

**AGREEMENT BETWEEN TOWN OF DANBURY
AND ATLANTIC WIND, LLC, DEVELOPER/OWNER OF THE
WILD MEADOWS WIND POWER PROJECT**

1. Definitions

- 1.1. "Agreement" - This agreement between the Town of Danbury, New Hampshire and Atlantic Wind LLC, and its successors and assigns, which shall apply for the life of the Wild Meadows Wind Farm located in New Hampshire.
- 1.2. "Ambient Sound Pressure" - The sound pressure level excluded from that contributed by the operation of the Wind Farm.
- 1.3. "Decommissioning Funding Assurance" – An assurance provided by the Owner in a form acceptable to the Town that guarantees completion of decommissioning, as provided in this Agreement.
- 1.4. "End of Useful Life" - The Wind Farm or individual Wind Turbines will be presumed to be at the End of Useful Life if no electricity is generated for a continuous period of twenty-four months for reasons other than the wind regime, maintenance or some technical failure or repair, or for wind farm repowering or facility upgrades or equipment replacements or curtailment by others.
- 1.5. "Non-Participating Landowner" - Any landowner in the Town of Danbury, other than a Participating Landowner.
- 1.6. "Owner" – Initially shall be Atlantic Wind, LLC and shall include the entity or entities having equity interest in the Wind Farm, including their respective successors and assigns.
- 1.7. "Occupied Building" - A permanent structure used as a year-round or seasonal residence, school, hospital, church, public library or other building used for gathering that is occupied or in use as of the time that the permit application was submitted to the New Hampshire Site Evaluation Committee.
- 1.8. "Participating Landowner" – Any landowner having entered into an agreement with the Owner for hosting Wind Farm facilities, providing easements for access, entry or conveyance of other rights related to the Wind Farm, or any other agreement related to the construction or operation of the Wind Farm.
- 1.9. "Project Site" – Property with rights as conveyed to Owner by lease, easement or other agreement with a Participating Landowner that includes all Wind Turbines, access roads, and other facilities required for construction and operation of the Wind Farm.
- 1.10. "Town" – Town of Danbury, New Hampshire.
- 1.11. "Turbine Height" - The distance from the surface of the tower foundation to the tip of the uppermost blade when in a vertical position. For the Wild Meadows Wind Farm, this height is approximately 492 feet.

- 1.12. "Wind Turbine" - A wind energy conversion system that converts wind energy for the generation of electricity, including a tower, a nacelle housing the generator and transformer, and a 3-blade rotor.
- 1.13. "Wind Farm" - The totality of the Wind Turbines, cables, accessory buildings and structures including substations, meteorological towers, electric infrastructure and cables and other appurtenant structures and facilities that comprise the Wild Meadows Wind Farm under development by Owner.

2. General Provisions

- 2.1. **Enforceability.** This Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner, including a Participating Landowner or any other party that assumes control of the Wind Farm or any Wind Turbines after the End of Useful Life. This Agreement shall have no force and effect to any party who does not own or is no longer in control of the Wind Farm or any Wind Turbines.
- 2.2. **Applicability to Owner.** This Agreement shall apply to the Owner only to the extent of Owner's rights and responsibilities related to the Wind Farm and Project Site as conferred to Owner by Participating Landowner agreements.
- 2.3. **Recording.**
- 2.3.1. Owner shall submit to the Town evidence of all Participating Landowner agreements, which may take the form of memoranda recorded with the Merrimack County Registry of Deeds.
- 2.3.2. This Agreement shall be recorded at the Merrimack County Registry of Deeds.
- 2.4. **Survivability.** The invalidity of any section, portion, or paragraph of this Agreement will not affect any other section, portion, or paragraph in this Agreement.
- 2.5. **Limitation on Turbines.** This Agreement is for the installation and operation of a Wind Farm of up to twenty-three turbines, consistent with the size and configuration approved by the New Hampshire Site Evaluation Committee (NHSEC). Communications or other equipment attached to the Wind Turbines shall be limited to that incidental and necessary for the safe and efficient operation, maintenance, and interconnection of the Wind Farm.
- 2.6. **On-site Burning.** The Owner will obtain a permit from the Town of Danbury and comply with all State requirements before Owner or its agents perform any on-site burning.

2.7. Warnings.

2.7.1. A clearly visible warning sign concerning voltage must be placed at the base of all Wind Turbines located in Danbury.

2.7.2. A clearly visible warning sign concerning safety risks related to winter or storm conditions shall be placed no less than 500 feet from each Wind Turbine tower base on site access roads.

