
UNIFORM PROJECT AGREEMENT (EOW FACILITY)

by and between

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

EMPIRE OFFSHORE WIND LLC

Dated as of March 1, 2025

2025 EOW Project

UNIFORM PROJECT AGREEMENT (EOW FACILITY)

This **UNIFORM PROJECT AGREEMENT (EOW FACILITY)**, dated as of March 1, 2025 (this “**Agreement**”), is by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the “**Agency**”), having its principal office at One Liberty Plaza, New York, New York 10006, party of the first part, and **EMPIRE OFFSHORE WIND LLC**, a limited liability company organized and existing under the laws of the State of Delaware (the “**Lessee**”), and authorized to conduct business in the State of New York, having its principal office at 600 Washington Blvd., Suite 800, Stamford, Connecticut 06901, party of the second part (capitalized terms used herein shall have the respective meanings assigned to such terms throughout this Agreement or the Agency Lease (as defined below)).

WITNESSETH:

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by the Agency Act for the benefit of the City and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into certain agreements with each of the Lessee and SBMT Asset regarding two interrelated “projects” within the meaning of the Act and within the territorial boundaries of the City, consisting of the construction, furnishing, equipping and installation of industrial facilities for the purpose of connecting OSW power from the Lessee’s Future OSW Development to the City’s power grid; and

WHEREAS, the EOW Project will further the purposes of the Act and promote job opportunities for the benefit of the City and the inhabitants thereof; and

WHEREAS, to facilitate the EOW Project, the Agency and the Lessee have entered into negotiations to enter into a Straight-Lease Transaction pursuant to which (i) the Lessee has subleased the Facility Realty (EOW Facility), and leased the Cables Property and the Facility Personalty (EOW Facility), to the Agency pursuant to the Company Lease (EOW Facility), and

(ii) the Agency has subleased the Facility Realty (EOW Facility), the Cables Property and the Facility Personalty (EOW Facility) to the Lessee pursuant to the Agency Lease; and

WHEREAS, in furtherance of the Straight-Lease Transaction, the Agency adopted its Inducement Resolution and its Authorizing Resolution inducing and authorizing the undertaking of the EOW Project and the EOW Project Work, the sublease of the Facility Realty (EOW Facility), and the lease of the Cables Property and the Facility Personalty (EOW Facility), by the Lessee to the Agency pursuant to the Company Lease (EOW Facility), and the sublease of the Facility Realty (EOW Facility), the Cables Property and the Facility Personalty (EOW Facility) by the Agency to the Lessee pursuant to the Agency Lease; and

WHEREAS, the provision by the Agency of Financial Assistance to the Lessee through a Straight-Lease Transaction has been determined to be necessary to induce the Lessee, SBMT Asset and Equinor to proceed with the Equinor Projects and the Future OSW Development, and if the Agency does not provide such Financial Assistance, the Lessee and SBMT Asset could not feasibly proceed with the respective Equinor Projects, and Equinor could not feasibly proceed with the Future OSW Development;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.1. Definitions. The following capitalized terms shall have the respective meanings specified for purposes of this Agreement.

Act shall mean, collectively, the Enabling Act and the Agency Act.

Additional Improvements (EOW Facility) shall have the meaning assigned to such term in the Agency Lease.

Agency Act shall mean Chapter 1082 of the 1974 Laws of New York, as amended.

Agency Lease shall mean the Agency Lease Agreement (EOW Facility), dated as of even date herewith, between the Agency and the Lessee, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

Agency Lease Agreement (SBMT Asset Facility) shall have the meaning assigned to such term in the Agency Lease.

Agent shall mean a contractor, subcontractor or other party appointed by the Lessee to act as the Agency's agent for the purpose of effecting purchases that are eligible for the Sales Tax Exemption.

Agreement shall mean this Uniform Project Agreement (EOW Facility), dated as of the date set forth in the first paragraph hereof, between the Agency and the Lessee, and shall

include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

Application Date shall mean the date on which the Inducement Resolution was adopted with respect to the application of the Lessee and SBMT Asset for Financial Assistance.

