

HOST COMMUNITY AGREEMENT

1. PARTIES

This agreement (the "Agreement") is entered into by the Town of Barnstable, a Massachusetts Municipal Corporation ("Barnstable" or "Town") and Vineyard Wind LLC, a Delaware limited liability company ("Vineyard Wind" or "VW").

2. THE MASSACHUSETTS PROCEEDINGS

Vineyard Wind proposes to construct a nominal 800-megawatt wind generating facility in federal waters south of Martha's Vineyard and to connect that facility via cables into state waters and eventually to an electrical sub-station in the Town in order to connect to the regional electric grid (collectively, the "Project") as more fully described as the preferred or noticed alternative route in the Supplemental Draft Environmental Impact Report dated August 31, 2018 and filed with the MEPA office of the Commonwealth. The cables consist of high voltage (115 kilovolt or greater) electric power transmission lines, along with associated appurtenances including but not limited to substation equipment, telecommunications lines, duct banks, vaults, and vault access (collectively, "Transmission Lines").

Vineyard Wind has filed for various approvals with the Commonwealth's Department of Public Utilities in D.P.U. 18-18 and 18-19, and with the Energy Facilities Siting Board in EFSB 17-05. VW also filed a Notice of Intent with the Executive Office of Energy and Environmental Affairs in case number EEA 15787 and the Secretary of EEA issued a MEPA Certificate on February 9, 2018. VW also intends to seek the approval of the Cape Cod Commission and applicable boards and committees of the Town of Barnstable and, if any portion of Transmission Lines are located in the Town of Yarmouth, the applicable boards and committees of the Town of Yarmouth.

Except as specifically identified herein, this Agreement does not relate to any matters now or hereafter filed with any Federal agencies including, without limitation, the United States Department of the Interior, the Federal Aviation Administration, or the United State Coast Guard.

3. STATEMENT OF PURPOSE

The Town wishes to support Vineyard Wind in launching this important project, which will contribute to the region's renewable energy supply and bring significant revenue to the Town of Barnstable.

The Town believes that certain components of the Project could pose environmental risks to Nantucket Sound and to the Town's public drinking water supplies if not properly designed and managed. VW acknowledges its responsibility to take every possible precaution to assure that, should the worst occur despite its best efforts, damage to the environment will be quickly, effectively, and comprehensively mitigated.

4. RECITATIONS

A. WHEREAS, Vineyard Wind is proposing to develop the Project in federal waters south of Martha's Vineyard and to connect the Project to the regional electric grid via Transmission Lines in federal

and state waters of Nantucket Sound and then across upland to an electrical sub-station in the Town described below, and

- B. WHEREAS, the Project is being developed in response to Section 83C of Chapter 169 of the Acts of 2008, as amended by Chapter 188 of the Acts of 2016, An Act to Promote Energy Diversity which mandated the development of 1,600 megawatts of offshore wind energy generation, and
- C. WHEREAS, the Town has previously opposed the proposed former Cape Wind project which was to be located on Horseshoe Shoals in Nantucket Sound, and
- D. WHEREAS, the Town believes that the Cape Wind project, because of its proposed location in Nantucket Sound, would have created numerous environmental risks to the public interest including, without limitation, the environment of Nantucket Sound, its beaches and estuaries, the water quality of the Town's sole source aquifer, air and marine navigation, endangered species, and the Commonwealth's Public Trust Rights and Obligations, and
- E. WHEREAS, the Town believes that the risks posed by the Cape Wind project, because of its proposed location in Nantucket Sound, would have been completely incompatible with considerations of environmental protection, public health, and public safety, and
- F. WHEREAS, Vineyard Wind was not involved in the proposal or permitting of the former proposed Cape Wind project, nor is the Vineyard Wind Project located in the same vicinity as the former proposed Cape Wind project, and
- G. WHEREAS, if any proposed energy generating facility in Nantucket Sound (including, but not limited to wind generating facilities) was allowed to connect to VW's Transmission Lines, both Parties agree that the Town would consider this to be an unacceptable outcome that clearly conflicts with the public interests of the Town of Barnstable, and
- H. WHEREAS, Vineyard Wind has not selected a final route for the Transmission Lines. However, one of VW potential routes for the Transmission Lines extends through conservation and water supply land belonging to both the Town and the Commonwealth running along and under and eventually across a proposed bike path that the Town states is important to the Town's recreational interests, and another of the routes crosses Covell's Beach, an important recreational facility, and
- I. WHEREAS, Vineyard Wind proposes to build a new electrical substation (the "VW Substation") on a portion of a parcel of land located in Independence Park, Hyannis and commonly known and numbered as 40 Communications Way, and to connect the VW Substation to the adjacent Eversource substation where VW's energy output will be connected to the regional electric grid, and
- J. WHEREAS, the proposed VW Substation will house yet-to-be-identified electrical equipment, some of which is expected to be cooled by so-called dielectric fluids, and
- K. WHEREAS, the Town's Hyannis public water supply wells are down-gradient from the proposed VW Substation, and

- L. WHEREAS, the Barnstable Fire District wells and Town of Yarmouth wells (the latter of which the Town of Barnstable has rights to draw upon for emergency purposes) are either/both down-gradient from or their zones of contribution may be affected by a hazardous release at the proposed VW Substation, and
- M. WHEREAS, Vineyard Wind may seek to select a second route for the Transmission Lines to the Eversource substation on Oak Street in West Barnstable to support a subsequent Vineyard Wind project that would not transmit energy generated from facilities located within Nantucket Sound, and
- N. WHEREAS, the Parties desire that, should the proposed Transmission Lines and VW Substation be authorized by the applicable regulatory agencies and thereafter be constructed by Vineyard Wind, the construction and operation of such facilities be undertaken in a manner that minimizes impact on the environment and the public, that appropriate mitigation be put in place to protect such interests, and
- O. WHEREAS, based on the information currently made available to the Town, the Parties agree that this Agreement establishes obligations and commitments that, when implemented, will sufficiently address the Town's concerns (including but not limited to those regarding environmental risks to Nantucket Sound, the Town's public drinking water supplies, and minimization of Project impact on the environment and the public), and that the Town, by and through its Town Manager, therefore agrees to support Vineyard Wind's Project in furtherance of the mutual interests of the Parties with respect to these concerns and consistent with the terms of this Agreement,

NOW, THEREFORE, for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

5. NANTUCKET SOUND CABLE

Vineyard Wind acknowledges that there are three material inducements to the Town of Barnstable to enter into this Agreement. The first inducement is an absolute, unconditional assurance from Vineyard Wind that Vineyard Wind will not voluntarily permit any entity that generates energy from a location within Nantucket Sound to connect to the VW Transmission Lines, unless ordered to do so by a governmental authority with legal jurisdiction to order such a connection or utilization, and where either a) no stay of such order is granted pending appeal or b) if such stay is granted, a final order of a court of competent jurisdiction affirms the underlying order after appeal. Therefore, Vineyard Wind expressly represents that it will not voluntarily permit any such connection or utilization to occur. The second inducement is the need to protect the Town's public water supply from any hazardous releases at the proposed VW substation(s). The third inducement is the payments to the Town by Vineyard Wind, as more particularly described in Section 9 herein, which the Town may use for any purpose.

