

## SECTION 28

### Tangible Benefits

## Section 28. Tangible Benefits

### A. Narrative.

A. There will be 30-40 part-time construction jobs during the period of the project construction. Roughly half of those jobs will be short term (i.e. 2-3 months) while the rest will be long term (i.e. 12-18 months). To the extent possible, personnel will be drawn from local and surrounding communities. Beyond the construction period, three long term Operations and Maintenance jobs will be created. The project will also require a local site guard, likely through extension of the existing contract with the site guard for the Pisgah Mountain Wind Project. The Silver Maple Wind Project will also contract snow removal through a nearby contractor, again extending the existing contract with the current snow removal service in place for the Pisgah Mountain Wind Project. Both positions will be part time.

B. The project is expected to generate approximately 60,000 MWh of electricity per year. This estimate is based on the anticipated net capacity factor of the project, historical and expected wind speeds on site, and curtailment regiments expected during the project's operating period.

C. The Silver Maple Wind Project will contribute \$2,000 per MW of installed capacity annually to the Town (totaling \$40,000) in compliance with the Community Benefit Agreement agreed upon between the Town and SWEB Development. This fund is the primary mechanism by which the project will contribute value to the Town of Clifton. The project is not expected to impact property tax rates in the host community.

D. The Silver Maple Wind Project has not yet secured a Power Purchase Agreement.

E. This project is not expected to have any material impacts on electricity rates throughout Maine or New England.

F. Conservation measures are not considered as part of the Community Benefits Package.

G. Not Applicable, please refer to Exhibit 28.1 for a scope of the Community Benefits.

H. 90 days following commencement of commercial operation, SWEB Development USA, LLC will provide the Department with a briefing on the tangible benefits realized by the project with regard to construction, initial Operations and Maintenance, and initial payments to the Town of Clifton.

I. Not Applicable, as the project's full scope of benefits has already been described in this Section.

J. The community benefits package in accordance with 35-A M.R.S. §3454(2). Please refer to the following pages in Exhibit 28.1.

## COMMUNITY BENEFIT AGREEMENT

This COMMUNITY BENEFIT AGREEMENT (the "Agreement") is made this 17<sup>th</sup> day of March, 2018 by and between the Town of Clifton, Maine, a body corporate and politic in the State Maine (the "Town") with a mailing address of 135 Airline Road, Clifton, Maine 04428, and SWEB Development USA, LLC (the "Company"), a Delaware limited liability company qualified to do business in Maine. The Town and the Company are referred to herein each as "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, the Company is seeking the requisite local, state and federal permits, licenses and approvals (collectively, the "Permits") to construct a commercial grid-scale wind energy project expected to include 5 wind turbines, for a total generating capacity of approximately 20 megawatts of electricity to be located in the Town and within the boundaries of the "Town of Clifton Pisgah Mountain Wind Power Omnibus Municipal Development and Tax Increment Financing District" (the "District") and within the tract identified on Exhibit 1-C as "Silver Maple Wind Energy Project" (the "Project" or the "Silver Maple Project");

WHEREAS, the Silver Maple Project represents a new wind power project within the District, as a separate and distinct initial wind power project was previously approved within the District, and the District is large enough to include both of the projects;

WHEREAS, pursuant to 35-A M.R.S.A. § 3451 *et seq.* (the "Maine Statute"), approval of the wind energy development permit for the Project by the Maine Department of Environmental Protection ("DEP") requires, among other approval standards, that the Project provide "tangible benefits" related to the Project;

WHEREAS, "tangible benefits" as defined by the Maine Statute must include a community benefits package which may be satisfied, among other things, by a community benefit agreement between the Town and the Company that provides for payments to the Town to be utilized for public purposes, including, but not limited to, for property tax reductions, economic development projects, land and natural resource conservation, tourism promotion or reduction of energy costs;

WHEREAS, the Company has determined it to be appropriate, and has voluntarily agreed, to provide an Annual Contribution (as hereinafter defined) to the Town for a term of years described herein in satisfaction of the Project's "tangible benefits" requirement under the Maine Statute;

WHEREAS, the Parties agree and acknowledge that the Annual Contribution shall not influence or have any bearing whatsoever on the Town's review of any application of the Company for any Permit or any other decision the Town may have occasion to make relative to the Project.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Community Benefit Annual Contribution; Timing of Payments; Obligation

