

INTRAGOVERNMENTAL AGREEMENT/LICENSE AGREEMENT

This Intragovernmental Agreement/License Agreement (the "Agreement") dated 4-19-18, 2018, is by and between the Hingham Municipal Lighting Plant ("HMLP" or the "Licensee"), organized and existing in accordance with Massachusetts General Laws, Chapter 164, with offices at 31 Bare Cove Park Drive, Hingham, Massachusetts, and the Town of Hingham, a Massachusetts municipality with its offices at 210 Central Street, Hingham, Massachusetts, (the "Town" or "Licensor").

WHEREAS, HMLP provides electric utility services within the Town; and

WHEREAS, the Town owns and controls a closed, capped landfill facility located in Hingham, Massachusetts ("Property");

WHEREAS, HMLP seeks to use a portion of the Property, in conjunction with third parties, to develop a solar power facility using photovoltaic panels installed with ballast system so as to not impact the cap on the Property for the purpose of generating electricity from a renewable resource for purchase by HMLP;

WHEREAS, the solar photovoltaic facility is expected to be a ground-mounted solar photovoltaic system which consists of solar panels, ballasted mounting systems, racking, inverters, integrators, electric lines, transformers, conduits, metering devices, communications lines and other related equipment and components (the "Facility");

WHEREAS, HMLP and a Developer will enter into a Power Purchase Agreement (as same may be amended or modified, the "PPA") pursuant to which HMLP will purchase all of the output generated by the Facility to be owned by Developer;

WHEREAS, HMLP may also use a portion of the Property, specifically, a portion of the parking lot immediately adjacent to the capped landfill, to install related equipment necessary to support the solar power facility;

WHEREAS, the Town is willing to permit, under certain conditions, on a revocable, nonexclusive basis, use by HMLP of the Property under its care, custody and control, where such use will not interfere with the landfill cap, subject to the terms of this Agreement;

WHEREAS, the Board of Selectmen are authorized to enter into this Agreement by Article 26 of the 2016 Town Meeting;

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereby agree as follows:

ARTICLE 1 – GRANT OF LICENSE/ USE AND OCCUPANCY

(a) Subject to the provisions of this Agreement, the Town hereby transfers the care, custody and control of the surface of the capped landfill located on Town of Hingham Assessor's Map 106-0-7 for the purposes described in this Agreement and hereby grants to HMLP a revocable, nonexclusive license ("License") to occupy the portion of the Property shown on Exhibit A (such portion, the "Licensed Area") for the construction, operation and maintenance and removal of the Facility and for the production and transmission of electrical energy and associated environmental attributes, together with the non-exclusive rights of ingress and egress across the Property and other Town-owned property to and from all public ways as necessary to access the Licensed Areas and also together with the right to install interconnection lines, poles, wires on and at the Property for interconnection of the Facility to the electrical distribution system (together, the "Permitted Use"). Subject to the terms of this Agreement, HMLP may sublicense use of the Property to a third party for the Permitted Use. The Town acknowledges that a third party (and not HMLP) may own the Facility which shall constitute personal property. The Licensee shall require any chosen Developer or sub-licensee to include visual simulations of the Facility as part of any agreement between Licensee and Developer for construction of the Facility and Licensee shall require any chosen Developer to submit the proposed Facility to Site Plan Review by the Town of Hingham Planning Board which may include appropriate and reasonable conditions and mitigation requirements.

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(b) No use, however extended, of the Property under HMLP's License shall create or vest in Licensee or any sub-licensee any ownership rights in such Property. Licensee's rights herein shall be and remain those of a licensee under this Agreement. Neither this Agreement nor any license granted hereunder shall constitute an assignment of any of the Town's rights to use the public or private property at the location of the Property under the Town's custody and control, except for the rights granted by Licensor in this Agreement.

(c) Nothing contained in this Agreement shall be construed as a limitation, restriction or prohibition against the Town with respect to any use by the Town of the Property or any agreement or arrangement which the Town has entered into, or may in the future enter into, with third parties regarding the Property covered by this Agreement; provided that the Town may not make use of, or permit any use to be made of, the Property which would unreasonably interfere with the Permitted Use or which would interfere with insolation to the Facility. Licensor shall be responsible for and shall repair any damage to the Facility caused by use of the Property by Licensor or its invitees. The Town shall not, during the term of this Agreement, enter into a joint-use arrangement, lease, license, agreement, occupancy, contract or undertake an obligation which is inconsistent or incompatible with the Town's obligations under this Agreement, nor will the Town, throughout the term of this Agreement, enter into a joint-use arrangement, lease, license, agreement, occupancy, contract or undertake an obligation with a third party which is inconsistent, incompatible or interferes with HMLP's use of the Property or the development, operation and maintenance and removal of the Facility. In no event shall the operation of the

Transfer Station at the Property be considered an interference with the Permitted Use or Facility and the Town reserves all of its rights to continue to operate said Transfer Station.