For the purposes of this Agreement, "Nantucket Sound" shall be defined as the area outlined in red on the NOAA Chart attached hereto as Exhibit A.

6. TRANSMISSION LINES AND DUCT BANKS

a. ROUTE SELECTION

Vineyard Wind has not selected a final route for the Transmission Lines, although the Town and Vineyard Wind express a mutual preference for, and interest in prioritizing, the route(s) involving Covell's Beach. The routes under consideration are the Preferred Route (and variants thereto) and the Noticed Alternative (and variant thereto), as described in Vineyard Wind's petition to the Siting Board dated December 18, 2017 and, for the purposes of this Agreement only, are shown in the map entitled "Vineyard Wind Routes Under Consideration – August 2018" and appended hereto as Exhibit B. In addition, Vineyard Wind may seek to select a route to the Eversource substation on Oak Street in West Barnstable for a subsequent Vineyard Wind project that would not transmit energy generated from facilities located within Nantucket Sound. The Town shall work cooperatively with Vineyard Wind on the selection of the final route(s) for the Transmission Lines on both the Project and any subsequent project, including minor modifications to the foregoing identified routes. The Town agrees to support either route selected by Vineyard Wind for the Project and the route for any subsequent Project, including route(s) involving Covell's Beach (subject to the reservations set forth in Section 13), and agrees to otherwise cooperate with Vineyard Wind as reasonably requested to effectuate the purposes of this Agreement in accordance with Section 8(c).

b. EASEMENTS AND GRANTS OF LOCATION

Contingent upon the approval of the Town Council and consistent with Section 8(d), the Town agrees to grant to Vineyard Wind, and Vineyard Wind agrees to accept as its sole means of upland access in Town public ways and Town property, the following:

- i. As to public ways within the Town, grants of location (or, upon mutual agreement between Vineyard Wind and the Town, easements) in, through, under and across said public ways (or properties in which the Town has the right to use for all purposes for which streets and ways are commonly used within the Town) along the considered route(s) sufficient for purposes of constructing, installing, inspecting, repairing, replacing, operating, maintaining, and from time to time relocating, the Transmission Lines.
- ii. As to Town property that is not a public way, including but not limited to Covell's Beach, easements in, through, under and across said Town property along the considered route(s) sufficient for purposes of constructing, installing, inspecting, repairing, replacing, operating, maintaining, and from time to time relocating, the Transmission Lines.

All easements granted under this Section shall be in form and substance reasonably acceptable to both Vineyard Wind and the Town of Barnstable and shall be promptly recorded in the Barnstable County Registry of Deeds by the Town at Vineyard Wind's expense. No easement or grant of location granted under this Section shall be revoked without written agreement by both the Town and Vineyard Wind, except that any easement shall: (i) expire upon the expiration of BOEM lease OCS-A-501 (or other comparable right to operate offshore wind turbines) to Vineyard Wind, including any existing or future extensions or renewals of the same; (ii) be for the purpose of installing, constructing, operating, maintaining, repairing and replacing, from time to time, the Transmission Lines for the Project or any

subsequent Vineyard Wind project that would not transmit energy generated from facilities located within Nantucket Sound, (iii) not be utilized by Vineyard Wind to serve facilities that generate energy from within Nantucket Sound, and (iv) otherwise be in form and substance reasonably acceptable to both Vineyard Wind and the Town of Barnstable.

Notwithstanding any other language in Agreement, The Town may, in its sole discretion, reserve surface rights in the easements at Covell's Beach and the Bike Path in Cummaquid and both subsurface and surface rights in all other easements consistent with Vineyard Wind's intended use. Additionally, each easement shall contain the following language:

This easement is for the exclusive use of Vineyard Wind, LLC, its heirs, successors, and assigns ("Vineyard Wind"). In accordance with a Host Community Agreement dated _____ to be recorded herewith, this easement shall be used solely for the purposes of the installation, construction, operation, maintenance, repair, and replacement, from time to time, of both transmission lines and duct bank capacity intended for the transmission of power generated within the area designated by BOEM lease area number OCS-A-501 and located in federal waters approximately 14 miles south of Martha's Vineyard to either (i) the proposed Vineyard Wind electrical substation at 40 Communications Way, Independence Park, Hyannis, or (ii) the regional electric grid connecting at or in the vicinity of Oak Street, West Barnstable. As a condition precedent to the validity of a transfer of any interest in the easement to a third party, any heir, successor, or assign to this easement shall accept in writing delivered to the Town before transfer the rights of this easement subject to all conditions upon which this easement is granted, including the conditions of the Host Community Agreement recorded herewith. Without limiting or expanding the foregoing and solely for the avoidance of all doubt, this easement does not authorize any use by any entity that generates energy from a location within Nantucket Sound. The grant of this easement is not and shall not be construed as a consent of the Town to an eminent domain taking of the easement lands pursuant to G.L. c. 164, section 72 or any other statute or regulation of similar import now or hereafter enacted.

Notwithstanding any other provision in this Agreement to the contrary, Vineyard Wind expressly acknowledges and agrees that any easement or grant of location are not and shall not be construed or treated as a consent of the Town to an eminent domain taking of the same pursuant to G.L. c. 164, § 72 or any other statute or regulation of similar import.

c. DUCT BANKS

To minimize the construction impact on the Town, the scope of all easements and grants of location shall authorize Vineyard Wind to install, construct, operate, maintain, repair, and replace, from time to time, both i) Vineyard Wind transmission lines and duct bank capacity for the Project and ii) upon provision by the Town in writing of approval, which shall not unreasonably be withheld, additional Vineyard Wind transmission lines and/or duct bank capacity sufficient to accommodate said additional Vineyard Wind transmission lines in the event Vineyard Wind develops additional offshore wind turbines. All easements and grants of location shall be granted under the express condition that no energy transmitted through said duct banks or transmission lines shall be generated from facilities within Nantucket Sound, and that no use of said additional duct bank by Vineyard Wind to transmit energy shall be authorized until payment by Vineyard Wind to the Town pursuant to Section 9 of this Agreement.

