

**SECOND AMENDMENT
TO
HARBOR DEVELOPMENT AGREEMENT**

This Second Amendment to Harbor Development Agreement (this “Second Amendment”) is made and entered into as of this 29th day of June, 2021 (the “Second Amendment Effective Date”), by and among the Connecticut Port Authority, a quasi-public agency of the State of Connecticut (the “Authority”), Gateway New London LLC, a Delaware limited liability company (“Gateway”) and Northeast Offshore LLC, a Delaware limited liability company (“NEO”).

WHEREAS, the Parties entered into that certain Harbor Development Agreement dated February 11, 2020, as amended by that certain First Amendment to Harbor Development Agreement dated March 11, 2021 (collectively, the “Agreement”); and

WHEREAS, the Parties now desire to further amend the Agreement as set forth below.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the undersigned agrees as follows:

1.1 Capitalized Terms. All capitalized terms contained in this Second Amendment and not specifically defined herein, shall have the meaning provided to such terms in the Agreement.

1.2 Amendments to Agreement.

A. Schedules 2 and 4 of the Agreement are hereby deleted in their entirety and the attached Schedules 2 and 4 shall be substituted in lieu thereof.

B. Section 2.4 of the Agreement is hereby deleted and the following is substituted in lieu thereof:

“In the event that despite such diligent efforts, the Authority is unable to achieve any of Items 8 (Phase 2 Permits issued), Item 10 (EPC Bids are too high process), 11 (Item 5 and 6 escrow funding), and Item 11a (Item 7 escrow funding) of the PCMPD within the timeframes set forth under the PCMPD, the Parties mutually agree to promptly meet and use diligent commercial efforts to either revise the applicable deadline(s) (if the Parties can so agree to an extension) or revise this Harbor Development Agreement and the Sublease Agreement no later than September 15, 2021 to reflect an alternate construction schedule, cost estimates and/or funding plan which most nearly approximates the scale and effectiveness of the Project and delivers the Project on or before the Regular Delivery Date (“the Alternate Plan”). Notwithstanding the foregoing, if the Parties cannot agree on the Alternate Plan, then the Parties agree that the Parties shall attempt to agree upon a plan to deliver the Project in its then full scope in a mutually agreeable budget and timeframe, recognizing the significance of harbor availability on NEO’s offshore wind project schedules. If the Parties are ultimately unable to achieve these goals by September 15, 2021, then NEO

shall have the right, with notice to all Parties, to reduce its funding obligation and the maximum amount that NEO shall be entitled to withdraw from the Escrow Agreement shall be \$55.0 million minus NEO funds already spent in accordance with Section 8.3. Furthermore, in the event the Project is terminated, NEO agrees to fund its pro rata share (calculated in accordance with each Party's capital contribution to the Project) of applicable expenses related to (i) demobilization, and (ii) termination of the applicable agreements. In no event will NEO be refunded the \$2.5 million operating support payments made to CPA during the construction period.

The Parties mutually agree that notwithstanding any other provision of this Harbor Development Agreement to the contrary, any and all costs as well as lease and/or rental obligations of the Authority to be paid pursuant to that certain lease agreement by and between the Authority and the New England Central Railroad, Inc. (the "NECR Lease") shall be included in the Budgeted Costs and shall be included in the funding pursuant to Section 8.3 to be provided to Escrow Agent and reserved only for such lease and/or rental obligations pursuant to the NECR Lease and such escrowed funds allocated for such lease and/or rental obligations shall not be used for costs associated with CMR Contractor, the Designer, any related design or construction costs, or any other costs or expenses."

C. Section 4.5 of the Agreement is hereby deleted in its entirety.

D. Section 5.2 is hereby revised by substituting "CMR Contractor" in every instance where "EPC Contractor" occurs.

E. The first sentence of Section 7.1.8 is hereby deleted in its entirety and the following is substituted in lieu thereof:

"The estimated Budgeted Costs, including contingency, as of the date of the Agreement as amended total \$235.5 million."

F. A new Section 7.1.10 is added to the Agreement to read as follows:

"7.1.10 Budgeted Costs shall include all costs associated with accommodating the Fishermen on Site as well as any necessary offsite staging required for the Project."

G. A new Section 7.1.11 is added to the Agreement to read as follows:

"7.1.11. Budgeted Costs shall include a reimbursement payment to Gateway of the 2022 Impact Fee of \$79,590.60 subject to fund availability within ten (10) business days after its payment by Gateway.

H. Section 8.1.1(b) of the Agreement is hereby deleted in its entirety and the following is substituted in lieu thereof:

“\$53.75 million to be funded by NEO in accordance with the sequence set forth in Section 8.3.”