Approved EOW Project Operations shall have the meaning assigned to such term in the Agency Lease.

As-of-Right Benefit shall mean, for any period of determination, any as-of-right incentives that would otherwise be applied in the absence of the Agency's leasehold interest in the Cables Property to reduce Real Estate Taxes applicable to the Cables Property and for which the Agency has been advised by NYCDOF that the Lessee has met all application, eligibility and qualification requirements.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director or General Counsel, or any other officer or employee of the Agency who is authorized to perform specific acts or to discharge specific duties, (ii) in the case of the Lessee, a person named in Exhibit C of the Agency Lease, or any other officer or employee of the Lessee who is authorized to perform specific duties hereunder or under any other EOW Project Document and of whom another Authorized Representative of the Lessee has given written notice to the Agency, and (iii) in the case of Equinor USH, a person named in Exhibit C to the Agency Lease, or any other officer or employee of Equinor USH who is authorized to perform specific duties hereunder or under any other EOW Project Document and of whom another Authorized Representative of Equinor USH has given written notice to the Agency; provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement or any other EOW Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

Authorizing Resolution shall mean the resolution of the Agency adopted on March 12, 2024, as amended on January 28, 2025, providing for Financial Assistance and authorizing, among other documents, the EOW Project Documents to which the Agency is a party.

Benefits (EOW Facility) shall mean, collectively, (i) all PILOT Benefits realized by the Lessee on and after the PILOT Commencement Date; and (ii) the Sales Tax Savings and all miscellaneous monetary benefits derived from the Agency's participation in the Straight-Lease Transaction contemplated by this Agreement.

Cables Property shall have the meaning assigned to such term in the Agency Lease.

City shall mean The City of New York, New York.

Commencement Date shall mean March 6, 2025, on which date this Agreement was executed and delivered.

Company Lease (EOW Facility) shall mean the Company Lease Agreement (EOW Facility), dated as of even date herewith, between the Lessee, as landlord, and the Agency, as tenant, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

Completion Deadline (EOW Facility) shall mean September 30, 2027, as such deadline may be extended due to a Construction Delay.

Construction Delay shall have the meaning assigned to such term in the Agency Lease.

Eligible Items shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Lessee and any Agent shall be entitled to claim a Sales Tax Exemption in connection with and as part of the EOW Project:

- (i) purchase of the Cables Property but only to the extent the same is to be located and used within the jurisdictional limits of the City and not to exceed the Cables Length;
- (ii) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility Realty (EOW Facility);
- (iii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more, and which are located at, and constitute part of, the Facility, but which are not required to be incorporated into the Facility Realty (EOW Facility) as an integral component thereof;
- (iv) with respect to the eligible items identified in clauses (i), (ii) or (iii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (v) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility Realty (EOW Facility) (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and
- (vi) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility Realty (EOW Facility).

Enabling Act shall mean the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended.

Entity shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

EOW Project shall have the meaning assigned to such term in the Agency Lease.

EOW Project Completion Date shall have the meaning assigned to such term in the Agency Lease.

EOW Project Cost Budget shall have the meaning assigned to such term in the Agency Lease.

EOW Project Documents shall have the meaning assigned to such term in the Agency Lease.

EOW Project Finance Plan shall have the meaning assigned to such term in the Agency Lease.

EOW Project Improvements shall have the meaning assigned to such term in the Agency Lease.

EOW Project Work shall have the meaning assigned to such term in the Agency Lease.

EOW Substation shall have the meaning assigned to such term in the Agency Lease.

Equinor shall mean Equinor ASA, a company organized under the laws of Norway, and its permitted successors and assigns.

Equinor Projects shall have the meaning assigned to such term in the Agency Lease.

Equinor USH shall mean Equinor US Holdings Inc., a corporation organized and existing under the laws of the State of Delaware, and its permitted successors and assigns pursuant to the Guaranty Agreement (EOW Facility).

Existing Improvements (EOW Facility) shall have the meaning assigned to such term in the Agency Lease.

