Plan with respect to such

exposure, then the letter of credit identified in Section 5.4 below may be drawn upon pursuant to the terms of Section 5.4 below.

**5.4. Decommissioning.** Tenant shall provide Landlord and the Town with a Decommissioning Plan for review and comment at least forty-five days prior to filing the EM & CP with the Commission. The Decommissioning Plan shall include (i) the anticipated life of the Project; (ii) the estimate of decommissioning of the Project on the Leased Area and any portion of the Project located in the Town (together, the "Local Area") in current dollars; (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 protections measures used, and restoring the Local Area, including any decommissioning methods and potential impacts to the environment and fishermen for each option, (v) if applicable, how the Tenant 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; and (vi) procedures and timeframes for notifying landowners adjoining the Local Area under or on which the export cable and all related facilities have been installed about decommissioning activities. The decommissioning estimate contained in the 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.

5.4.1.1. Prior to the commencement of construction, Tenant shall provide Landlord and the Town with an irrevocable letter of credit in the amount of the decommissioning estimate for the portions of the Project located in the Local Area, as provided in the Decommissioning Plan.

5.4.1.2. The irrevocable letter of credit shall state on its face that it is held by and for the benefit of the Landlord and the Town, jointly.

5.4.1.3. The irrevocable letter of credit shall remain in place for the life of the Project, until it is decommissioned. The irrevocable letter of credit shall provide that the Landlord or the Town may, subject to the cure provisions set forth in Section 5.4.1.4, exercise their right to draw on it upon the occurrence of any of the following events:

5.4.1.3.1. If Tenant provides notice 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

5.4.1.3.2. If the Project ceases commercial operation for twelve (12) months and Tenant does not, within such twelve (12)-month period, provide notice to the Landlord of its intent to decommission the Project or to resume commercial operations;

5.4.1.3.3. If Tenant does not address an exposure of Tenant's facilities as required by Section 5.3 above; or

5.4.1.3.4. If the New York Public Service Commission (the "Commission") vacates the Article VII Certificate and Tenant has not provided the Commission a notice of intent to decommission the Project.

5.4.1.4. Prior to exercising the right to draw on the letter of credit, Landlord shall provide Tenant written notice in accordance with Section 16, of their intent to draw on the letter of credit. If, within ninety (90) days of the date of such written notice, Tenant has documented, to Landlord's commercially reasonable satisfaction, that Tenant is, as applicable: (i) diligently implementing the Decommissioning Plan; or (ii) diligently acting to resume commercial operations; then Landlord will not draw on the letter of credit. If, after said ninety (90) days, Landlord determines in Landlord's commercially reasonable discretion Tenant has not met the requirements set forth in (i) through (ii), above, Landlord may draw on the letter of credit to accomplish the Decommissioning Plan.

Notwithstanding anything contained herein to the contrary, except to the extent inconsistent with law, including any decision of any New York or federal permitting agency with authority over the export cable, Landlord, in its sole discretion, may require Tenant to abandon in place the export cable and conduit if Landlord determines that it would be less disruptive to Landlord's property.

**5.5. Tenant's Rights to Removal.** Tenant shall have the right to remove the Tenant's Facilities from the Leased Area at any time, provided Tenant shall (a) provide Landlord a Phase I and Phase 2 environmental assessment report documenting the decommissioning of Tenant's Facilities in the Leased Area; (b) remediate, in full, any and all Hazardous Materials, as defined in Section 4.2 of this Lease Agreement, and contamination of any kind or nature that has been identified or otherwise determined to exist, solely as a result of construction, installation, maintenance, repair, replacement, decommissioning, or other activities of Tenant or any of its employees or contractors, and/or Tenant's use of (i) the Leased Area (ii) any of the lands, and/or waters on, over, in, or beneath the Leased Area, and/or (iii) any other lands or waters; and (c) restore the Leased Area to as close to its condition prior to installation of the Tenant's Facilities pursuant to this Lease Agreement as is reasonably practical.