2.8. **Access.** The Town shall have access to all access road gated entrances to the Project Site for the purpose of emergency response. The Owner shall provide to the Town keys, combination codes, and/or remote control devices for opening project access road gates. Such keys or access devices may not be provided by the Town to anyone other than members of the Board of Selectmen, Danbury Police Chief, Danbury Fire Chief or head of the Highway Department while engaged in official duties. The Owner shall provide access to the Project Site, Wind Turbines or other facilities upon reasonable request of the Town for the purpose of building or safety inspections under Town ordinances. The Owner shall provide access for emergency response purposes pursuant to the protocols provided under Section 7 of this Agreement. The Owner shall coordinate agreements with responding town emergency services and ensure access for those responder departments.

2.9. **Liability Insurance.** There shall be maintained a current general liability policy covering bodily injury and property damage with limits of at least \$10 million in the aggregate. Certificates shall be made available to the Town upon request.

2.10. **Indemnification.** The Owner specifically and expressly agrees to indemnify, defend, and hold harmless the Town and its officers, elected officials, employees and agents (hereinafter collectively "Indemnitees") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses, brought or made against or incurred by any of the Indemnitees resulting from or arising out of any negligence or wrongful acts of the Owner, its employees, agents, representatives or subcontractors of any tier, their employees, agents or representatives in connection with the Wind Farm. The indemnity obligations under this Article shall include without limitation:

2.10.1. Loss of or damage to any property of the Town or any third party or, to the extent that loss of or damage to property of Owner, results in a third party claim against the Town, loss of or damage to any property of Owner;

2.10.2. Bodily or personal injury to, or death of any person(s), including without limitation employees of the Town, or of the Owner or its subcontractors of any tier.

The Owner's indemnity obligation under this Article shall not extend to any liability caused by the negligence or willful misconduct of any of the Indemnitees, or third parties outside its control. In no event shall Owner be liable for consequential or special damages.

2.11. **Reopener Clause.** Upon agreement of both parties to this agreement, this agreement or portions thereof may be revised or amended.

3. Wind Turbine Equipment and Facilities

3.1. Visual Appearance.

3.1.1. Wind Turbines shall be painted and lighted and operated in accordance with Federal Aviation Administration (FAA) regulations. Wind Turbines shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or any other applicable authority that regulates air safety.

3.1.2. Wind Turbines shall not display advertising, except for reasonable identification of the turbine manufacturer and/or Owner.

3.2. **Controls and Brakes.** All Wind Turbines shall be equipped with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.

3.3. **Electrical Components.** All electrical components of the Wind Farm shall conform to relevant, applicable, and adopted local, state, and national codes.

3.4. **Power Lines.** Electric and communication lines between Wind Turbines shall, to the maximum extent practicable, be placed underground.

4. Project Site Security

4.1. Wind Turbines exteriors shall not be climbable up to fifteen (15) feet above ground surface.

4.2. All access doors to Wind Turbines and electrical equipment shall be locked, fenced, or both, as appropriate, to prevent entry by non-authorized persons.

4.3. Entrances to the Project Site shall be gated, and locked during non-working hours. If problems with unauthorized access are identified, the Project shall work to implement additional security measures.

5. Public Information, Communications and Complaints

5.1. **Public Inquiries and Complaints.** During construction and operation of the Wind Farm, and continuing through completion of decommissioning of the Wind Farm, the Owner shall identify an individual(s), including phone number, email address, and mailing address, posted at the Town Hall, who will be available for the public to contact with inquiries and complaints. The Owner shall make reasonable efforts to respond to and address the public's inquiries and complaints. This process shall not preclude the local government from acting on a complaint.

- 5.2. **Signs.** Signs shall be reasonably sized and limited to those necessary to identify the Project Site and provide warnings or liability information, construction information, or identification of private property. There will be no signs placed in the public right of way without the prior approval of the Town. After the completion of construction, signs visible from public roads shall be unlit.

6. **Reports to the Town of Danbury**

- 6.1. **Incident Reports.** The Owner shall provide the following to the Chairman of the Board of Selectmen or his designee as soon as possible:

- 6.1.1. Copies of all reporting of environmental incidents or industrial accidents that require a report to U.S. EPA, New Hampshire Department of Environmental Services, OSHA or another federal or state government agency

- 6.2 **Periodic Reports.** The Owner shall submit, on an annual basis starting one year from commercial operation of the Wind Farm, a report to the Board of Selectmen of the Town of Danbury, providing, at a minimum, the following information:

- 6.2.1 If applicable, status of any additional construction activities, including schedule for completion;
- 6.2.2 Details on any calls for emergency police or fire assistance;
- 6.2.3 Location of all on-site fire suppression equipment; and
- 6.2.4 Identity of hazardous materials, including volumes and locations, as reported to state or federal agencies.