Facility shall mean, collectively, the Facility Personalty (EOW Facility), the Facility Realty (EOW Facility) and the Cables Property.

Facility Personalty (EOW Facility) shall have the meaning assigned to such term in the Agency Lease.

Facility Realty (EOW Facility) shall have the meaning assigned to such term in the Agency Lease.

Financial Assistance shall have the meaning assigned to such term in the Enabling Act.

Future OSW Development shall have the meaning assigned to such term in the Agency Lease.

General Municipal Law shall mean Chapter 24 of the Consolidated Laws of New York, as amended.

Guarantor shall have the meaning assigned to such term in the Agency Lease.

Guaranty Agreement (EOW Facility) shall have the meaning assigned to that term in the Agency Lease.

Guaranty Agreement (SBMT Asset Facility) shall have the meaning assigned to such term in the Agency Lease Agreement (SBMT Asset Facility).

Improvements (EOW Facility) shall have the meaning assigned to such term in the Agency Lease.

Inducement Resolution shall mean the resolution of the Agency adopted on March 12, 2024, as amended on January 28, 2025, inducing the SBMT Asset Project and the EOW Project.

Ineligible Items shall mean the following items of personal property and services with respect to which the Lessee and any Agent shall not be entitled to claim a Sales Tax Exemption in connection with the EOW Project:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art and other similar decorative items;
- (v) plants, whether potted or landscaped;
- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) any personal property or services (x) located outside of the Facility Realty (EOW Facility) other than the Cables Property, (y) the acquisition or

purchase of which shall have preceded the Commencement Date, or (z) the acquisition or purchase of which shall not have been effected in accordance with the Agency Lease and the Sales Tax Agent Authorization Letter (EOW Facility);

- (ix) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (x) maintenance of the type as shall constitute janitorial services.

Land (EOW Facility) shall have the meaning assigned to such term in the Agency Lease.

Lessee shall mean Empire Offshore Wind LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Lessee under Section 8.9 or 8.20 of the Agency Lease.

Maximum PILOT Benefit shall have the meaning assigned to such term in the Agency Lease.

Maximum Sales Tax Savings Amount shall have the meaning assigned to such term in the Agency Lease.

Net Present Value shall mean the net present value calculated as of the PILOT Commencement Date using a discount rate of 6.25%.

NYCDOF shall mean the New York City Department of Finance.

Person shall mean an individual or any Entity.

PILOT shall mean payments in lieu of Real Estate Taxes with respect to the Cables.

PILOT Benefits shall mean, for any period of determination, the dollar amount of all benefits that accrued during such period due to the exemption from Real Estate Taxes resulting from the Agency's leasehold interest in the Cables Property, such amount to be computed by subtracting (y) the aggregate amount of PILOT paid by the Lessee during such period from (z) Real Estate Taxes that would have been levied by the City on the Cables Property, as reduced by As-of-Right Benefits, during such period in the absence of the Agency's leasehold interest in the Cables Property.

PILOT Commencement Date shall have the meaning assigned to such term in the Agency Lease.

PILOT Exemption Recognition Date shall have the meaning assigned to such term in the Agency Lease.

Project Application Information shall have the meaning assigned to such term in the Agency Lease.

Qualified Use shall have the meaning assigned to such term in the Agency Lease.

Real Estate Taxes shall mean real property taxes levied by the City on real property within the City.

Sales and Use Taxes shall mean City and State sales and compensating use taxes and fees imposed pursuant to Article 28 or 28-A of the New York State Tax Law, as the same may be amended from time to time.

Sales Tax Agent Authorization Letter (EOW Facility) shall mean the Sales Tax Agent Authorization Letter (EOW Facility), substantially in the form set forth in Exhibit H to the Agency Lease and to be delivered in accordance with Section 5.2(e) thereof.

Sales Tax Exemption shall mean an exemption from Sales and Use Taxes resulting from the Agency's participation in the EOW Project.