I. Sections 8.1.1(d), 8.1.1(e) and 8.1.1(f) of the Agreement are hereby deleted in their entirety.

J. Section 8.1.3 of the Agreement is hereby deleted in its entirety.

K. Section 8.1.4 of the Agreement is hereby revised by the addition of a new second sentence thereto as follows:

“The Parties agree that the Regular Delivery Date shall be extended up to a maximum of 5 months as a result of material permit delays.”

L. Section 8.1.5 of the Agreement is hereby revised by substituting a revised amount of \$2 million for the \$4 million currently set forth in the first sentence of Section 8.1.5.

M. The first two sentences of Section 8.2 of the Agreement are hereby deleted in their entirety and the following is substituted in lieu thereof:

“The Authority has deposited with the Escrow Agent \$25.5 million plus \$22.5 million plus 30.0 million in accordance with 8.3. The Authority shall further fund those amounts as set forth in items 5 and 7 of Section 8.3.”

N. Section 8.3 of the Agreement is deleted in its entirety and the following is substituted in lieu thereof:

“Funding to Escrow Agent for the Work will be made by NEO and the Authority in the following sequence (but in all events after the Effective Date), and payment of the related costs thereof by Escrow Agent will be made in the following sequence as Budgeted Costs are incurred, in conformance to the PCMPD and subject to the terms and conditions contained herein:

Funding Party	Funding Amount	Funding
1. NEO	\$2.5 Million	50% funded with the remainder to be deposited to Escrow Agent on or before July 9, 2021
2. The Authority	\$22.5 Million (DWW Funding Commitment)	Fully funded
3. The Authority	\$25.5 Million	Fully funded
4. The Authority	\$30 Million	Fully funded
5. The Authority	\$55 Million	The Authority to fund to Escrow Agent on or before July 9, 2021
6. NEO	\$52.5 Million	NEO to fund to Escrow Agent on or before July 9, 2021
7. The Authority	\$50 Million	The Authority to Fund to Escrow Agent within ten (10) Business Days of receipt of funds authorized by State Bonding Commission but in no event later than August 31, 2021

O. The first sentence paragraph beginning with the word “Force” and ending with the word “case,” of Section 13.1 of the Agreement is hereby amended by replacing the portion of prior to “and, in each case,”: deleted and the following is substituted in lieu thereof:

“‘Force Majeure’ means (i) fire, explosion, National Emergency, war or act of war, insurrection, riot, terrorist acts, labor disputes, accidents, mechanical failure, pandemic declaration by the President of the United States, including COVID19, acts of the public enemy, war, hostilities (including flood or abnormal adverse whether war be declared or not), invasion, act of foreign enemies; (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war; (iii) riot, commotion, disorder, strike or lockout by Persons not a Party to this Harbor Development Agreement; (iv) munitions of war, explosive materials, ionizing radiation or contamination by radioactivity, except as may be attributable to the use of such munitions, explosives, radiation or radioactivity by a Party, its Affiliates, Employees or Subcontractors; (v) acts of God (such as extreme weather, tornado, flood, hurricane or natural catastrophes such as earthquake and volcanic activity or abnormal weather conditions not reasonably anticipatable), in each case only to the extent such event or circumstance is an exceptional event or circumstance; (vi) changes to existing law, and change in law, codes or regulations governing construction of the Project that have a material adverse impact on the Project; and, in each case,”

P. Section 16.2.2 of the Agreement is hereby deleted and the following is substituted in lieu thereof:

“NEO will not seek a refund of funding already disbursed or pending disbursement in accordance with Section 8.3 for work performed or materials purchased prior to termination, provided, however, that NEO shall be entitled to receive the balance of any funds as set forth in Section 2.4 hereof.”

Q. The defined term “EPC Contractor” in Annex A of the Agreement is hereby deleted from the Agreement and the defined term “CMR Contractor” shall be substituted in its places in the Agreement. Additionally, a new defined term shall be added to Annex A of the Agreement as follows:

“CMR Contractor” means the general contractor obtained through a CMR pursuant to Applicable Law to complete the Work on behalf of the Authority.”

1.3 Per Connecticut General Statute § 4e-7 as amended, each of NEO and Gateway acknowledge and accept that, for cause, the State Contracting Standards Board may review and recommend, for CPA’s consideration and final CPA determination, termination of this amendment. “For Cause” means: (1) a violation of the State ethics laws (Chapter 10 of the Connecticut General Statutes as amended) or Connecticut General Statutes § 4a-100 as amended or (2) wanton or reckless disregard of any State contracting and procurement process by any person substantially involved in such contract or State contracting agency, to the extent such statutes are applicable.

1.4 **Effective Date.** This Second Amendment shall be effective as of the Second Amendment Effective Date.