7. **Emergency Response**

- 7.1. Upon request, the Owner shall cooperate with the Town's emergency services and any emergency services that may be called upon to deal with a fire or other emergency at the Wind Farm through a mutual aid agreement, to develop and coordinate implementation of an emergency response plan for the Wind Farm. The Owner shall provide and maintain protocols for direct notification of emergency response personnel designated by the Town and provisions that provide the Town with contact information of personnel available at every hour of the day. The Owner shall coordinate with other jurisdictions as necessary on emergency response provisions.
- 7.2. In the event of an emergency response event that creates an extraordinary expense (expenses beyond what the Town would otherwise incur in responding to an emergency response event for a resident of the Town) for the Town based on obligations under a mutual aid agreement, Owner shall reimburse the Town for actual expenses incurred by the Town.

8. Roads

8.1. Public Roads

- 8.1.1. In the event that the Owner wishes to utilize Town of Danbury roads for construction or operation of the Wind Farm (use for oversize or overweight vehicles, and/or use during posted weight limit time periods), then the Owner shall follow the below procedures:
- 8.1.2. Identify all local public roads to be used within the Town to transport equipment and parts for construction, operation or maintenance of the facility.
- 8.1.3. The Owner shall hire a qualified professional engineer, to document local road conditions prior to construction and again thirty days after construction is completed or as weather permits.
- 8.1.4. Any local road damage caused directly by the Owner or its contractors at any time shall be promptly repaired at the Owner's expense.
- 8.1.5. The Owner will reimburse the Town for costs associated with special police details, when contracted by Owner or their representatives if required to direct or monitor traffic within the Town limits during construction.
- 8.1.6. The Owner shall demonstrate by financial guarantee of the Owner or its parent or affiliates, that it will provide appropriate financial assurance to ensure prompt repair of damaged roads. If such financial assurance is not provided in a form acceptable to the Town, the Town may require a bond, letter of credit or cash deposit to meet this obligation.

8.2. Wind Farm Access Roads

- 8.2.1. The Owner shall construct roads at the Wind Farm that allow for access to each Wind Turbine at a level that permits passage of emergency response vehicles or, during winter conditions, allows access via snowcat or other equipment readily utilized during winter operations .

9. Construction Period Requirements

- 9.1. **Site Plan.** Prior to the commencement of construction, the Owner shall provide the Town with a copy of the final Soil Erosion and Sediment Control site plans, as approved by the New Hampshire SEC and Department of Environmental Services (DES) showing the construction layout of the Wind Farm.
- 9.2. **Construction Schedule.** Prior to the commencement of construction activities at the Wind Farm, the Owner shall provide the Town with a schedule for construction activities, including anticipated use of public roads for the transport of oversize and overweight vehicles. The Owner shall provide updated

information and schedules regarding construction activities to the Town upon request of the Town.

9.3. **Disposal of Construction Debris.** Tree stumps, slash and brush will be disposed of onsite or removed consistent with state law.

9.4. **Blasting.** The handling, storage, sale, transportation and use of explosive materials shall conform to all state and federal rules and regulations. In addition, the Owner shall comply with the following Town requirements.

9.4.1. At least ten days before blasting commences, the Owner shall provide Town officials the blasting plan. The plan shall include the necessity of blasting and the safeguards that will be in place to ensure that building foundations, wells or other structures will not be damaged by the blasting.

9.4.2. In accordance with the rules of the State of New Hampshire, the Owner shall notify the Danbury police and fire chiefs before blasting commences. Any changes to the schedule for blasting must be reported immediately and in person to the police and fire chiefs.

9.4.3. A Pre-Blast Survey will be performed to cover residents within 500 ft. of the work area, and a copy of the survey will be recorded in the Town office. Residents within 500 feet will be notified in person whenever possible, or by registered mail, prior to work in the area.

9.4.4. A copy of the appropriate Insurance Policy and Blasting License will be recorded in the Town office.

9.5. **Storm Water Pollution Control.** The Owner shall obtain a New Hampshire Site-Specific Permit and conform to all of its requirements including the Storm Water Pollution Prevention Plan and requirements for inspections as included or referenced therein. The Owner shall provide the Town with a copy of all state and federal stormwater, wetlands, or water quality permits and related conditions.

9.6. **Design Safety Certification.** The design of the Wind Farm shall conform to applicable industry standards. The Applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations, as requested and which have been obtained by the equipment manufacturers.