(a) Annual Contribution Payments: The Company shall make Twenty (20) payments (each an "Annual Contribution" and collectively, the "Annual Contributions") to the Town in an amount equal to two thousand two hundred and fifty dollars (\$2,250.00) per megawatt of allowed capacity under the interconnection agreement for the Project, which Project is located within the tract labeled "Silver Maple Tract" as delineated on Exhibit 1-B and Exhibit 1-C to this Agreement, which is located within the boundaries of the District and within the boundaries of the Town. The first Annual Contribution payment will be made on the date one hundred eighty (180) days following the date the Project reaches Commercial Operation, as defined below. Payments 2-20 will be made annually thereafter, on the day one hundred eighty (180) days after Commercial Operation. Notwithstanding anything to the contrary contained herein, the Company's obligations hereunder, including but not limited to the obligation to make the Annual Contributions, are conditioned on the Company receiving a DEP permit authorizing the Company to build and operate the Project.

(b) Commercial Operation: The date of Commercial Operation shall mean the date certain set forth in a notice to the transmission owner and the system operator in accordance with and pursuant to the interconnection agreement. The Company shall provide to the Town a copy of such written notice, when issued by the Company.

(c) Obligation: Upon notice to the Town of the date of Commercial Operation, the Company becomes automatically obligated to the Town for the Annual Contributions as described herein.

2. Use of Annual Contribution

(a) As a condition of the Town's receipt of the Annual Contributions under this Agreement, the Town agrees to use the Annual Contributions for public purposes, including, but not limited to: for property tax reductions, economic development projects, land and natural resource conservation, tourism promotion, or reduction of energy costs (the "Approved Uses").

(b) In the event that any use of the Annual Contributions by the Town, as described in subsection (a) above or otherwise, is declared by a court of competent jurisdiction to constitute an improper or unauthorized expenditure of Town funds under the Maine Statute or otherwise, the full amount of the Annual Contributions shall be used by the Town in accordance with such governmental order or applicable laws or regulations then in place.

3. Term; Assignments and Transfers

a. This Agreement shall terminate on the earliest to occur of (i) the date the Town has received each of the twenty (20) contributions comprising the Annual Contribution or (ii) the date that the Company gives notice to the Town of the Company's intent to decommission the Project (the "Decommissioning Notice"). Notwithstanding the foregoing, if the Company has not completed the decommissioning of the Project within twelve (12) months of delivery of the Decommissioning Notice, then the Company shall pay to the Town an amount equal to fifty percent (50%) of the last applicable Annual Contribution on the January 31 immediately following the end of such 12 month period, and on each succeeding January 31 until the date that the Company has given notice to the Town that it has complied with the decommissioning requirements of the Natural Resource Protection Act and Site Location of Development permit issued by the DEP.

b. Prior to any sale or transfer of the Project or of a controlling interest in the Project, the Company shall take all necessary steps to assure that its obligations under this Agreement are assumed by, binding upon and enforceable against any successors, assigns, transferees or purchasers of the Company or of the Project. Unless expressly released by the Town in writing, the Company shall remain obligated to the Town for payment of all amounts to be paid to the Town under this Agreement, if not paid in full by such successors, assigns, transferees or purchasers when due.

4. Company Representations and Warranties.

The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

a. The Company is a limited liability company organized under the laws of the State of Delaware and is qualified to do business in the State of Maine.

b. The Company has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. The Company is duly authorized to execute and deliver this Agreement and perform all of its duties and obligations contained herein, and, to the extent permitted by applicable law, this Agreement constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms.

5. Town Representations and Warranties.

The Town makes the following representations and warranties as the basis for the undertakings on its part herein contained:

a. The Town validly exists as a political subdivision in good standing under the laws of the State of Maine

b. The Town has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. The Town has duly authorized the execution

and delivery of this Agreement and the Town's performance of all of its duties and obligations contained herein, and, to the extent permitted by applicable law, this Agreement constitutes a valid and legally binding obligation of the Town, enforceable in accordance with its terms.

c. The Company's payments to the Town under this Agreement shall not influence or have any bearing whatsoever upon the Town's determination with respect to any application for any Permit or other request for a decision from the Town made by the Company.

6. Entire Agreement

The entire Agreement between the Parties with respect to the subject matter hereunder is contained in the Agreement. There are no other understandings, representations or agreements not incorporated herein. This Agreement constitutes a legal, valid and binding obligation enforceable in accordance with its terms except as such enforceability may be affected by applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally and the application of general principles of equity.

7. Modification

No waiver, alteration or modification of any of the provisions of this Agreement shall be enforced unless in writing and signed by both parties to this Agreement.