**5.6. Indemnity.**

5.6.1. Indemnification By Tenant. Tenant shall indemnify, defend and hold harmless Landlord against any claim, liability, or loss arising from (i) any unreasonable damage, interruption, or impairment to Other Easement Right Holders' improvements and/or Landlord's Facilities on, over, under, across, or through the Landlord Property, including the Leased Area; and (ii) physical injuries or death, to the extent caused by Tenant's construction, maintenance, operation, or removal of the Tenant's Facilities on, over, under, across, or through the Landlord Property, including the Leased Area, except to the extent such damages or injuries are caused or contributed to by Landlord's or Other Easement Right Holder's negligence or willful misconduct. The foregoing indemnity shall not extend to actual or alleged property damage or personal injuries or death attributable to electromagnetic fields.

5.6.2. Indemnification By Landlord. The Landlord shall indemnify, defend, and hold harmless Tenant 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 acts or omissions or willful misconduct of the Landlord, (b) breach of any obligation, covenant or undertaking of the Landlord contained herein or (c) any misrepresentation or breach of warranty on the part of the Landlord pursuant to this Lease Agreement. For the sake of clarity, the Landlord 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 Tenant's conduct, act or omissions.

**5.7. Hazardous Materials.** Tenant covenants and agrees that it (a) shall not use, store, dispose of, or release on or in the Landlord Property or (b) cause or permit to exist or be used, stored, disposed of, or released on or in the Landlord Property as a result of Tenant's operations, any Hazardous Material, except in such quantities as may be required in its normal business operations and only if such use is in full compliance with all Environmental Laws applicable at the time of use.

**5.8. Hazardous Materials Indemnification.** If Tenant breaches its warranty or representation in Section 5.7, above, or if a release of a Hazardous Material is caused, exacerbated, or permitted by Tenant or its agents, employees, or contractors and results in contamination of the Landlord Property, and except to the extent such release is caused or exacerbated by Other Easement Right Holder's or Landlord or its agents, employees, or contractors, then Tenant shall indemnify, defend, protect, and hold Landlord, and Landlord's employees, agents, partners, members, officers, and directors, harmless 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 or contamination. This indemnity shall include, without limitation, and Tenant 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 the environment, (b) any investigation, monitoring, repair, clean-up, treatment, or detoxification of the Landlord Property 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 Tenant, or a Tenant agent, employee, or contractor, on the Landlord Property.

**6. Insurance.** Landlord and Tenant shall each maintain the following insurance coverage in full force and effect throughout the Term of this Lease Agreement either through insurance policies 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. Landlord insurance coverage may be within the coverage of a blanket policy it has in effect at the time of this Lease Agreement or may hereafter place in effect. Tenant shall carry (i) adequate property loss insurance on any property of Tenant, its employees, agents and contractors, and (ii) worker's compensation and employer's liability insurance with a nationally-recognized insurance carrier, covering all persons employed by Tenant in connection with the permitted activities of Tenant under this Lease Agreement at the Leased Area satisfying the requirements of the worker's compensation statutes of New



York State. Landlord may, at its option, bring its obligations to insure under this Section 6 within the coverage of a "blanket" policy of insurance that it may now or hereafter carry, by appropriate amendment, rider, endorsement, or otherwise. Each Party's insurance policy shall be written on an occurrence basis and shall include the other Party as an additional insured as its interest may appear.

7. Requirements of Governmental Agencies. Landlord and Tenant shall comply in all material respects with all valid laws applicable to their activities on the Leased 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 applicable to their activities.

8. Mechanics' and Construction Liens. Neither Landlord nor Tenant shall permit any mechanics' or construction liens to be filed against the Landlord Property or Tenant's interest in the Landlord Property. The Party whose actions resulted in the 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 Landlord Property pursuant to applicable law.

9. Taxes. The Landlord Property is currently wholly exempt from real property taxes. It is the understanding of the Parties that the proposed use of the Leased Area granted herein shall not affect the tax exempt status of the Landlord Property. If the Landlord Property, or any portion thereof, may no longer be wholly tax exempt and any real property taxes become due as result of the uses proposed on the Leased Area by Tenant, then Tenant shall be responsible for the payment of the taxes due as a result of said use.