Notwithstanding any other provision in this Agreement to the contrary, VW expressly acknowledges and agrees that any easement or grant of location are not and shall not be construed or treated as a consent of the Town to an eminent domain taking of the same pursuant to G.L. c. 164, § 72 or any other statute or regulation of similar import.

d. EASEMENT FOR SUBSEQUENT DUCT BANK USE

With respect to the use by Vineyard Wind or its successor or assign of any easement for assets intended to support a subsequent Vineyard Wind project (including the Second Vineyard Wind Project referenced in Section 9(b)(ii) of this Agreement), the portion of an easement granted for such purpose (the “Subsequent Use Portion”) shall expire on the tenth anniversary of the grant of such easement if Vineyard Wind has not commenced utilization of the Subsequent Use Portion (beyond installation of duct banks) by said date. Notwithstanding the foregoing, the term of the Subsequent Use Portion shall be deemed extended annually even if Vineyard Wind’s utilization of the Subsequent Use Portion (beyond installation of duct banks) has not commenced, so long as Vineyard Wind makes an annual Supplemental HCA Payment installment in the amount of \$640,000 on said date, and shall be deemed extended annually thereafter so long as Vineyard Wind makes Supplemental HCA Payment installments annually thereafter on the anniversary thereof. All said installments shall accrue toward Vineyard Wind’s total aggregate Supplemental HCA Payment pursuant to Section 9(b)(ii) of this Agreement. Vineyard Wind may choose, in its sole and absolute discretion, to cease making said Supplemental HCA Payment installments for the preservation of the Subsequent Use Portion rights without further obligation, without constituting abandonment of easement rights other than the Subsequent Use Portion, and without any acceleration or requirement of additional payment that may otherwise be contemplated pursuant to Section 9(b)(ii). In the event that Vineyard Wind fails to make a Supplemental HCA Payment when due and fails to cure within thirty (30) days, then the Town may declare the Subsequent Use Portion abandoned and, upon such declaration, Vineyard Wind shall promptly deliver to the Town a Notice of Termination of the Subsequent Use Portion suitable in form and content to the Town which shall then record the same at the Barnstable County Registry of Deeds.

If Vineyard Wind conveys its rights in the Subsequent Use Portion to any entity other than a Vineyard Wind affiliate (defined as another person or entity that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control or ownership with Vineyard Wind), the following procedure shall apply. If Vineyard Wind *has not* commenced Supplemental HCA Payment payments, Vineyard Wind shall disburse to the Town within thirty (30) days of the date of conveyance \$640,000 for each full year that has elapsed between the date of the grant of the easement and the date of the conveyance, and the grantee shall commence payment of the balance of the Supplemental HCA Payment on the next-occurring anniversary of the grant of the easement following the conveyance, in installments pursuant to Section 9(b)(ii). If Vineyard Wind *has* commenced Supplemental HCA Payment payments, Vineyard Wind shall disburse to the Town a Supplemental HCA Payment installment in the amount of \$6.4 million within thirty (30) days of conveyance, and the grantee shall commence payment of any balance of the Supplemental HCA Payment on the next-occurring anniversary of the grant of the easement following the conveyance, in installments pursuant to Section 9(b)(ii).

In the event Vineyard Wind at any time commences utilization of the Subsequent Use Portion to support a subsequent Vineyard Wind project, or in the event Vineyard Wind satisfies its obligations under Section 9(b)(ii) by disbursing the total aggregate \$16 million Supplemental HCA Payment, this subsection shall no longer be in effect and Vineyard Wind’s obligations shall solely be governed by Section 9(b)(ii).

e. PERMITTING OBLIGATIONS

As to any Vineyard Wind construction activities on, over, or under Town-owned property or municipal roadways, Vineyard Wind agrees to procure all required permits and approvals, and to coordinate construction schedules and construction plans with the requisite Town departments in accordance with existing Town policies, practices, and procedures.

7. ELECTRICAL SUBSTATIONS

a. RISK TO GROUNDWATER AND PUBLIC WATER

Vineyard Wind acknowledges that its electrical substation will house yet-to-be-identified electrical equipment, some of which is expected to be cooled by so-called dielectric fluids. Such dielectric fluids, if not properly managed, could pose a risk to groundwater and public water supplies.

Vineyard Wind acknowledges that the proposed location of its electrical sub-station in Independence Park, Hyannis is located above the sole-source aquifer that services the Town's public water supply wells in the Hyannis area and up-gradient from the Town's Hyannis wells.

The Parties agree that a release of dielectric fluids and other hazardous materials from VW's electric substation must be avoided.

b. SUBSTATION CONTAINMENT; CONSULTATION; EXPEDITED BINDING ARBITRATION AVAILABLE REGARDLESS OF ROUTE

- i. Commitments. Without further limiting the elements of design containment that the Parties will explore, Vineyard Wind commits to providing design containment equal to a minimum of 110% of the dielectric fluid volume contained in the associated equipment plus an additional volume to include the 100-year storm event over a 24-hour period, as well as to providing dielectric fluid containment under each piece of substation equipment containing dielectric fluids (even if such fluid is considered biodegradable).
- ii. Consultation. Vineyard Wind will consult with the Town regarding the substation(s) associated with the Project or any subsequent Vineyard Wind project. Within 5 business days of the execution of this Agreement, Vineyard Wind will supply to the Town for its review and comment all information previously submitted by Vineyard Wind to any regulatory authority (and any other plans or information Vineyard Wind is reasonably able to provide) relating to the containment of dielectric fluids that may be used, or the mitigation of any release or potential release of such dielectric fluids. Additionally, Vineyard Wind commits to promptly provide on request at its own cost and subject to procurement, exemplars of the dielectric fluid(s) and oil absorbing inhibition device(s) to be used in substation equipment, in sufficient quantities as the Town may reasonably designate to enable independent examination and testing.

The Parties will work together in good faith to discuss the Town's concerns with regard to these issues. In particular, Vineyard Wind commits to consider in good faith and to respond promptly in good faith to all written substation design requests made by the Town prior to commencement of construction of any Vineyard Wind substation

pertaining to any of the following issues relating to dielectric fluids: 1) the scope and volume of containment measures, 2) concrete treatment measures, 3) oil inhibition measures, 4) oil-water separation measures (collectively "Written Design Requests"). Vineyard Wind further commits to cooperate fully in assessing risk parameters of its proposed designs, mitigation measures with respect to such risks, and emergency and oil spill response plans designed to prevent discharges of dielectric fluids and other hazardous substances located at the substation from reaching groundwater. Vineyard Wind also agrees to implement any Written Design Request that is both reasonably implementable prior to commencement of construction and mutually agreed upon by the Parties.

- iii. Expedited Binding Arbitration. Any Written Design Request submitted by the Town to Vineyard Wind within seventy-five (75) days of the execution of this Agreement shall be eligible for binding arbitration pursuant to this subparagraph. If at any point beginning 90 days after the execution of this Agreement either Party determines that Vineyard Wind and the Town are not likely to reach agreement on a Written Design Request under the previous subparagraph, or (if at least seventy-five days have passed since execution of this Agreement) five days after either Party declares an impasse in consultation under the previous subparagraph, then without the need to utilize Section 18 that Party may request expedited binding arbitration (or any other dispute resolution mechanism mutually agreeable to the Parties) to resolve the dispute.

Within 30 days of the notice of the request for expedited binding arbitration, the Parties shall agree upon three arbitrators (one of whom shall be a licensed attorney with a minimum of ten years' experience in arbitration, one of whom shall be a licensed attorney with a minimum of ten years' experience in environmental matters, and one of whom shall be a licensed professional engineer with a minimum of ten years' experience in substation design and operations), and shall enter into an arbitration agreement with the arbitrators. If the Parties cannot agree upon arbitrators or an arbitration agreement within that time, they shall be deemed to have selected the Real Estate Bar Association, Boston, MA ("REBA") arbitration services, which shall appoint three qualified arbitrators using the above stated criteria to hear and resolve the dispute. The Parties agree to engage in and conclude the arbitration within 90 days of notice of the request for arbitration unless they mutually agree to extend that time.