8. Governing Law

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Maine, without regard to the conflict of laws provisions in such state.

9. Notices

All notices, requests, demands and other communication hereunder shall be in writing and shall be deemed to have been duly given (i) when delivered by messenger or by reputable national overnight courier service, or (ii) three (3) business days after mailing when mailed by certified or registered mail (return receipt requested), with postage prepaid and addressed to the parties at their respective addresses shown below or at such other address as any party may specify by written notice to the other party, or (iii) when delivered by facsimile transmission to the parties at the facsimile numbers listed below:

If to the Company:

SWEB Development  
6080 Young Street  
Suite 106  
Halifax, NS B3K 5L2  
Canada  
Attn: Stefan Karkulik  
Facsimile: (902) 407-2122

With a copy to:

Bernstein, Shur, Sawyer & Nelson, P.A.  
100 Middle Street  
P.O. Box 9729  
Portland, Maine 04104-5029  
Attn: Joan Fortin, Esq.  
Facsimile: (207) 774-1127

If to the Town:

Administrative Assistant to the Selectboard  
Clifton Town Office  
135 Airline Road  
Clifton, Maine 04428  
Facsimile: (207) 843-5171

With a copy to:

Rudman Winchell  
84 Harlow Street  
Bangor, ME 04402-1401  
Attn: Edmond J. Bearor, Esq.  
Facsimile: (207) 941-9715

Either party may change the name(s) and or address(es) to which notice is to be addressed by giving the other party notice in the manner herein set forth.

10. Miscellaneous

a. *Exercise of Rights and Waiver.* The failure of any Party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by any Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

b. *Severability.* In the event that any clause, provisions or remedy in this Agreement shall, for any reason, be deemed invalid or unenforceable, the remaining clauses and provisions shall not be affected, impaired or invalidated and shall remain in full force and effect.

c. *Headings and Construction.* The section headings in this Agreement are inserted for convenience of reference only and shall in no way effect, modify, define, or be used in construing the text of the Agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words. Notwithstanding the fact that this Agreement has been prepared by one of the Parties, all of the Parties confirm that they and their respective counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the Parties. This Agreement is to be construed as a whole and any presumption that ambiguities are to be resolved against the primary drafting party shall not apply.

d. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.


12. Indemnification. As a further condition of this Agreement, the Town agrees to indemnify the Company for any legal expenses incurred by the Company as a result of legal challenges by any person to the validity or administration of this Agreement. At its option, the Company shall have the right to pursue the defense on behalf of the Town of any action in which damages are sought which might be its ultimate responsibility. If the Company elects to exercise said right, it shall bear all of its defense costs, including attorneys' fees and court costs.

[Signatures on following page.]



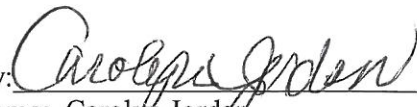
IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed effective on the date indicated above.

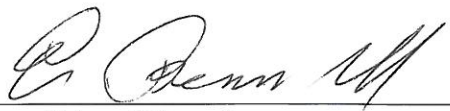
**SWEB Development USA, LLC**

By:   
Name: Stuart Lawrence  
Its: CEO

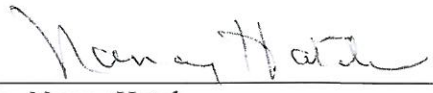
By:   
Name: Stefan Karhucich  
Its: CLO

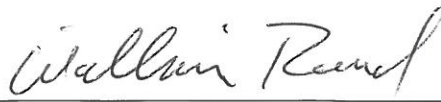
**TOWN OF CLIFTON**

By:   
Name: Carolyn Jordan  
Member, Board of Selectmen

By:   
Name: Edward Beauchamp  
Member, Board of Selectmen

By: \_\_\_\_\_  
Name: Joshua Lander  
Member, Board of Selectmen

By:   
Name: Nancy Hatch  
Member, Board of Selectmen

By:   
Name: William Rand  
Member, Board of Selectmen

EXHIBITS:

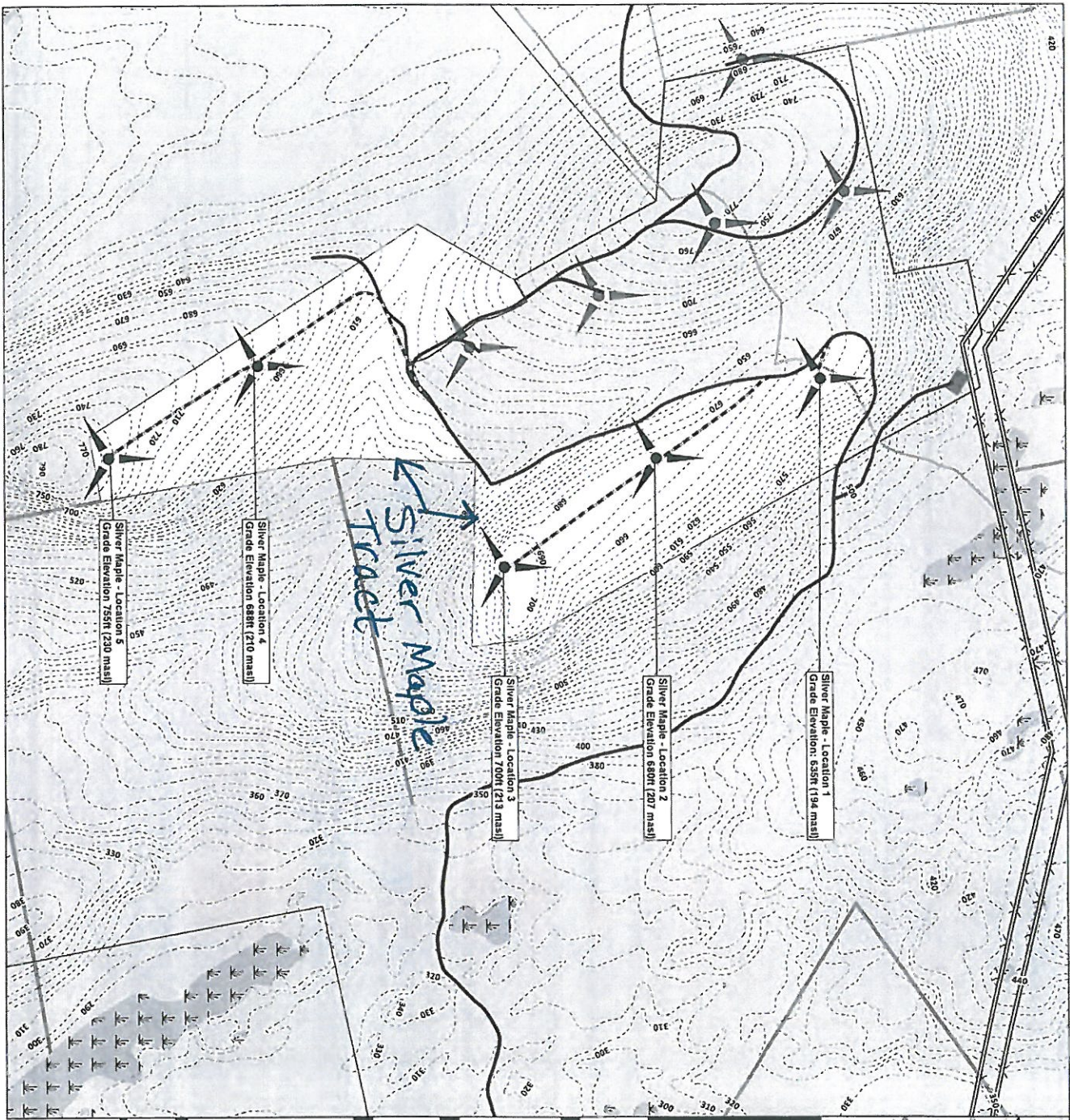
Exhibit 1-B ALTA Survey Showing Company Tract and Silver Maple Tract  
Exhibit 1-C Silver Maple Wind Energy Project Site Plan

[to be attached]

Exhibit A to  
Community Benefit Agreement







**SILVER MAPLE**  
Wind Energy Project  
WEST of Route 100  
Town of Clifton, Maine  
**SITE PLAN**



- Legend**
- 10 ft Property Line
  - Transmission Line
  - Building (small)
  - Building (large)
  - Watercourse
  - Waterbody
  - Wetland/Bog
  - Local Road
  - Major Road
  - Wooded Area
  - Project WTG
  - Substation
  - New Project Rd
  - Lands now or formerly of SWEB DEVELOPMENT USA LLC

**Project Details**

Silver Maple Wind Energy Project

Final turbine locations subject to change

Final road layout subject to change

Client: M Underhay

Site Layout

Prepared by: S.W.E.B.

Checked by: M Underhay

Drawn by: S.W.E.B.

Scale: 1" = 14,000'

Project No: 2017-001

Date: 10/10/17

Author: S.W.E.B.

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