(d) Licensee's use of the Property shall be restricted exclusively to the Permitted Use by Licensee and its sub-licensees and their authorized agents, employees, servants and contractors and the Licensee and its sub-licensees shall not interfere with the Town's operation of the Transfer Station at the Property. Prior to and during its utilization of the Property, Licensee shall hold and maintain or shall cause its sub-licensee to hold and maintain current and effective any permits, licenses or authorizations required by all applicable federal, state or municipal laws, regulations, codes and ordinances for the Permitted Use of the Property and shall promptly provide Licensor with evidence thereof upon request.

(e) Licensee's agents, employees, servants, contractors, sub-licensees and invitees shall take all necessary precautions to insure the safety of Licensee's agents, employees, servants, contractors, sub-licensees and invitees upon the Property and shall comply with all applicable provisions of federal, state and municipal laws, codes, regulations and ordinances and any successor laws, codes, regulations and ordinances thereto which are applicable to the Property or required for the Permitted Use, in order to prevent accidents or injury to persons and property on the Property.

(f) This Agreement neither transfers the responsibility nor relieves the Town of any responsibility it has for maintaining and monitoring the integrity of the Property or the landfill cap or complying with any permits issued to Licensor. To the extent permitted by law, the Licensor will defend Licensee and its sub-licensees from and against any and all liabilities, claims, suits, causes of action of any kind, fines, penalties, damages, judgments, orders, awards, losses, fees, costs and expenses (including reasonable attorneys' and expert fees), relating to any damage or other adverse event related to use of the Property for the development, construction, operation and maintenance and removal of the Facility arising from or relative to Town's maintenance and monitoring of, of failure to maintain and monitor, the capped landfill or any methane gas venting infrastructure.

Notwithstanding the preceding paragraph, HMLP shall, or HMLP shall cause its sub-licensee to be responsible for and to defend and indemnify the Town, to the extent permitted by law, from and against any and all liabilities, claims, suits, causes of action of any kind, fines, penalties, damages, judgments, orders, awards, losses, fees, costs and expenses (including reasonable attorneys' and expert fees), relating to any damage or other adverse event arising from or related to use of the Property for the development, construction, operation and maintenance and removal of the Facility.

(g) Licensor acknowledges and agrees that Licensee and/or Developer (or its designee) will submit an application to the Massachusetts Department of Environmental Protection ("DEP") on behalf of and in the name of Licensor for a post-closure use permit

pursuant to 310 CMR 19.143 (“Post-Closure Permit”) which is required for installation and operation of the Facility and the Permitted Use at the Property. Licensee and/or Developer shall prepare such application for Licensor’s review and approval, which shall not be unreasonably withheld. Licensor agrees to comply with the conditions or obligations in the Post-Closure Permit related to the maintenance, repair, inspection or security of the landfill, the landfill cap, the waste transfer facility, any methane venting systems at the Property or remediation of hazardous substances or conditions at the Property. Licensor agrees to submit any periodic inspection reports required by the Post-Closure Permit related to Licensor’s aforementioned duties or related to Licensor’s ownership of the Property. Licensee shall require sub-licensees to comply with conditions in the Post-Closure Permit related to construction, operation and maintenance of the Facility and interconnection of the Facility to the electrical distribution system. Licensor acknowledges that the DEP may require fencing around the Facility. To the extent any conditions in the Post-Closure Permit require Licensor to perform work within the Licensed Area, Licensee shall or shall require its sub-licensees to provide Licensor access to such area upon prior written notice; provided that Licensor shall minimize interference with the Facility during such access and Licensor agrees to comply with Licensee’s or its sub-licensee’s safety procedures. Each of Licensor and Licensee and sub-licensees shall provide reasonable cooperation and assistance with the other parties in providing information that a party may require to meet the DEP Post Closure Permit conditions. If Licensor fails to comply with the Post Closure Permit, Licensee or its sub-licensee may take such action as it deems necessary to avoid cancellation of the Post Closure Permit and Licensor shall reimburse Licensee or sub-licensee for costs incurred. If Licensor’s failure to comply results in cancellation of the Post Closure Permit, then Licensor shall be deemed in default under this Agreement unless Licensor remedies such non-compliance prior to the date of cancellation of the Post Closure Permit, failing which Licensee may terminate this Agreement and require Licensor to pay the Early Termination Payment.