Sales Tax Savings shall mean all Sales Tax Exemption savings realized by or for the benefit of the Lessee, including any savings realized by any Agent, pursuant to the Agency Lease and each Sales Tax Agent Authorization Letter (EOW Facility) issued in connection with the EOW Project.

SBMT Asset shall mean SBMT Asset LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its permitted successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of SBMT Asset under Section 8.9 or 8.20 of the Agency Lease Agreement (SBMT Asset Facility).

SBMT Project shall have the meaning assigned to such term in the Agency Lease Agreement (SBMT Asset Facility).

State shall mean the State of New York.

Straight-Lease Transaction shall have the meaning assigned to such term in the Enabling Act.

Section 1.2. Construction. In this Agreement, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" shall mean after the Commencement Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) References to designated “Appendices,” “Sections” and other subdivisions are to the designated Appendices, Sections and other subdivisions of or to this Agreement.

(f) The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

(g) The word “will” shall be construed to have the same meaning and effect as the word “shall.”

(h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein or herein).

(i) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person’s successors and assigns or such Person’s successors in such capacity, as the case may be.

ARTICLE II

Section 2.1. Acknowledgments of the Lessee. The Lessee acknowledges that:

(a) In connection with the EOW Project, the Lessee will receive the following types of Financial Assistance (the Lessee acknowledging and agreeing that no exemption from mortgage recording taxes will be included within the Financial Assistance):

(i) PILOT Benefits with an estimated (such estimate being as of the date of the adoption of the Inducement Resolution) Net Present Value of approximately \$43,563,343 (but not to exceed the Maximum PILOT Benefit), as more particularly set forth in Section 5.1 of the Agency Lease, attached hereto as Appendix A; and

(ii) Exemption from Sales and Use Taxes on the purchase of Eligible Items in an amount not to exceed the Maximum Sales Tax Savings Amount, as more particularly set forth in Section 5.2 of the Agency Lease.

(b) The Financial Assistance described herein is subject to suspension, modification, discontinuance and/or recapture, as more particularly set forth in Section 5.4 of the Agency Lease attached hereto as Appendix B, and as set forth in Section 5.1 and 5.2 of the Agency Lease.

(c) The description of the EOW Project (as defined in Section 1.1 hereof) is true, correct and complete.

(d) Undertaking the EOW Project is anticipated to serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

Section 2.2. Covenants and Certifications of the Lessee. The Lessee shall provide annually to the Agency on August 1 of each year commencing August 1, 2025, a certified statement and supporting documentation:

(i) enumerating the full-time equivalent jobs retained, if any, and the full-time equivalent jobs created, if any, as a result of the Financial Assistance described in Section 2.1(a) above, by category, including full-time equivalent independent contractors or employees of independent contractors that work at the Facility; provided, however, that as stated in Section 8.16(b) of the Agency Lease, nothing herein shall be construed as requiring the Lessee to maintain a minimum number of employees on its payroll; and

(ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that were provided in the Project Application Information are still accurate and, if not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and an explanation for why the averages or ranges provided in the Project Application Information are not still accurate.

(b) The Lessee does hereby certify, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

ARTICLE III

Except for the Agency Lease and the other EOW Project Documents, this Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and all prior negotiations and agreements are merged in this Agreement. This Agreement shall only be changed, modified or discharged in whole or in part by a written instrument executed by the Lessee and the Agency.

ARTICLE IV

All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as provided in Section 11.5 of the Agency Lease.

ARTICLE V

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State, without regard or giving effect to the principles of conflicts of laws thereof.

The terms of this Agreement are and shall be binding upon and inure to the benefit of the Agency and the Lessee and their respective successors and assigns.

If any one or more of the provisions of this Agreement shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Lessee relating to the Facility, other than the Agency Lease or any other EOW Project Document.

ARTICLE VI

This Agreement shall become effective upon its delivery on the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

ARTICLE VII

All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent (other than the Lessee) of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent (other than the Lessee) of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not subject the Agency to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Agency by the Lessee under the Agency Lease.