The Parties agree that the standard on which any expedited binding arbitration will proceed is as follows: "Whether the failure to implement the Written Design Request will result in a substation design that could reasonably prevent continued use of existing Town municipal water wells in the event of a release of dielectric fluid from Vineyard Wind substation equipment or components, taking into account the degree of risk posed to public drinking water supplies from such release, the components, design, materials, site conditions, mitigation, emergency response and oil spill response plans, and existing best practices for environmental remediation."

If Vineyard Wind has not designated specific dielectric fluid(s) or oil absorbing inhibition device(s) as of the time the request for expedited binding arbitration is submitted, then the Written Design Request by the Town may assume that such materials are of any type

used in substation design, unless Vineyard Wind specifically commits to their non-use at the substation.

The Parties agree that any arbitrated resolution must be consistent with Good Engineering Practice (as that term is commonly understood in the engineering profession) and be capable, when implemented, of receiving the stamp of Professional Engineers with expertise in civil engineering and substation design and operations. The Parties agree that the arbitrated resolution need not adopt the position of either Party, but may provide for a compromise position deemed reasonable and prudent by the arbitrators that is consistent with the parameters above. Notwithstanding the above, the parties further agree that in the event of a conflict between the final order of the arbitration panel and a final order of the Energy Facilities Siting Board, the arbitration order shall prevail.

- iv. Construction At Risk Allowed. During the pendency of any proceeding intended to resolve a disagreement over whether a written design request should be implemented, Vineyard Wind shall be entitled to construct and operate any substation consistent with any Final Order of the Siting Board, albeit at its own risk (and the Parties agree that the fact of the construction or operation of any substation shall not be considered as evidence in such proceeding, and that any Final Order of the Siting Board shall not be considered in such proceeding), unless enjoined by a court of competent jurisdiction, and provided further that said construction shall not preclude the ability to retrofit the substation in the event the Town prevails in said proceeding on any Written Design Request.
- v. Expert Reimbursement. Within thirty days of being presented with evidence of payment thereof, Vineyard Wind agrees to reimburse the Town in an amount not to exceed \$50,000 in total for technical expert service(s) of the Town's choosing relating to the containment of dielectric fluids, or the mitigation of any release or potential release of such dielectric fluids. Each Party will bear their own costs with respect to any arbitration proceeding.

8. TOWN SUPPORT

a. ZONING AND OTHER REGULATORY APPROVALS

Vineyard Wind is seeking individual and comprehensive zoning exemptions pursuant to G.L. c. 40A, §3 for the Transmission Line and the VW Substation from the Massachusetts Department of Public Utilities. The Town agrees to publicly support the issuance of such exemptions and agrees to immediately withdraw all prefilled direct testimony submitted to the Siting Board pertaining to zoning. The Parties agree that if requested by the Siting Board in this proceeding, each shall be entitled to reintroduce and add to such testimony. Furthermore, if Vineyard Wind seeks zoning relief from the Town for the VW Substation and/or the Transmission Lines, the Town agrees to support such relief before applicable Town boards and departments having jurisdiction over the same including, without limitation, the Zoning Board of Appeals, the Planning Board and the Building Department.

To the extent that approvals of other Town boards and departments are required, including without limitation the Conservation Commission, the Town will similarly support Vineyard Wind's requests for relief before those boards.

b. ARTICLE 97

Portions of some of the proposed routes as shown in Exhibit B are located on land that is or may be subject to Article 97 of the Amendments to the Massachusetts Constitution, including Covell's Beach and the bike path. Subject to a 2/3 vote by the Town Council, the Town agrees to publicly support the adoption by the Massachusetts General Court of legislation approving the grant of easements and other rights through such land for the Transmission Lines, and will support Vineyard Wind's requests to Town boards and departments having jurisdiction over the same including, without limitation, the Conservation Commission, to approve the grant of such easements and other rights through such land for the Transmission Lines in accordance with Section 6. In the event approval pursuant to Article 97 is determined to be necessary but cannot be obtained, the Town and Vineyard Wind agree to consult in good faith to identify and consider alternative solutions.

c. COOPERATION

The Town agrees to publicly support the Project in its permitting, construction, operation, and maintenance, and will provide at no material cost to the Town such assistance as may be reasonably requested to facilitate the timely development of the Project. Such assistance may include but is not limited to (i) facilitating permitting at state, regional and local levels; (ii) providing information and guidance to facilitate efficient planning and construction process and to minimize disruption to the Town and its residents; (iii) working cooperatively with VW on construction scheduling, including granting licenses where necessary to facilitate construction access, and (iv) considering promptly and in good faith all requests from Vineyard Wind, in addition to those identified in Section 8(d), for a) additional easements with respect to Town property identified by Vineyard Wind as necessary to the Project and lying on one or more of the proposed Project routes as shown in Exhibit B, or other such Town Property as mutually agreed by the Parties, and b) sufficient authorizations acceptable to Vineyard Wind pursuant to Section 8(b) with respect to any easement granted.

The Town states that its Town Manager is authorized by state and local law to grant grants-of-location, and the Town agrees, by and through its Town Manager, to grant grants-of-location in all Town public ways (or properties in which the Town has the right to use for all purposes for which streets and ways are commonly used within the Town), identified by Vineyard Wind as necessary to the Project and lying on one or more of the proposed Project routes as shown in Exhibit B (or other such locations as otherwise mutually agreed by the Parties). As to properties in which the Town has the right to use for all purposes for which streets and ways are commonly used within the Town, Vineyard Wind shall defend, indemnify, and hold harmless the Town with respect to any challenge to the Town's authority to such grant of location, and the Town agrees to cooperate to the extent required for Vineyard Wind to defend.

In exchange for the benefits of the binding arbitration provisions of Section 7(b), and so long as a decision has been issued by the arbitrators pursuant to Section 7(b), the Town agrees not to appeal any Final Order of the Siting Board in EFSB 17-05. The Town agrees to immediately withdraw upon the effective date this Agreement all prefilled direct testimony submitted to the Siting Board, and further agrees to affirmatively object to and oppose any use of said prefilled direct testimony (unless and until verified under oath in person before the Siting Board in future) by any person or entity seeking to utilize said prefilled direct testimony in any setting as a basis for furthering any opposition to the Project. Vineyard Wind agrees to withdraw all prefilled rebuttal testimony, after the filing thereof, upon the Town's withdrawal of its prefilled direct testimony. The Parties also agree to immediately suspend and withdraw discovery requests, including Information Requests. Notwithstanding the mutual withdrawal of said

prefiled testimony, the Parties agree that if requested by the Siting Board in this proceeding, each shall be entitled to reintroduce and add to such testimony.

d. EFFECTIVE DATE; TOWN COUNCIL APPROVALS

The effective date of this Agreement shall be the date on which Town Council grants the request by Vineyard Wind for a) valid easement(s) in accordance with all applicable state and local laws, and otherwise acceptable to Vineyard Wind, in Covell's Beach consistent with Section 6(c), and b) sufficient authorizations acceptable to Vineyard Wind pursuant to Section 8(b) with respect to the same.