1.5 **Ratification of Agreement.** Except as specifically modified in this Second Amendment, the Agreement shall be and remain in full force and effect and is hereby ratified by the Parties. To the extent that this Second Amendment is inconsistent or conflicts with any of the provisions of the Agreement, this Second Amendment shall control and supersede the Agreement with respect to the subject matter hereof.

1.6 **Expenses.** Each Party shall pay its own expenses in connection with the negotiation, preparation and execution of this Second Amendment and any and all other documents relating to the transactions contemplated hereby.

1.7 **Amendments.** This Second Amendment shall not be amended, changed, modified, or altered without the concurring written consent of the Parties hereto.

1.8 **Signatures & Counterparts.** This Second Amendment may be executed in one or more counterparts, all of which together shall constitute one and the same agreement. Any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original.

1.9 Governing Law. This Second Amendment shall be governed, construed and enforced in accordance with the laws of the State of Connecticut (without giving effect to principles of conflicts of laws thereof).

1.10 Merger. This Second Amendment together with the Agreement represents the entire agreement among the Parties relating to the subject matter hereof. Any prior agreements, promises, negotiations or representations, either oral or written, relating to the subject matter hereof, not expressly set forth herein, are of no force or effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Second Amendment to be executed as of the day and year first above written.

CONNECTICUT PORT AUTHORITY

By: 
Name: John H. Henshaw, III
Title: Executive Director

GATEWAY NEW LONDON LLC

By: _____
Name: Matthew Satnick
Title: Authorized Representative

NORTHEAST OFFSHORE LLC

By: _____
Name: Michael J. Ausere
Title: Authorized Representative

By: _____
Name: Francis Slingsby
Title: Authorized Representative

Attachments:

Schedule 2

Schedule 4

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SCHEDULE 2 TO HARBOR DEVELOPMENT AGREEMENT
PROJECT CONDITIONS AND MILESTONE PERFORMANCE DATES (PCMPD)

Item Number	Item Name	Item Description	Deadline	Extend for Force Majeure?
1	M&N Contract Amendment	Execution and Delivery of amendment of M&N contract for State control.	completed	No
2	Confirmation of CPA good title	NEO confirmation of good title transfer from CT DOT to CPA.	completed	No
3	Abutter Parcels	Resolution of abutter parcel issues, including NECR lease.	completed	No
4	Additional bonding authority	CPA receives legislative authority and bonding commission action to bond \$60 million in addition to \$25.5 million of bonded funds already available; CPA confirms \$30 million of such \$60 million has been specifically allocated to the Project.	completed	No
5	408 De-Authorization	Confirmation that CWA Section 408 de-authorization is complete.	completed	No
6	Stormwater Permit Issuance	Approval by CT DEEP of the Construction General Stormwater Permit.	completed	No
7	Updated Cost Estimate	60% design and estimates will be delivered by M&N by 7/29/20. 3 rd Party review and reconciliation will be completed per this milestone.	completed	No
8	Phase 2 Permits Issued	Phase 2 approvals issued by CT DEEP and USACE.	August 31, 2021	No
9		<i>Intentionally left blank</i>		
10	<i>"EPC Bids are too high" process (Sec 5.2)</i>	Final GMP Approval under contract between the CMR and Authority. Further, the GMP will not exceed targeted GMP of \$204 million.	August 31, 2021	No
11	Item 5 and 6 escrow funding	Funding due to escrow agent by both Parties in accordance with HDA Section 8.3, items 5 and 6.	July 9, 2021	
11a	Item 7 escrow funding	Funding due to escrow agent by CPA in accordance with HDA Section 8.3, item 7.	August 31, 2021	

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PROJECT CONDITIONS AND MILESTONE PERFORMANCE DATES (PCMPD)

Item Number	Item Name	Item Description	Deadline	Extend for Force Majeure?
12	Construction Contract Executed by CPA	Execution of CMR contract between CMR and Authority	completed	No
13	Construction Commencement	"Construction NTP" issued to CMR by Authority under CMR contract	completed	Yes
14		<i>Intentionally left blank</i>		
15	CPA construction funding shortfall	CPA Failure to pay Excess Costs arising after issuance of all permits/all Phase II share funded (e.g. VO for unexpected site condition discovered during construction) after cure period.	varies	Yes, for CPA time to cure, but not for CPA funding obligation
16		<i>Intentionally left blank</i>		
17	Regular Delivery Date	Turnkey handoff date on which BSW enters Site to make use of facility as WTG construction hub (i.e., not for alternative use.	8/31/22*	Yes

*Regular Delivery Date shall be extended up to 5 months based on permit delays pursuant to Section 8.1.4.