10. Assignment; Successors and Assigns.

10.1. Assignment by Tenant; Conveyances by Landlord. Tenant shall have the right, with the prior consent of Landlord, which consent shall not be unreasonably withheld or delayed, to assign, sublease, or otherwise convey or transfer all or any portion of its rights and interests under this Lease Agreement, including without limitation, in connection with any investment by a third party in, or sale of, in whole or in part, (a) Tenant's rights in the Landlord Property, and/or (b) any equipment, fixtures, facilities, structures, or improvements located upon the Landlord Property, including, without limitation, the Tenant's Facilities and any export cable improvements. Landlord may sell, mortgage, transfer, or lease the Landlord Property to others without the consent of Tenant; so long as any such sale, mortgage, lease, or transfer by Landlord is subject to this Lease Agreement and does not interfere with Tenant's rights hereunder and Tenant's use of the Leased Area. Upon the acquisition of all or any part of Tenant's interest in the Landlord Property granted hereunder, or in the Tenant's Facilities, by another person or entity Landlord shall recognize such person or entity as Tenant's successor. Landlord's consent shall not be required for the assignment to a lender by Tenant of any of Tenant's rights and interest in the Lease Agreement for the purposes of financing the Project. Any assignment or sublease by Tenant in violation of the requirements of this Section 10.1 shall be null and void and without any effect.

**10.2. Estoppel Certificate.** Within thirty (30) days of receipt of a request from Tenant or a permitted assignee or subtenant of Tenant, Landlord shall execute an estoppel certificate, in form and substance acceptable to Landlord, (a) certifying that this Lease 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 Lease Agreement), (b) certifying that, to the best of Landlord's knowledge, there are no uncured events of default under this Lease 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 statements may be conclusively relied upon by Tenant or any existing or proposed subtenant or assignee. The failure of Landlord to deliver such statement within such time shall be conclusive evidence upon Landlord that this Lease Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Tenant under this Lease Agreement.

**10.3. Non-Disturbance Agreements.** Upon the written request of Tenant, Landlord shall enter into a non-disturbance and attornment agreement, in form and substance acceptable to Tenant, with a permitted assignee of the Leased Area, or Tenant's Facilities, 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, Landlord, in the exercise of any of its rights or remedies under this Lease Agreement, shall not deprive the assignee of possession, or the right of possession, of the Leased Area or Tenant's Facilities during the term of the assignment.

**10.4. Rights of Assignees.** Any permitted assignee or transferee of Tenant shall have the same rights as Tenant under this Section 10 to further assign or transfer its interest in this Lease Agreement.

**10.5. Successors and Assigns.** This Lease Agreement shall inure to the benefit of and be binding upon Landlord and Tenant, any permitted assignee, and the respective heirs, transferees, successors, and assigns of the same, and all persons claiming under them, and shall be deemed covenants running with the land and be binding upon the Landlord Property.

## **11. Default.**

11.1 Each of the following shall constitute an event of default that shall permit the nondefaulting party to terminate this Lease Agreement and/or pursue other remedies available at law or equity.

(i) any failure by Tenant to comply with the terms of the HCA or Section 5.1 of this Lease Agreement, which failure continues following written notice and the expiration of any applicable cure or grace period set forth in the HCA or Lease Agreement.

(ii) any other material breach of this Lease Agreement, by either Party, that continues for thirty (30) days after written notice of default from the nondefaulting party or, if the cure will take longer than thirty (30) days, the length of time necessary to effect cure as long as the defaulting party is making diligent efforts to cure during that time.

(iii) this Lease Agreement or the Leased Area or any part of the Leased Area are taken upon execution or by other process of law directed against Tenant, or are taken upon or subject to any attachment by any creditor of Tenant or claimant against Tenant, and said attachment is not discharged or disposed of within 60 days after its levy;

(iv) Tenant or any permitted assignee of Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or admits the material allegations of any such petition by answer or otherwise, or is dissolved or makes an assignment for the benefit of creditors unless Tenant continues to fulfill its obligations under this Agreement and the HCA; or

(v) involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant or a permitted assignee of Tenant are instituted against Tenant or a permitted assignee of Tenant, or a receiver or trustee is appointed for all or substantially all of the property of Tenant or a permitted assignee of Tenant, and such proceeding is not dismissed or such receivership or trusteeship vacated within 60 days after such institution or appointment unless Tenant continues to fulfill its obligations under this Agreement and the HCA.

11.2 If any one or more events of default set forth in Section 11.1 occurs, then Landlord has the right, at its election:

(i) to give Tenant or a permitted assignee of Tenant thirty (30) days' written notice of the expiration of the Term and, upon the giving of such notice and the expiration of such thirty (30)-day period, Tenant's or Tenant's assignee's right to possession of the Leased Area will cease and this Lease Agreement will be terminated, except as to Tenant's or its assignee's liability, as if the expiration of the term fixed in such notice were the end of the Term; or

(ii) to give Tenant fifteen (15) days' written notice to cure any event of default and to charge Tenant for the cost of effecting such cure, including, without limitation, reasonable attorneys' fees, provided that Landlord will have no obligation to cure any such event of default of Tenant.