All covenants, stipulations, promises, agreements and obligations of the Lessee contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Lessee, and not of any member, director, officer, manager, partner, employee or agent of the Lessee in their individual capacity, and no recourse shall be had for the payment of any amounts hereunder against any member, director, officer, manager, partner, employee or agent of the Lessee.

ARTICLE VIII

Each party acknowledges that this Agreement is a legally binding contract and that it was represented by legal counsel in connection with the drafting, negotiation and preparation of this Agreement. Each party acknowledges that it and its legal counsel has cooperated in the drafting, negotiation and preparation of this Agreement and agrees that this Agreement and any provision hereof shall be construed, interpreted and enforced without regard to any presumptions against the drafting party. Each party hereby agrees to waive any rule, doctrine or canon of law, including without limitation, the *contra proferentem* doctrine, that would require interpretation of any ambiguities in this Agreement against the party that has drafted it.

[Signature Page Follows]

IN WITNESS WHEREOF the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel, and the Lessee has caused its name to be subscribed hereto by its Authorized Representative all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

Noah Schumer
Deputy Executive Director

EMPIRE OFFSHORE WIND LLC

By: _____
Theodore Muhlfelder
President

IN WITNESS WHEREOF the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel, and the Lessee has caused its name to be subscribed hereto by its Authorized Representative all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Noah Schumer
Deputy Executive Director

EMPIRE OFFSHORE WIND LLC

By:  _____
Theodore Muhlfelder
President

[See attached copy of Section 5.1 of the Agency Lease.]

Section 5.1 Payments in Lieu of Real Estate Taxes.

(a) Real Estate Taxes to be Paid Prior to PILOT Commencement Date. Until the PILOT Commencement Date (or such later date as the Cables Property is determined to be exempt from Real Estate Taxes), the Lessee shall pay to the City all Real Estate Taxes in respect of the Cables Property for the periods of time occurring prior to such date at such times, in such manner and in such amounts as would be applicable if the Agency did not have a leasehold interest in the Cables Property.

(b) PILOT Generally.

(i) It is recognized that under the provisions of the Act the Agency is required to pay no Real Estate Taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. The Agency and the Lessee agree, however, that the Lessee shall be required to pay PILOT with respect to the Cables Property in accordance with the provisions of this Section 5.1.

(ii) The Agency makes no representation as to the availability of an exemption or abatement from Real Estate Taxes for the Cables Property. The Lessee acknowledges that the Agency has not represented the availability of any such exemption or abatement for the Cables Property, and the Lessee hereby releases the Agency from any claim arising from any loss of the Financial Assistance that was contemplated hereunder.

(iii) The Lessee acknowledges that PILOT will equal the Full PILOT Amount until such time as all Real Estate Taxes due prior to the PILOT Commencement Date are paid in full, including any interest that may be due thereon.

(iv) The Agency shall have no obligation to take any action to correct any defect or deficiency that may prevent the Cables Property from being recognized as exempt from Real Estate Taxes by the City.

(v) The Agency, in its sole discretion and in furtherance of the purposes of the Act, may waive, in whole or in part, the payment of PILOT for good cause shown.

(vi) Notwithstanding any other provision of this Agreement, if a PILOT calculation results in a negative amount due for any period of calculation, PILOT shall be deemed to equal zero for such period and the Lessee shall not be entitled to any credit or refund.

(c) Treatment of Cables. The Lessee represents, warrants, covenants and agrees that (i) the Cables Property will be purchased by the Lessee in accordance with this Agreement and the Sales Tax Agent Authorization Letter (EOW Facility) on behalf of the Agency, (ii) the Cables Property will be owned by the Lessee and leased by the Lessee to the Agency

