

**Amendment to the  
Memorandum of Understanding  
Between  
The Town of Nantucket  
and  
Siasconset Beach Preservation Fund, Inc.  
for the Design, Permitting and Construction  
of a Coastal Erosion Structure  
and for the Protection and/or Relocation of Baxter Road**

This shall serve as an amendment (“Amendment”) to the Memorandum of Understanding (“MOU”) entered into on July 5, 2013, by and between the Board of Selectmen of the Town of Nantucket (the “Town”) and Siasconset Beach Preservation Fund, Inc. (“SBPF”), a Massachusetts 501(c)(3) corporation created by residents of Nantucket to protect historic homes and associated public infrastructure along Baxter Road in the Siasconset area of Nantucket; hereunto duly authorized. Any and all terms and conditions of this Amendment which are inconsistent with the terms and conditions contained in the MOU are expressly intended to supersede such terms and conditions so that they shall no longer apply. All other terms and conditions shall remain in full force and effect.

WHEREAS, certain of the facts and assumptions underlying the terms and conditions set forth in the original MOU have changed and/or no longer apply, the parties recognize and wish to enter into this Amendment so as to bring their agreement up to date. Such changed facts and underlying assumptions include but are not limited to changes in the scope and timing of the erosion protection project and related actions, as well as changes which may result in a change to the funding mechanism referred to in numbered paragraph 7 of the MOU;

WHEREAS, during the public hearings on SBPF’s underlying NOI and the findings of the Town’s engineering consultant, the Town has identified two potential failures involving Siasconset Bluff in the area of Baxter Road, including 1) global failure which would be a catastrophic bank failure caused by undermining at the toe of the bluff by wave action; and 2) local failure which would result along smaller sections of the bluff and is more likely to be caused by runoff discharging from the top of the bank and running down the exposed face of the bluff, so that there is an immediate need for emergency measures to protect Baxter Road and the associated utilities temporarily, in order to maintain vehicular access and utility service to the residential properties on Baxter Road;

WHEREAS, the Town’s engineering consultant has also determined that there is an immediate need for an emergency response action plan outlining how the Town will provide emergency vehicular access, water supply and sanitary sewer service to the residences at the north end of Baxter Road in the event of a failure of the roadway and that there is also a need for long-term planning for the potential eventual loss of Baxter

Road regardless of whether temporary and/or permanent protection measures for Siasconset Bluff are ultimately approved by the Town's Conservation Commission and the Massachusetts Department of Environmental Protection;

NOW THEREFORE, the Parties agree to the following amended course of action to that agreed to in the original MOU:

1. SBPF and the Town shall apply, as co-applicants, for approval of an emergency project to protect Baxter Road temporarily in the areas where Baxter Road appears to be in imminent danger due to erosion of Siasconset Bluff, specifically from 85 to 107A Baxter Road. SBPF shall pay for all engineering and construction costs related to such project, maintenance and repair of any approved installation, and mitigation and/or removal of any approved temporary protection installation in the event of failure of, or damage caused by such installation and shall also indemnify the Town against liability arising from damage caused by such installation.

2. SBPF shall provide funding for professional services for the Town including legal, engineering, and survey services, to formulate an emergency action plan outlining how the Town will provide emergency vehicular access, water supply, and sanitary sewer service, to the residences at the north end of Baxter Road, and shall ensure that utilities are notified and requested to provide an emergency response action plan for the relocation of electric, telephone and cable utility service to the area.

3. SBPF shall assist the Town with respect to long-term planning for the possible eventual loss of Baxter Road, regardless of whether a permanent coastal engineering structure is ultimately approved by the Conservation Commission, and SBPF agrees to assist the Town in preparing for "springing easements" triggered by the Town and/or County if there is a failure of Baxter Road, the criteria for which shall be established as soon as possible with the intent that the Town and/or County can act promptly in the event of such failure, to construct alternative access. SBPF shall provide the necessary funding for engineering and design services for construction of one or more alternative roadways, as well as funding necessary for surveys, preparation of easement taking plans, and appraisals for the relocation of Baxter Road. SBPF shall also endeavor to obtain easements or access agreements from private property owners so that takings can be avoided or minimized to the fullest possible extent.

4. The Town agrees to assist in expediting the public hearing and related processes on the emergency project so that the Conservation Commission's hearing on the emergency project opens on or before October 16, 2013, with the intent that emergency measures can proceed and be installed as soon as possible, and prior to the Winter, 2013/14 storm season. To the extent Town land is required for this emergency project, including access thereto, the Town by its Board of Selectmen hereby consents to such use, subject to permitting and applicable law.

Entered into this 9<sup>th</sup> day of October, 2013.

Town of Nantucket

Siasconset Beach Preservation Fund, Inc.

By its Board of Selectmen

By its President

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