9.7. **Construction Vehicles**

9.7.1. Construction vehicles shall only use a route approved by the Town, which approval shall not be unreasonably withheld, delayed or conditioned. There shall be no staging or idling of vehicles on public roads. The Town shall be provided a schedule of deliveries using vehicles with a Gross Vehicle Weight greater than 88,000 pounds.

- 9.7.2. Construction vehicles will not travel on Town roads before 6:00 am or after 7:00 pm, Monday through Saturday, unless prior approval is obtained from the Town. Construction vehicles will not travel on Town roads on Sunday, unless prior approval is obtained from the Town.
- 9.7.3. Construction will only be conducted between 5:00 am and 7:00 pm, Monday – Saturday, unless prior approval is obtained from the Town. Construction will not be conducted on Sundays, unless prior approval is obtained from the Town.
- 9.7.4. The start-up and idling of trucks and equipment will conform to all applicable Department of Transportation regulations. In addition, the start-up and idling of trucks and equipment will only be conducted between 5:30 am and 7:00 pm, Monday through Saturday. The start-up and idling of trucks and equipment will not be conducted before 5:30 am, after 7:00 pm or on Sundays, unless prior approval is obtained from the Town.
- 9.7.5. Notwithstanding anything in this Agreement to the contrary, upon prior approval of the Town, over-sized vehicles delivering equipment and supplies may travel on Town roads between the hours of 7:00 pm and 6:00 am and on Sundays in order to minimize potential disruptions to area roads.

10. Operating Period Requirements

- 10.1. **Spill Protection.** The Owner shall take reasonable and prudent steps to prevent spills of hazardous substances used during the construction and operation of the Wind Farm. This includes, without limitation, oil and oil-based products, gasoline, and other hazardous substances from construction related vehicles and machinery, permanently stored oil, and oil used for operation of permanent equipment. Owner shall provide the Town with a copy of the Spill Prevention, Control and Countermeasure (SPCC) for the Wind Farm as required by state or federal agencies.
- 10.2. **Pesticides and Herbicides.** The Owner shall not use herbicides or pesticides for maintaining clearances around the Wind Turbines or for any other maintenance at the Wind Farm.
- 10.3. **Signal Interference.** The Owner shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television, or similar signals, and shall take commercially reasonable measures to mitigate any such harm caused by the Wind Farm.

11. Noise Restrictions

- 11.1. **Residential Noise Restrictions.** Audible sound from the Wind Farm during Operations shall not exceed 55 dB(A) as measured at the outside of any existing Occupied Building on a Non-Participating Landowner's property. This sound pressure level shall not be exceeded for more than a total of three minutes during any sixty minute period of the day. If the Ambient Sound Pressure Level exceeds 55 dB(A), the standard shall be ambient dB(A) level plus 5 dB(A).

11.2. **Post-Construction Noise Measurements.** After commercial operations of the Wind Farm commence, the Owner shall retain an independent qualified acoustics engineer to take sound pressure level measurements in accordance with the most current version of ANSI S12.18. The measurements shall be taken at sensitive receptor locations as identified by the Owner and Town. The periods of the noise measurements shall include, as a minimum, daytime, winter and summer seasons, and nighttime after 10 pm. All sound pressure levels shall be measured with a sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter. The Owner shall provide the final report of the acoustics engineer to the Town within 30 days of its receipt by the Owner.

12. Setbacks

12.1. **Setback From Occupied Buildings.** The setback distance between a Wind Turbine tower and a Non-Participating Landowner's existing Occupied Building shall be not less than three times the Turbine Height. The setback distance shall be measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building.

12.2. **Setback From Property Lines.** The setback distance between a Wind Turbine tower and Non-Participating Landowner's property line shall be not less than 1.1 times the Turbine Height. The setback distance shall be measured to the center of the Wind Turbine base.

12.3. **Setback From Public Roads.** All Wind Turbines shall be setback from the nearest public road a distance of not less than 1.5 times the Turbine Height as measured from the right-of-way line of the nearest public road to the center of the Wind Turbine base.

13. Waiver of Restrictions

13.1. **Waiver of Noise Restrictions.** A Participating Landowner or Non-Participating Landowner may waive the noise provisions of Section 11 of this Agreement by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights.

13.2. **Waiver of Setback Requirements.** A Participating Landowner or Non-Participating Landowner may waive the setback provisions of Section twelve of this Agreement by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights. Upon application, the Town may waive the setback requirement for public roads for good cause.

13.3. **Recording.** A memorandum summarizing a waiver or agreement containing a waiver pursuant to Section 13.1 or 13.2 of this Agreement shall be recorded in the Registry of Deeds for Merrimack County, New Hampshire. The memorandum shall describe the properties benefited and burdened and advise all subsequent purchasers of the burdened property of the basic terms of the

waiver or agreement, including time duration. A copy of any such recorded agreement shall be provided to the Town.