pursuant to the Company Lease (EOW Facility) such that, on or prior to the PILOT Commencement Date, the Agency will have a leasehold interest in the Cables Property, (iii) the Cables Property will be located within the jurisdictional limits of the City and no portion of the Cables Property will be located outside of the jurisdictional limits of the City, (iv) appropriate officials of the City may determine that the Cables Property constitute real estate of a utility corporation (“REUC”), (v) the Lessee will request that NYCDOF assign an IDENT number to the Cables Property for purposes of imposing Real Estate Taxes, and will promptly deliver written notice of the IDENT number so assigned to the Agency, (vi) the Cables will have a length not exceeding the Cables Length, (vii) the Cables Property will be installed to connect the OSW power from the Future OSW Development to the City’s power grid so that electrical power generated from the Future OSW Development will flow through the Cables, and all of the work with respect thereto will be completed in accordance with all applicable regulatory and contractual requirements, and (viii) the Lessee will timely deliver to the Agency the certificate of the Authorized Representative of the Lessee referred to in the definition of “PILOT Exemption Recognition Date”.

(d) Cables Property PILOT.

During the PILOT Term, the Lessee shall pay PILOT with respect to the Cables Property (the “**Cables Property PILOT**”) in the amounts described below.

(i) For each semi-annual period occurring within the Annual Period commencing on the PILOT Commencement Date to and including the last day of the twenty-first (21st) Annual Period (for example, if the PILOT Commencement Date is July 1, 2027 such that the first Annual Period is from July 1, 2027 through June 30, 2028, the last day of the twenty-first Annual Period is June 30, 2048), the Cables Property PILOT shall equal zero (subject to clause (vi) below).

(ii) For each semi-annual period occurring within the Annual Period commencing on the twenty-second (22nd) Annual Period to the end of such twenty-second (22nd) Annual Period, the Cables Property PILOT shall equal (1) the Full PILOT Amount with respect to the Cables Property minus (2) the product of (y) 0.80 and (z) the Full PILOT Amount (subject to clause (vi) below).

(iii) For each semi-annual period occurring within the Annual Period commencing on the twenty-third (23rd) Annual Period to the end of such twenty-third (23rd) Annual Period, the Cables Property PILOT shall equal (1) the Full PILOT Amount with respect to the Cables Property minus (2) the product of (y) 0.60 and (z) the Full PILOT Amount (subject to clause (vi) below).

(iv) For each semi-annual period occurring within the Annual Period commencing on the twenty-fourth (24th) Annual Period to the end of such twenty-fourth (24th) Annual Period, the Cables Property PILOT shall equal (1) the Full PILOT Amount with respect to the Cables Property minus (2) the product of (y) 0.40 and (z) the Full PILOT Amount (subject to clause (vi) below).

(v) For each semi-annual period occurring within the Annual Period commencing on the twenty-fifth (25th) Annual Period to the end of such twenty-fifth (25th) Annual Period (for example, if the PILOT Commencement Date is July 1, 2027 such that the first Annual Period is from July 1, 2027 through June 30, 2028, the last day of the twenty-fifth (25th) Annual Period is June 30, 2052), the Cables Property PILOT shall equal (1) the Full PILOT Amount with respect to the Cables Property minus (2) the product of (y) 0.20 and (z) the Full PILOT Amount (subject to clause (vi) below).

(vi) Notwithstanding any of the preceding subparagraphs, the aggregate PILOT Benefits shall not exceed \$45,000,000 calculated on a net present value basis by discounting the PILOT Benefits at 6.25% per annum to the PILOT Commencement Date (the “**Maximum PILOT Benefit**”). In the event the Lessee shall receive the Maximum PILOT Benefit, all future PILOT Payments owed by the Lessee shall be in the Full PILOT Amount.

(e) Payment Provisions.

(i) The Lessee agrees to pay all PILOT required to be paid under this Section 5.1 seven (7) Business Days prior to the commencement of the semi-annual period which relates to such PILOT (i.e., July 1 or January 1 (as the case may be)), in the amounts specified in PILOT Bills. The Lessee also agrees to pay within seven (7) business days of receipt of a PILOT Bill from NYCDOF, any PILOT Reconciliation amount required to be paid by the Lessee in accordance with Section 5.1(g)(ii). The Agency agrees to request appropriate officers of NYCDOF to provide the Lessee with PILOT Bills. The Lessee understands and agrees that the failure of NYCDOF to send the Lessee a PILOT Bill shall not relieve the Lessee of its obligation hereunder to pay the amount of PILOT required in accordance with this Section 5.1. The Lessee may send all inquiries concerning PILOT Bills to pilot1@finance.nyc.gov or: **PILOT Unit, NYC Department of Finance, 59 Maiden Lane, 22nd floor, New York, New York 10038.**