If Town Council does not approve this request on or before October 18, 2018, the effective date of this Agreement shall be October 19, 2018, with the provisos that in such circumstance a) consistent with Section 8(c), the Town Manager agrees to promptly and in good faith work with Vineyard Wind to identify easements in Town Property and authorizations required for other routes, and to propose such alternative easements and authorizations to Town Council for its consideration, and b) that notwithstanding Section 9(b)(i)(1), Section 9(b)(i)(2) shall govern any Primary HCA Payment that may be owed.

Notwithstanding the previous paragraph, if a) Town Council does not approve this request on or before October 18, 2018 due to an event of force majeure (in which case Town Council shall schedule a meeting to consider this request on the next date consistent with the state Open Meeting Law), or b) Vineyard Wind elects to extend said deadline for approval of this request to October 25, 2018, then the effective date of this Agreement shall be the date on which Town Council grants the requests after such rescheduling or extension, and Section 9(b)(i)(1) shall apply. If Town Council does not approve this request on said date, however, the effective date of this Agreement shall be the next calendar day, and the same two provisos as stated in the previous paragraph shall apply.

Notwithstanding any other provision in this Agreement to the contrary, VW expressly acknowledges and agrees that any easement or grant of location are not and shall not be construed or treated as a consent of the Town to an eminent domain taking of the same pursuant to G.L. c. 164, § 72 or any other statute or regulation of similar import.

9. FINANCIAL AGREEMENTS

a. TAXES

Vineyard Wind will pay taxes based on the "fair cash valuation" of its real and personal property in the Town in accordance with G.L. c. 59, § 38. This Agreement does not waive any right of either Party pursuant any state or local taxation statute or regulation, including with respect to the valuation, assessment, or abatement of taxes.

b. HOST COMMUNITY AGREEMENT PAYMENTS

In addition to taxes paid annually pursuant to subsection 9(a), if any substation for the Project is located in the Town of Barnstable and so long as the Town remains in compliance with Section 8(c) of this Agreement, Vineyard Wind shall provide the Town annual "HCA Payments." For the purposes of this subsection, the Parties define "Start Date" to mean one year from the commencement by Vineyard Wind of initial physical construction within the Town. For the purposes of this subsection, "Town taxes" shall

not include any fire district taxes owed by Vineyard Wind and collected by the Town Assessor pursuant to G.L. c. 48, § 73.

- i. Primary HCA Payment. Regardless of which of the proposed routes is utilized by Vineyard Wind for the Project, Vineyard Wind shall provide a Primary HCA Payment.

1. Covell's Beach Route. If Town Council grants easements and authorizations pursuant to Section 8(d) as to Covell's Beach for the Project, the Primary HCA Payment shall be in the aggregate amount of \$16 million, paid by Vineyard Wind in annual installments and calculated pursuant to this subparagraph.

The first annual installment of the Primary HCA Payment shall be due within thirty (30) days of the Start Date of the Project, in the amount of \$640,000. Subsequent annual Primary HCA Payment installments shall be due on the anniversary of the Start Date. Once Vineyard Wind has made \$16 million in total aggregate annual Primary HCA Payment payments, Vineyard Wind's obligation to make further annual Primary HCA Payment payments shall cease.

Each annual Primary HCA Payment installment other than the first such installment shall be calculated by subtracting from the figure \$1,534,000 the amount paid by Vineyard Wind in Town taxes on Project assets in the Town fiscal year immediately preceding the Town fiscal year in which the annual Primary HCA Payment installment due date falls, provided that the once \$16 million has been paid, no further Primary HCA Payment shall be due. If the amount of taxes paid in any given year exceeds \$1,534,000, there will be no Primary HCA Payment installment made or credited that year and the Primary HCA Payment balance will remain as before.

- a. In the event that the calculated annual Primary HCA Payment installment for a given year would, when added to the total aggregate of all annual Primary HCA Payment payments made to that date, exceed \$16 million, Vineyard Wind shall be responsible only for the portion of that given year's annual Primary HCA Payment installment that constitutes the difference between \$16 million and the total aggregate of all annual Primary HCA Payment payments made to that date, resulting in the aggregate of all Primary HCA Payment payments being \$16 million.
- b. In the event that, on the twenty-fifth anniversary of the Start Date of the Project, the total aggregate Primary HCA Payment made by Vineyard Wind is less than \$16 million, Vineyard Wind shall on that date pay the difference between \$16 million and the total aggregate Primary HCA Payment made to that date, resulting in the aggregate of all Primary HCA Payment payments being \$16 million.
- c. Commencing on the twenty-sixth anniversary of the Start Date of the Project, and on each anniversary thereafter, so long as the BOEM lease OCS-A-501 remains valid (including any existing or future extensions or renewals of the same) unless Vineyard Wind otherwise ceases operation

of the Project, Vineyard Wind shall on that date pay a sum of \$60,000, with subsequent annual payments increasing two and one half percent over the prior years' payment.

2. Non-Covell's Beach Route. If Town Council does *not* grant easements and authorizations pursuant to Section 8(d) as to Covell's Beach for the Project, the Primary HCA Payment shall be in the aggregate amount of \$6 million, paid by Vineyard Wind in annual installments and calculated pursuant to this subparagraph.

The first annual installment of the Primary HCA Payment shall be due within thirty (30) days of the Start Date of the Project, in the amount of \$640,000. Subsequent annual Primary HCA Payment installments shall be due on the anniversary of the Start Date. Once Vineyard Wind has made \$6 million in total aggregate annual Primary HCA Payment payments, Vineyard Wind's obligation to make further annual Primary HCA Payment payments shall cease.

Each annual Primary HCA Payment installment other than the first such installment shall be calculated by subtracting from the figure \$1,534,000 the amount paid by Vineyard Wind in Town taxes on Project assets in the Town fiscal year immediately preceding the Town fiscal year in which the annual Primary HCA Payment installment due date falls, provided that the once \$6 million has been paid, no further Primary HCA Payment shall be due. If the amount of taxes paid in any given year exceeds \$1,534,000, there will be no Primary HCA Payment installment made or credited that year and the Primary HCA Payment balance will remain as before.

- a. In the event that the calculated annual Primary HCA Payment installment for a given year would, when added to the total aggregate of all annual Primary HCA Payment payments made to that date, exceed \$6 million, Vineyard Wind shall be responsible only for the portion of that given year's annual Primary HCA Payment installment that constitutes the difference between \$6 million and the total aggregate of all annual Primary HCA Payment payments made to that date, resulting in the aggregate of all Primary HCA Payment payments being \$6 million.
- b. In the event that, on the twenty-fifth anniversary of the Start Date of the Project, the total aggregate Primary HCA Payment made by Vineyard Wind is less than \$6 million, Vineyard Wind shall on that date pay the difference between \$6 million and the total aggregate Primary HCA Payment made to that date, resulting in the aggregate of all Primary HCA Payment payments being \$6 million.
- c. Commencing on the twenty-sixth anniversary of the Start Date of the Project, and on each anniversary thereafter, so long as the BOEM lease OCS-A-501 remains valid (including any existing or future extensions or renewals of the same) unless Vineyard Wind otherwise ceases operation of the Project, Vineyard Wind shall on that date pay a sum of \$60,000,

with subsequent annual payments increasing two and one half percent over the prior years' payment.