Each right and remedy provided for in this Lease Agreement is cumulative and is in addition to every other right or remedy provided for in this Lease Agreement or now or after the Effective Date existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease Agreement or now or after the Effective Date existing at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease Agreement or now or after the Effective Date existing at law or in equity or by statute or otherwise. All reasonable costs incurred by Landlord in collecting any amounts and damages owed to Landlord pursuant to the provisions of this Lease Agreement or to enforce any provision of this Lease Agreement, including reasonable

attorneys' fees from the date any such matter is turned over to an attorney, whether or not one or more actions are commenced by Landlord, will also be recoverable by Landlord from Tenant.

12. Reserved.

13. Surrender. Upon the termination or expiration of this Lease Agreement, Tenant shall peaceably surrender the Leased Area to Landlord and remove all Tenant's Facilities from the Leased Area at Tenant's expense in compliance with Section 5.4 hereof.

14. Encumbrance of Lease.

14.1. Covenants for Lenders' Benefit. Upon any assignment or transfer of Tenant'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 (a "Lender"), Tenant and Landlord expressly agree, between themselves and for the benefit of any Lender, as follows (for purposes of this Section 14, "Tenant" includes any assignee of Tenant's interest (or a portion thereof) in this Lease Agreement):

14.1.1. They will not modify or cancel this Lease Agreement without the prior written consent of each Lender, which consent shall not be unreasonably withheld or delayed.

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

14.1.3. If Landlord is entitled to terminate this Lease Agreement due to default by Tenant, Landlord will not terminate this Lease Agreement unless and until (i) Landlord has first given written notice of such default and of Landlord's intent to terminate this Lease Agreement to each Lender and has given each Lender at least thirty (30) days to cure the default to prevent such termination of this Lease Agreement. Furthermore, if, within such thirty (30)-day period, a Lender notifies Landlord that it must foreclose on or otherwise take possession of its borrower's interest under this Lease Agreement in order to cure the default, Landlord shall not terminate this Lease Agreement without first providing such Lender a sufficient period of time as may be reasonably necessary for such Lender, with the exercise of due diligence, to foreclose or acquire the interest under this Lease Agreement and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Tenant. Upon the sale or other transfer of all of a Lender's interest in the rights granted hereunder, such Lender shall have no further duties or obligations hereunder.

14.1.4. In the case of termination of this Lease Agreement as a result of any default or the bankruptcy, insolvency, or appointment of a receiver in bankruptcy for Tenant, Landlord shall give prompt notice to each Lender. Landlord shall, upon written

request of a Lender, so long as such request is made within thirty (30) days after notice from Landlord to such Lender, enter into a new lease agreement with such Lender, or its designee, within thirty (30) days after the receipt of such request. Such new lease agreement shall be effective as of the date of this Lease Agreement's Effective Date, and upon the same terms, covenants, conditions, and agreements as contained in this Lease Agreement. Coincident with the entry of a new lease agreement as provided herein, Landlord shall reissue to such Lender any other interests respecting the Landlord Property which any Landlord may have granted to Tenant in connection with this Lease Agreement and the transactions contemplated thereby. Upon the execution of any such new Lease Agreement, the Lender shall (i) pay Landlord any amounts that are due to Landlord from Tenant, (ii) pay Landlord any and all amounts that would have been due under this Lease Agreement (had this Lease Agreement not been terminated) from the date of the termination of this Lease Agreement to the date of the new lease agreement, and (iii) agree, in writing, to perform or cause to be performed all of the other covenants and agreements set forth in this Lease Agreement to be performed by Tenant to the extent that Tenant failed to perform the same prior to the execution and delivery of the new lease agreement. Landlord hereby agrees, with and for the benefit of each Lender, that the provisions of this subsection shall survive termination, rejection, or disaffirmation of this Lease Agreement, whether by default or as a result of the bankruptcy or insolvency of Tenant, and shall continue in full force and effect thereafter to the same extent as if this subsection were a separate and independent instrument.

14.1.5. Landlord hereby agrees to execute any consents to assignment, estoppel certificates, and other documents as may reasonably be requested by any Lender consistent with this Section or Section 10.2.