(ii) Until such time as the Agency may in writing require otherwise, the Lessee shall pay PILOT to the PILOT Depository and the Lessee shall make such payments by certified check, or bank draft payable at a bank in New York, New York, wire transfer or electronic funds transfer; provided, however, that any single semi-annual payment of \$150,000 or more (i.e., \$300,000 or more annually) or any payment which is over thirty (30) days past due, must be made by either wire transfer or electronic funds transfer.

(iii) Upon the occurrence of a PILOT Payment Default, the amount of PILOT so in default shall continue as an obligation of the Lessee and the Lessee agrees to pay the same to the PILOT Depository, together with the lesser of (A) the maximum amount of interest permitted by law, and (B) the greater of (i) interest thereon at the same rate per annum and compounded at the same frequency as is charged from time to time by the City with respect to the delinquent payment of Real Estate Taxes, and (ii) a late payment fee of 5% of the amount of PILOT that was not paid when due and, for each month or part thereof that a payment is delinquent beyond the first month, an additional late payment fee of 1% per month assessed on (a) the original amount or portion thereof that was not paid

when due that remains unpaid during such month or part thereof and (b) the 5% late payment penalty or portion thereof that remains unpaid during such month or part thereof.

(iv) Nothing contained herein shall limit or impair the Lessee's right, to the extent permitted by law, to do the following:

(1) to obtain reductions in the assessed value of the Cables Property; or

(2) to apply for As-of-Right Benefits that would reduce Real Estate Taxes with respect to the Cables Property (as if the Cables Property was not exempt from Real Estate Taxes); provided, however, that the foregoing shall not be construed to reduce PILOT payable under this Section 5.1 except as expressly contemplated by the provisions of Section 5.1(d).

(f) Apportionment of Payments after Transfer.

(i) The Agency shall cause the appropriate officer or officers of the City to return the Cables Property to the tax rolls as of the Cessation Date. During the City Tax Fiscal Year in which the Cessation Date occurs, the Lessee and/or other subsequent owner of the Cables Property shall be responsible for paying the Real Estate Taxes due for the portion of such City Tax Fiscal Year that remains from and after the Cessation Date.

(ii) With respect to the semi-annual period of the City Tax Fiscal Year during which the Cessation Date occurs, the Agency shall cause the appropriate officer or officers of the City to apportion that part of PILOT previously remitted for such semi-annual period (if any), which is attributable to the period commencing on the Cessation Date and ending on the June 30 or December 31 following (as the case may be), as a credit against the Real Estate Taxes owed for such semi annual period.

(g) Reduction or Withdrawal of Financial Assistance; Loss of Exemption.

(i) *Additional PILOT.* If any portion of the Cables Property is used for Non-Qualified Use by the Lessee or any Tenant (whether pursuant to a Tenant Lease, occupancy or use), with respect to the period of such use, the Lessee shall pay additional PILOT in accordance with Section 5.1(e) in advance of each semi-annual period during which such Non-Qualified Use shall occur (in addition to amounts payable pursuant to Section 5.1(d) hereof) as follows: if any portion of the Cables Property is used for Non-Qualified Use, an amount, equal to the product of (y) the positive difference, if any, between (A) the PILOT Amount with respect to the Cables Property and (B) the PILOT amounts applicable to the Cables Property calculated pursuant to Section 5.1(d) hereof, in each case, determined on a per diem basis for the period of such Non-Qualified Use, and (z) a fraction, expressed as percentage (the "**Disqualified Percentage**"), the numerator of which is (A) the total Non-Qualified Length and the denominator of which is (B) the Cables Length.