- ii. Supplemental HCA Payment. Should Vineyard Wind receive all required federal, state, and local approvals and permits for a route to the Eversource substation on Oak Street in West Barnstable for a subsequent Vineyard Wind project (the "Second Project") and the Town has granted an easement in Covell's Beach or an alternative acceptable to Vineyard Wind, Vineyard Wind shall provide a Supplemental HCA Payment in the aggregate amount of \$16 million, paid by Vineyard Wind in annual installments and calculated pursuant to this subparagraph.

The first annual installment of the Supplemental HCA Payment shall be due within thirty (30) days of the Start Date of the Second Project, in the amount of \$640,000. Subsequent annual Supplemental HCA Payment installments shall be due on the anniversary of the Start Date. Once Vineyard Wind has made \$16 million in total aggregate annual Supplemental HCA Payment payments, Vineyard Wind's obligation to make further annual Supplemental HCA Payment payments shall cease.

Each annual Supplemental HCA Payment installment other than the first such installment shall be calculated by subtracting from the figure \$1,534,000 the amount paid by Vineyard Wind in Town taxes on Second Project assets in the Town fiscal year immediately preceding the Town fiscal year in which the annual Supplemental HCA Payment installment due date falls, provided that once \$16 million has been paid, no further Supplemental HCA Payment shall be due. If the amount of taxes paid in any given year exceeds \$1,534,000, there will be no Supplemental HCA Payment installment made or credited that year and the Supplemental HCA Payment balance will remain as before.

1. In the event that the calculated annual Supplemental HCA Payment installment for a given year would, when added to the total aggregate of all annual Supplemental HCA Payment payments made to that date, exceed \$16 million, Vineyard Wind shall be responsible only for the portion of that given year's annual Supplemental HCA Payment installment that constitutes the difference between \$16 million and the total aggregate of all annual Supplemental HCA Payment payments made to that date, resulting in the aggregate of all Supplemental HCA Payment payments being \$16 million.
2. In the event that, on the twenty-fifth anniversary of the Start Date of the Second Project, the total aggregate Supplemental HCA Payment made by Vineyard Wind is less than \$16 million, Vineyard Wind shall on that date pay the difference between \$16 million and the total aggregate Supplemental HCA Payment made to that date, resulting in the aggregate of all Supplemental HCA Payment payments being \$16 million.
3. Commencing on the twenty-sixth anniversary of the Start Date of the Second Project, and on each anniversary thereafter, so long as the BOEM lease OCS-A-501 remains valid (including any existing or future extensions or renewals of the same) unless Vineyard Wind otherwise ceases operation of the Second Project, Vineyard Wind shall on that date pay a sum of \$60,000, with

subsequent annual payments increasing two and one half percent over the prior years' payment.

c. FEES

Nothing in this Agreement waives the obligation of Vineyard Wind to pay any otherwise-applicable permit fee or license fee payable to the Town pursuant to either state or local law or regulation.

d. SPECIAL MITIGATION

In the event Vineyard Wind selects a Project route landing at Covell's Beach, Vineyard Wind states its intent to commence construction no sooner than September 15, and no later than December 15, of any given year, with the further intent and expectation of completing said construction no later than April 30 of the following year. Starting no later than April 1, and at least every two weeks thereafter, Vineyard Wind will provide status reports to the Town as to the progress of construction and any anticipated requirement for construction beyond April 30, to enable the Town and Vineyard Wind to identify mutually acceptable alternate actions to provide for resident access to Covell's Beach proper after the first Friday in May. If construction in the Covell's Beach parking lot in any given year is not anticipated to be completed before May 15, Vineyard Wind agrees to make temporary repairs at the expense of Vineyard Wind to any physical disturbances to the parking lot caused by Vineyard Wind, so as to return any disturbed portions of said lot to their condition at the time, or to confer promptly with the Town to identify mutually acceptable alternate actions to provide for resident access to Covell's Beach proper after said date. Vineyard Wind agrees that if a resumption of construction is required in the next subsequent construction season, that all construction shall be concluded on or before April 30 of that construction season unless further authorized by the Town. Further, Vineyard Wind agrees to limit any staging on the Covell's Beach parking lot to equipment and materials required for construction within the Covell's Beach easement and the seaward portion thereof, with all other staging required for the Project to occur at another location, unless mutually agreed otherwise with the Town. And further, Vineyard Wind agrees, upon completion of all Vineyard Wind construction at Covell's Beach, to fully repave to the Town's satisfaction the parking lot at Covell's Beach unless otherwise agreed by the Town.

In the event Vineyard Wind selects a Project route landing at Covell's Beach and commences Project construction within the Town on said route, Vineyard Wind will provide the Town \$80,000 for the purpose of reconstructing a bath house at Covell's Beach. Notwithstanding the foregoing, however, if Vineyard Wind is required under either state or local law to compensate the Town for any right, interest, or approval required to authorize Vineyard Wind to utilize said landing at Covell's Beach ("the Compensation Payment"), the Town will credit Vineyard Wind on a dollar-for-dollar basis a maximum of \$80,000 against the Compensation Payment.

10. THE ENVIRONMENTAL JUSTICE COMMUNITY

To the extent this Project triggers the Commonwealth's Environmental Justice Policy of EOEEA, Vineyard Wind agrees to adhere to said policy.

11. ROADWAYS AND PUBLIC LANDS

Vineyard Wind has not made a final route selection for the Transmission Lines and therefore site-specific conditions cannot be identified at this time. VW and the Town will review such plans when available and the Town agrees that its approval of these plans shall not be unreasonably withheld.

Notwithstanding the above, the parties agree that all work will conform to MassHighway and Town specifications for new road construction. VW agrees to restore roadways to “like new” condition or a mutually acceptable alternative consistent with then-existing Town policies and procedures.

12. BIKE PATH

Certain routes under consideration, as shown in Exhibit B, involve running the Transmission Lines under the proposed Town bike path.

If such routes are selected, as further consideration for this Agreement, VW agrees to coordinate its construction with the municipal bike path, including preparatory work on pathway to facilitate subsequent bike path installation by others.

13. OAK STREET SUB-STATION

Vineyard Wind has designated Independence Park in Hyannis as its preferred location for the VW Substation and interconnection to the regional electric grid via the nearby Eversource sub-station. VW has also indicated its interest in a site in the vicinity of the Oak Street sub-station in West Barnstable as an additional location for support of a subsequent Vineyard Wind project that would not transmit energy generated from facilities located within Nantucket Sound. Additional payment shall be made by Vineyard Wind to the Town, should Vineyard Wind utilize such a site and route, pursuant to Section 9 of this Agreement.

The Town currently has insufficient information to determine whether it can support a sub-station in West Barnstable. However, the Town agrees to work cooperatively with VW, at no material cost to the Town, if VW wishes to pursue the Oak Street site (and associated route) for use by a subsequent Vineyard Wind project that would not transmit energy generated from facilities located within Nantucket Sound.