**15. Limitation on Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE AGREEMENT, NO PARTY SHALL BE ENTITLED TO, AND EACH PARTY HEREBY WAIVES, ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS LEASE AGREEMENT.

**16. Notices.** All notices or other communications required or permitted under this Lease 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:

General Counsel  
South Fork Wind, LLC  
c/o Eversource Energy  
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.

**17. Miscellaneous.**

**17.1. Entire Agreement; Incorporation of Recitals and Exhibits.** This Lease Agreement constitutes the entire agreement between the Parties respecting the subject matter hereof. The recitals set forth above, and all exhibits attached hereto, are hereby incorporated and made a part of this Lease Agreement as though fully set forth herein.

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

**17.3. Binding Effect.** This Lease 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.

**17.4. Governing Law; Recordation.** The construction and performance of this Lease 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 Lease Agreement shall be recorded in the official records of the Suffolk County Clerk's Office, Suffolk County, New York.

**17.5. Conflicting or Inconsistency.** In the event of any conflict or inconsistency between the terms or conditions of the HCA and this Lease 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 HCA and this Lease Agreement shall prevail. Moreover, in the event of any conflict or inconsistency between the terms or conditions of the HCA and the terms or conditions of this Lease Agreement, the terms and conditions of this Lease Agreement shall prevail.

**17.6.** Landlord 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.

**17.7. Arguments and Claims Not to Be Asserted.** Tenant, its successors, assigns, and affiliated and associated entities, and all officers, directors, shareholders, members, representatives, agents, legal counsel, employees, and contractors of Tenant and Tenant'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 HCA or this Lease Agreement.

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

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

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

**17.11. Severability.** If any one or more of the provisions contained in this Lease 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.

**17.12. Amendment.** This Lease Agreement shall be modified or amended only by a written instrument signed by or on behalf of Landlord and Tenant, and a memorandum of such amendment shall be recorded in the official records of Suffolk County, if required.

**17.13. Reserved.**

**17.14. 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. References to Tenant shall include any and all permitted assignee(s) of Tenant, and any and all successors, assigns, heirs and transferees of same. References to Landlord herein shall, as appropriate, include any other parties holding any title, interest, or right in the Landlord Property and any and all successors, assigns, heirs, and transferees of the same.

**17.15. Headings.** The headings of the sections and subsections of this Lease Agreement are for convenience purposes only, do not constitute and are not a part of this Lease Agreement, and shall have no effect upon the construction or interpretation of any part of this Lease Agreement.

**17.16. Counterparts; PDFs.** This Lease 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. This Lease Agreement may be signed by any one or more of the Parties hereto by facsimile transmission or by PDF transmission, and any such facsimile or PDF transmission shall be treated for all purposes as an original.

**17.17. Attorneys' Fees.** In the event of any litigation concerning enforcement or interpretation of this Lease 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.

*[SIGNATURES APPEAR NEXT PAGE]*



IN WITNESS WHEREOF, Landlord and Tenant caused this Lease Agreement to be executed as of the Effective Date.

LANDLORD:

**TRUSTEES OF THE FREEHOLDERS AND  
COMMONALITY OF THE  
TOWN OF EAST HAMPTON, NEW YORK**

By: *Francis J. Bock*  
Name: FRANCIS J. BOCK  
Its: CLERK OF THE TRUSTEES

TENANT:

**SOUTH FORK WIND, LLC**

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

IN WITNESS WHEREOF, Landlord and Tenant caused this Lease Agreement to be executed as of the Effective Date.

LANDLORD:

**TOWN OF EAST HAMPTON TRUSTEES**

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

TENANT:

**SOUTH FORK WIND, LLC**

By: *Kenneth Bowers*  
Name: *Kenneth Bowers*  
Its: *Vice President - Siting & Permitting*

## EXHIBIT A

### DESCRIPTION OF THE LANDLORD PROPERTY

#### **Lease area to be acquired at the end of Beach Lane, East Hampton, NY**

The Lease herein described and more clearly designated and defined as "LEASE AREA" as depicted on a certain sketch entitled "EXHIBIT A DEPICTING AREA TO BE LEASED OFF BEACH LANE, EAST HAMPTON, NEW YORK, SCALE: 1" = 40', DATED: SEPTEMBER 14, 2020. EVERSOURCE R.E. DWG: 24097, (the "Sketch"), being more particularly described as follows:

Beginning at a point, said point being the southwesterly corner of a town road known as Beach Lane, thence;

N54°53'45"E A distance of forty nine and fifty-six hundredths (49.56') feet by the southerly line of Beach Lane, to a point, thence;

N54°53'45"E A distance of ten and one hundredth (10.01') feet to a point, thence;

S32°19'44"E A distance of one hundred fifty seven and ninety-four hundredths (157.94') feet to a point along the mean LOW-Water line of the Atlantic Ocean, thence;

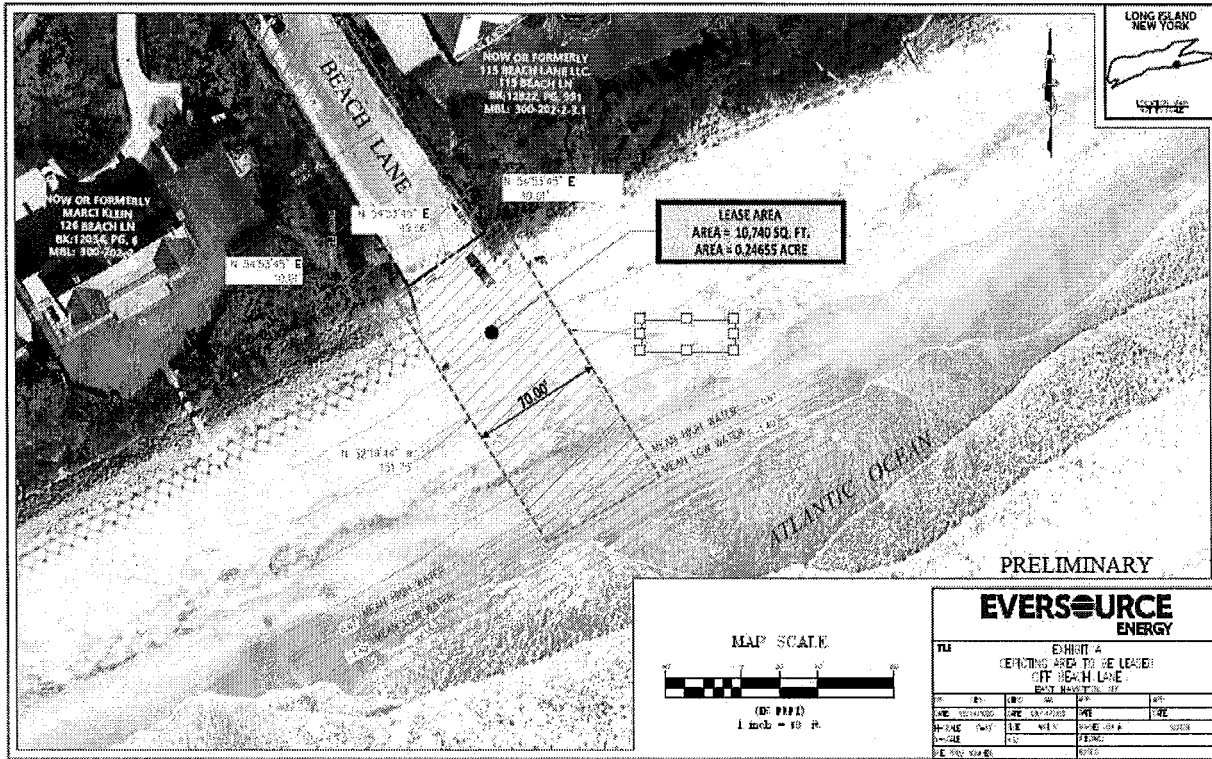
Approximately ±70 feet Southwesterly by and along the mean LOW-Water line, to a point, thence;

N32°19'44"W A distance of one hundred fifty one and seventy-five hundredths (151.75') feet to a point, thence;

N54°53'45"E A distance of ten and one hundredth (10.01') feet back to the point and place of beginning.

The Lease Area herein described contains approximately 10,740 SQ. FT. more or less

**EXHIBIT B**  
**BEACH AREA**  
**DRAWING/MAP**



**EXHIBIT C**

**OTHER EASEMENT HOLDERS LIENS AND ENCUMBRANCES**

There are no other easement holders, lines or encumbrances on the Landlord Property.