(ii) *PILOT Reconciliation.* The Lessee shall submit semi-annually pursuant to Section 8.16(d) a certificate that includes a PILOT Reconciliation for each

semi-annual period ending on the prior June 30th or December 31st. Any additional PILOT due as a result of the PILOT Reconciliation shall be payable within seven (7) business days of the issuance of a PILOT bill by NYCDOF in accordance with Section 5.1(e). Failure by the Lessee to submit a PILOT Reconciliation by the due date for the certification specified in Section 8.16(d) will result in the imposition of interest and fees specified in Section 5.1(e)(iii) for any PILOT Reconciliation amount otherwise due, and such interest and fees shall accrue from the required certification due date.

(iii) *Events of Default.* Upon the occurrence of an Event of Default, including but not limited to a PILOT Payment Default, the Agency may increase PILOT temporarily or permanently, in its sole discretion, and without notice other than the prior notice required for certain Events of Default, to an amount equal to the Full PILOT Amount as to the Cables Property.

(iv) *Loss of Exemption.* Upon the occurrence of a Cessation Date, the Cables Property shall be deemed automatically restored to the tax rolls, whether or not procedurally such restoration has in fact occurred, and the Lessee shall pay Real Estate Taxes with respect to the Cables Property from and after such Cessation Date.

[See attached copy of Section 5.4 of the Agency Lease.]

Section 5.4. Recapture of Benefits. It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide Financial Assistance to the Lessee for the EOW Project and to accomplish the public purposes of the Act. In consideration therefor, the Lessee hereby agrees as follows:

(a) If there shall occur a Recapture Event during the Recapture Period, the Lessee shall pay to the Agency as a return of Financial Assistance conferred by the Agency, a recapture amount (the “**Recapture Amount**”) equal to the product of (y) all Benefits (EOW Facility) realized by the Lessee and (z) the recapture percentage below (the “**Recapture Percentage**”) for the period during which the Recapture Event occurs, as determined by the Agency:

(i) if the Recapture Event occurs during the period commencing on the Commencement Date and ending on the day before the third anniversary of the Facility Operations Commencement Date, the Recapture Percentage is 130%;

(ii) if the Recapture Event occurs during the period commencing on the third anniversary of the Facility Operations Commencement Date and ending on the day before the fourth anniversary of the Facility Operations Commencement Date, the Recapture Percentage is 120%;

(iii) if the Recapture Event occurs during the period commencing on the fourth anniversary of the Facility Operations Commencement Date and ending on the day before the fifth anniversary of the Facility Operations Commencement Date, the Recapture Percentage is 110%;

(iv) if the Recapture Event occurs during the period commencing on the fifth anniversary of the Facility Operations Commencement Date and ending on the day before the sixth anniversary of the Facility Operations Commencement Date, the Recapture Percentage is 100%; or

(v) if the Recapture Event occurs during the period commencing on the sixth anniversary of the Facility Operations Commencement Date and ending on or before the tenth anniversary of the Facility Operations Commencement Date, the Recapture Percentage is 100% minus the product of (y) 1.666% and (z) the number of months elapsed since the sixth anniversary of the Facility Operations Commencement Date.

(b) Interest on any Recapture Amount due pursuant to the provisions of Section 5.4(a) shall accrue at a rate equal to the higher of nine percent (9%) per annum, or the amount of interest and penalties imposed by the Act or other law, from the date that the Recapture Event occurred until the date of repayment of the Recapture Amount to the Agency.

(c) Notwithstanding the foregoing, with respect to State Sales Tax Savings, the computation of the amount of State Sales Tax Savings to be recaptured shall equal the greater of the amount determined pursuant to this Section 5.4 and the amount due to the State pursuant to the Special Provisions.

(d) For purposes of this Section 5.4, demand for payment by the Agency shall be made in accordance with the notice requirements of this Agreement and the due date for payment shall be not less than seven (7) Business Days from the date of the notice.

(e) The Lessee shall furnish the Agency with written notification of any Recapture Event within twenty (20) days of its occurrence and shall subsequently provide to the Agency in writing any additional information that the Agency may request.

(f) The provisions of this Section 5.4 shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.