14. OTHER TOWN AGENCIES

Vineyard Wind acknowledges and agrees that to the extent that it is required to appear before and obtain permitting from the Barnstable Conservation Commission, Barnstable Site Plan Review, Barnstable Board of Health, or Barnstable Department of Public Works, it agrees to provide full and complete information required by any Barnstable boards pursuant to applicable statute or regulation in support of its application(s). The Town acknowledges that Vineyard Wind must reserve its right to seek a Comprehensive Permit from the Siting Board with respect to the subject matter of each such permit or permission; to the maximum extent feasible, however, Vineyard Wind agrees to solicit full adoption of the Town’s permit conditions into the Siting Board decision.

15. CONTINUING REVIEW AND PROMPT DISCLOSURE

The parties agree to meet at least annually during the month of September starting in 2019, and more often if necessary, to review in good faith the parameters of the Project, its equipment, its effect on the environment, and any other matters of material importance to its performance.

Each Party agrees to promptly provide copies of all required public filings and correspondence with public agencies to the other Party promptly upon filing. Each Party further agrees to notify the other of any facts, circumstances, information, or developments that a reasonable observer would deem material to the Town's or Vineyard Wind's interests, including, without limitation, environmental considerations.

16. NON-OBJECTION; DEFAULT; INJUNCTIVE RELIEF FOR BREACH OF CONDITIONS

The Town would consider, and Vineyard Wind agrees not to contest, that a connection to the Transmission Lines by any entity that generates energy from a location within Nantucket Sound would both overburden the easements and grants of location contemplated by this Agreement and to be a clear and immediate threat of "damage to the environment" of Nantucket Sound as well as that of Barnstable, Dukes, Nantucket, and Bristol Counties, as that term is used in G.L. c. 214, §7A. Vineyard Wind further agrees that it would not contest an allegation that the occurrence of such an event would irreparably harm the Town's stated interests and that there is no adequate remedy at law that could compensate the Town for such a breach.

Therefore, Vineyard Wind agrees that it would not object to the Town seeking standing to pursue any appropriate relief against any entity that generates energy from a location within Nantucket Sound before any agencies or Courts of competent jurisdiction, including a G.L. c. 214, §7A claim. VW also agrees that it would not object to the Town seeking Temporary, Preliminary, and Permanent Injunctive Relief, as well as Declaratory Relief, ordering the termination of the connection to VW's Transmission Lines by any entity that generates energy from a location within Nantucket Sound. Vineyard Wind further would not object to the Town seeking such further relief as any such agency or Court may determine to be appropriate in the circumstances.

With respect to all other obligations identified in this Agreement, any Party that fails to satisfy any obligation under this Agreement in a timely manner may be declared to be in default by the other Party upon receipt of written notice stating the basis for the same. The defaulting Performing Party shall have 90 days from receipt of the Notice of default to cure the default unless such time is further extended by agreement with the other Party.

Given the importance of this Project to the region's renewable energy supply, in the event of a default by Vineyard Wind under this Agreement, the Town's remedies shall be limited to injunctive and declaratory relief and/or monetary damages; in no event shall the Town have the right to terminate this Agreement due to a default by Vineyard Wind. In the event Vineyard Wind declares bankruptcy, all HCA payments due and not already paid by Vineyard Wind as of the date of said declaration shall, at the Town's election, be accelerated. The amount of each annual outstanding accelerated HCA payment shall be calculated pursuant to the formula established in Section 9, utilizing the taxes paid in the fiscal year ended immediately prior to said date of declaration of bankruptcy.

17. INCORPORATION OF CONDITIONS

Vineyard Wind agrees to support any motion or request made by the Town to the Siting Board to incorporate the conditions contained in this Agreement as conditions of any Final Order of the Siting Board in the proceeding. Vineyard Wind further agrees not to object to efforts by the Town to encourage the federal and state agencies with jurisdiction over the Project to endorse or adopt this Agreement as part of any approvals that Vineyard Wind is required to obtain from said agencies.

18. DISPUTE RESOLUTION

- a. Generally: The Parties agree to use reasonable efforts to resolve any dispute arising under this Agreement informally.
- b. Mediation: In the event the Parties cannot resolve a dispute arising under this Agreement informally, any Party to the dispute may request mediation upon Notice to the other Party. The Notice shall identify the Parties to the dispute, the nature of the dispute, and a proposed mediator(s).
 - i. Within 30 days of the Notice of the request for mediation, the Parties to the dispute shall agree upon a mediator and enter into a mediation agreement with the mediator. If the Parties to the dispute cannot agree upon a mediator and mediation agreement within that time, they shall be deemed to have selected the Real Estate Bar Association, Boston, MA ("REBA") mediation services which shall appoint a qualified mediator to hear the dispute.
 - ii. The Parties to the mediation agreement shall engage in and conclude the mediation within 90 days of Notice of the request for mediation unless they agree to extend that time.
 - iii. If mediation is unsuccessful, the Parties to the dispute shall be free to exercise any rights or remedies they may have pursuant to this Agreement or otherwise.
- c. Exception: In the event of exigent circumstances, either Party may pursue judicial relief regarding events of default without first resorting to mediation.

19. VENUE AND JURISDICTION

Unless the Parties otherwise agree in writing, all actions within the Courts of the Commonwealth shall be filed in the Superior Court for Barnstable County.

Unless the Parties otherwise agree in writing, any Federal actions shall be filed in the United States District Court for the District of Massachusetts.

20. INDEPENDENT MASSACHUSETTS CONTRACT

This Agreement shall be governed by and construed as a Massachusetts contract in accordance with its laws, exclusive of the conflicts of law rules of the Commonwealth. It shall have independent legal

significance and, in the event of a conflict with the terms of any administrative order, or otherwise, the terms of this Agreement shall prevail.

If any portion of this Agreement shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible and the balance of this Agreement shall be deemed to remain in full force and effect, except as necessary to accommodate such finding of invalidity in order that both parties shall be provided with the benefits and burden with the obligations set forth herein.

21. NOTICE

All notices or correspondence with the Town shall be addressed to:

Town Manager
Town of Barnstable
367 Main Street
Hyannis, MA 02601

With a copy to:

Town Attorney
Town of Barnstable
367 Main Street
Hyannis, MA 02601

All notices or correspondence with Vineyard Wind shall be addressed to:

Vineyard Wind LLC
700 Pleasant Street, Suite 510
New Bedford, MA 02740

With a copy to:

Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210
Attn: Adam Kahn and Tad Heuer, Esq.

Notice shall be considered delivered if sent via U.S. Postal Service or a commercial delivery service such as FedEx or UPS if, in each instance, a tracking protocol is utilized to record date, time, and place of delivery. Notice shall be effective upon the day following such delivery.

The addresses above shall be utilized unless and until a Party desiring to change such address notifies the other of such change in the manner described above.

22. RELATIONSHIP OF THE PARTIES

a. INDEPENDENT ADVICE

No Party, representative or counsel for any Party, has acted as counsel for any other Party with respect to such Party entering into this Agreement, except as expressly engaged by such Party with respect to this Agreement, and each Party represents that it has sought and obtained any appropriate legal advice it deems necessary prior to entering into this Agreement. No Party shall act or be deemed to act as legal counsel or a representative of the other Party unless expressly retained by such Party for such purpose, and, except for such express retention, no attorney/client relationship is intended to be created between the Parties.

b. NO PARTNERSHIP

Nothing herein shall be deemed to create a partnership or joint venture and/or principal and agent relationship between the Parties.