14. Decommissioning

14.1. Scope of Decommissioning Activities

- 14.1.1. The Owner shall submit a detailed site-specific decommissioning estimate of costs associated with decommissioning activities to the Town before construction of the Wind Farm commences. This estimate shall be updated and submitted to the Town every five years thereafter. The plan and estimate shall include the cost of removing the above ground facilities down to eighteen (18) inches below grade.
- 14.1.2. The Owner shall, at its expense, complete decommissioning of the Wind Farm or individual Wind Turbines, pursuant to Section 14.1.3 of this Agreement, within twenty-four months after the End of Useful Life of the Wind Farm or individual Wind Turbines, as defined in Section 1.4.
- 14.1.3. The Owner shall provide a decommissioning plan to the Town no less than three months before decommissioning is to begin. The decommissioning plan shall provide a description of all Wind Farm equipment, facilities or appurtenances proposed to be removed, the process for removal, and the post-removal site conditions. The Town will consider the remaining useful life of any improvement before requiring its removal as part of decommissioning. Approval of the Town must be received before decommissioning can begin, which approval shall not be unreasonably withheld, delayed or conditioned.

14.2. Decommissioning Funding Assurance

- 14.2.1. The Owner shall provide a Decommissioning Funding Assurance for the complete decommissioning of the Wind Farm, or individual Wind Turbines in a form reasonably acceptable to the Town. The Wind Farm or individual Wind Turbines will be presumed to be at the End of Useful Life if no electricity is generated from the Wind Farm or any individual Wind Turbine for a continuous period of twenty-four months, as defined in Section 1.4.
- 14.2.2. Before commencement of construction of the Wind Farm, the Owner shall provide Decommissioning Funding Assurance in an amount equal to the site-specific decommissioning estimate or \$600,000, whichever is greater. The Owner shall adjust the amount of the Decommissioning Funding Assurance to reflect the updated decommissioning costs after each update of the decommissioning estimate, in accordance with Section 14.1.1.
- 14.2.3. Decommissioning Funding Assurance in the amount described in Section 14.2.2 shall be provided by a parental guarantee from the Owner's parent or affiliates or Letter of Credit, in a form reasonably acceptable to the Town. The Town shall accept a parental guarantee from an affiliate of Owner with a minimum corporate credit rating of BBB from S&P or the equivalent from another reputable rating agency. If the corporate credit rating of the parent

issuing the parental guarantee declines below BBB, then Owner shall, within 60 days, provide a Letter of Credit in the amount indicated in Section 14.2.2 (as adjusted per Section 14.1.1). The Letter of Credit shall be in a form reasonably acceptable to the Board of Selectmen of the Town of Danbury. If Owner does not provide such financial guarantee or Letter of Credit, the Town may require another form of decommissioning assurance such as prepayment, external sinking funds, insurance, performance bond, surety bond, form of surety, or other method, or combination of methods as may be acceptable to the Board of Selectmen of the Town of Danbury. When the corporate credit rating of the parent entity issuing the parental guarantee rises to BBB or above, and remains at that level for 60 days, the Letter of Credit shall be released and not required so long as the parental guarantee is still in place with the Town.

14.2.4. Funds expended from the Decommissioning Funding Assurance shall only be used for expenses associated with the actual cost of decommissioning the Wind Farm.

14.2.5. If the Owner fails to complete decommissioning within the period proscribed by this Agreement, the Town of Danbury may, at its sole discretion, enforce the financial guarantee and require the expenditure of decommissioning funds on such measures as necessary to complete decommissioning.

14.3. Transfer of Decommissioning Responsibility

14.3.1. Consistent with Section 2.1 of this Agreement, the provisions of Section 14 of this Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner, including a Participating Landowner or any other party that assumes control of the Wind Farm or any Wind Turbines after the End of Useful Life, as defined in Section 1.4.

14.3.2. The Owner shall ensure that any successors or assigns of the Wind Farm shall agree to be bound by this Agreement and shall provide the Town with written confirmation from any successors or assigns stating that they agree to be bound to this Agreement upon the acquisition of the Wind Farm.

The parties agree the terms of this Agreement are final, enforceable and no longer subject to change as of _____, 201_, regardless of the date of execution by either party.

Signature page follows.

Town of Danbury

Atlantic Wind, LLC

Chairman, Board of Selectmen

Print Name:
Title: Authorized Representative

Selectman

Print Name:
Title: Authorized Representative

Selectman