23. GENERAL TERMS AND CONDITIONS

a. MODIFICATION

No provision of this Agreement may be modified except by a subsequent writing signed by all of the Parties.

b. AFFILIATES, SUCCESSORS, AND ASSIGNS

This Agreement is binding upon and shall inure to the benefit of each of the Parties as well as their respective affiliates, successors, and assigns.

c. INDEMNIFICATION

Vineyard Wind acknowledges that the Town, through no fault of its own, may become a party to litigation or may be threatened with litigation relating to or stemming from VW's Project. VW agrees to defend, indemnify, and hold the Town harmless from any cause of action asserted against the Town, its agents, servants, employees, or contractors resulting from or related to the Project, other than those caused by the Town's negligence (provided, however, that this provision shall not excuse Vineyard Wind for liability to the Town in proportion to any comparative negligence), willful misconduct, or by breach of this Agreement. Such indemnification shall include, without limitation, the costs of investigation, negotiation, or settlement of such claims whether or not such a claim has been placed in litigation. Notwithstanding anything to the contrary contained in this Agreement, in no event shall either Party be liable to the other Party for damages on account of lost profits or opportunities or business interruption.

d. RESPONSE COSTS

VW asserts that the Project is not expected to require any material increase in use of emergency response resources by the Town. However, Vineyard Wind will within 30 days upon presentation reimburse the Town for all reasonable costs incurred by the Town in responding to any and all emergency response actions originating at or from the Project sites, if deemed by the Town in the public interest to

do so, and whether or not mandated or invited to do so by any local, regional, state or federal agency. These response actions include, but are not limited to, emergency medical response, fire-fighting response, hazardous material release, vessel collisions, and aircraft emergencies. In addition, Vineyard Wind will, upon reasonable prior notice of anticipated expenses of the Town and its fire districts for training for, equipping for, and preparing for emergency response actions originating exclusively at or from the Project sites, and upon preapproval by Vineyard Wind of the same (which shall not be unreasonably withheld), reimburse the Town within 30 days upon presentation for all such reasonable expenses incurred.

e. INSURANCE

Vineyard Wind agrees to provide policies of commercial liability insurance from Insurance Companies domiciled in the United States, acceptable to the Town of Barnstable, naming the Town of Barnstable individually and/or as an additionally-named insured for such coverage and in such amounts as the Town and its insurance advisors shall reasonably determine in relation to the risks to be insured against. All such required policies of insurance shall be delivered to the Town before any permits for construction of the VW Project at sea or ashore shall be commenced. If any such coverage is cancelled or become unavailable, it shall be a material breach of this Agreement and entitle the Town to equitable and legal relief before any agency or court of competent jurisdiction.

f. LEGAL COSTS

Vineyard Wind agrees that it will not seek attorney's fees from the Town in any matter relating to this Agreement or the Project. VW concedes that an assessment of such fees have not been appropriated, and as such are barred by the Constitution of the Commonwealth.

g. ENFORCEMENT AUTHORITY NOT WAIVED

Unless otherwise agreed herein, including but not limited to Section 8, this Agreement does not preclude Town boards or officials from i) taking any action within the scope of their legal discretion on petitions submitted to them by Vineyard Wind, or ii) taking enforcement positions within the scope of their official duties with regard to the Project. Nor does this Agreement preclude legal counsel for the Town, at the direction of the Town Manager, from i) defending decisions of Town boards or officials on petitions submitted to them by Vineyard Wind, or ii) defending enforcement decisions of or commencing enforcement actions on behalf of Town boards or officials within the scope of their official duties with regard to the Project. Further, unless otherwise agreed herein, including but not limited to Section 8, nothing in this Agreement shall prohibit the Town from taking positions or actions with regard to changes to the proposed Project to the extent such changes are inconsistent with this Agreement.

h. FORCE MAJEURE

It is understood and agreed that the Parties hereto shall make a reasonable and good faith effort to perform their obligations under this Agreement. If and to the extent, but only to the extent, that either Party is prevented from performing its obligations hereunder by an event of force majeure, such Party shall be excused from performing hereunder for said period, and shall not be liable in damages or otherwise, and the Parties instead shall negotiate in good faith with respect to appropriate modifications to the terms hereof. For purposes of this Agreement, the term force majeure shall mean any i) storm, flood, earthquake, hurricane, cyclone, typhoon, lightning, landslide, drought, tornado, tidal wave,

wave, blizzard, ice storm, or other natural disaster; ii) explosion, structural collapse, evacuation, fire, sonic boom, pressure waves, bombing, hostage taking, kidnapping, physical criminal acts, accidents involving any aviation, nautical, or automotive vehicle or other means of conveyance, whether manned or unmanned, motorized or unmotorized, iii) plague, epidemics, or nuclear, chemical, or biological incidents or contamination, iv) civil disturbance, invasion, riot, coup, revolution, war (whether declared or not), civil war or any other armed conflict, military or non-military interference by any third party state or states, acts of terrorism or serious threats of terrorist attacks, v) sabotage, piracy, blockade, siege, embargo, strikes, boycotts, labor disputes, vi) interruptions, loss, or malfunctions of utilities, communications, or computer services; and vii) states of emergency declared by a local, state, or federal official or agency, acts of God, or acts of the public enemy.

i. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Witness this day our hands and seals,

Town of Barnstable,
By,



Mark S. Ells, Town Manager

10.3.2018
Date

Vineyard Wind LLC
By,

Erich Stephens, Chief Development Officer

Date

END OF DOCUMENT

blizzard, ice storm, or other natural disaster; ii) explosion, structural collapse, evacuation, fire, sonic boom, pressure waves, bombing, hostage taking, kidnapping, physical criminal acts, accidents involving any aviation, nautical, or automotive vehicle or other means of conveyance, whether manned or unmanned, motorized or unmotorized, iii) plague, epidemics, or nuclear, chemical, or biological incidents or contamination, iv) civil disturbance, invasion, riot, coup, revolution, war (whether declared or not), civil war or any other armed conflict, military or non-military interference by any third party state or states, acts of terrorism or serious threats of terrorist attacks, v) sabotage, piracy, blockade, siege, embargo, strikes, boycotts, labor disputes, vi) interruptions, loss, or malfunctions of utilities, communications, or computer services; and vii) states of emergency declared by a local, state, or federal official or agency, acts of God, or acts of the public enemy.

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Witness this day our hands and seals,

Town of Barnstable,
By,

Mark S. Ells, Town Manager

Date

Vineyard Wind LLC
By,



Erich Stephens, Chief Development Officer

3 Oct 18
Date

END OF DOCUMENT

Exhibit A

Marked NOAA Chart of Nantucket Sound




Exhibit B

Vineyard Wind Routes Under Consideration
August 2018



Figure 1-2
Onshore Locations: Preferred Route, Noticed Alternative Route, and Variants