(h) The Parties’ respective obligations under this Agreement are conditioned upon the receipt of the necessary permits for construction of the Facility, submission of the proposed Facility for Site Plan Review by the Town of Hingham Planning Board, and the negotiation of a payment in lieu of taxes or “PILOT” Agreement; if these conditions precedent to performance cannot be achieved by the final date set forth for Commercial Operation as defined in the PPA between Licensee and Developer, then this Agreement shall terminate and neither Party shall have any further obligation to each other hereunder and the provisions of Section 4(c) shall apply immediately upon said termination.

ARTICLE 2 - TERM OF AGREEMENT

This Agreement shall become effective on the date that this Agreement is signed by both parties’ authorized representatives, and if not terminated in accordance with the provisions herein, shall continue in effect for a term of twenty (20) years after the commercial operation

date of the Facility, as such date is established under the PPA (“Term”). Licensee shall provide written notice to Licensor of the commercial operation date.

ARTICLE 3 – FEES AND CHARGES

The fee to be paid by the Licensee to Licensor for the Term of this Agreement shall be a set fee of \$100 per year (“Licensee Fee”) plus any costs incurred by Licensor arising out of or as a result of the Post-Closure Permit and/or any costs incurred by Licensor arising out of or as a result of any conditions imposed by DEP on the Licensor related to said Post-Closure Permit.

ARTICLE 4 – TERMINATION

(a) Notwithstanding anything contained herein to the contrary, each of Licensor and Licensee reserves the right to terminate this Agreement at any time by giving written notice of termination at least thirty (30) days before the effective date of said termination. Upon the effective date of termination, this Agreement shall be of no further force and effect, except as to such of Licensee's or Licensor's liabilities or obligations hereunder, actual or contingent, as shall have arisen on or prior to such date of termination or which survive the termination of this License. In the event that (i) Licensor terminates this Agreement prior to the expiration of the Term for any reason other than default (beyond notice and cure periods) of the Licensee or (ii) Licensee terminates this Agreement due to breach or default beyond applicable notice and cure periods of the Licensor, then Licensor shall be obligated to reimburse the Licensee for any Early Termination Payment for which the Licensee is obligated to pay any Developer plus all Removal Costs. This Article 4 shall survive termination of this Agreement. “Removal Costs” are actual costs of removing the Facility.

(b) Licensee, at its expense, shall remove all equipment it has installed or caused to be installed from the Property within one hundred eighty (180) days after the later of (i) termination of this Agreement and (ii) if applicable, receipt of the Early Termination Payment. Licensee shall not be required to remove concrete foundations from the Licensed Area. Licensee shall not be required to re-sod or re-plant any vegetation at the Property after removal of the Facility. If Licensee fails to remove its equipment within such 180-day period, Licensor shall have the right to remove such equipment at Licensee's expense and without any liability on the part of Licensor for damage or injury to Licensee's equipment. Licensee bears all costs of removing and storing such equipment.

(c) Upon the termination of this Agreement the Licensee shall transfer the care, custody and control of the surface of the capped landfill located on Town of Hingham Assessor's Map 106-0-7 back to the Town.

ARTICLE 5 – LIABILITY, INDEMNIFICATION, INSURANCE

(a) Licensee shall exercise precaution to avoid damaging the landfill cap in any way whatsoever, and Licensee assumes all responsibility for any and all loss from such damage caused by Licensee or sub-licensee, or their agents, servants, contractors, or invitees, subject to the provisions of Section 1(f) above. Licensee shall make an immediate report to Licensor and any other user of the occurrence of any such damage and agrees to reimburse the respective parties for all costs incurred in making repairs. The parties acknowledge that liability of Licensor and Licensee are subject to all applicable limitations and defenses under the Massachusetts Tort Claims Act, G.L. c. 258. This Agreement does not create any rights or benefits in favor of any third parties including customers of Licensee; and the Licensor shall not be liable to such third parties by virtue of its acts or omissions under this Agreement.

(b) Except as may be caused by the negligence ~~or and~~ willful misconduct of the Town, or the Town's agents or contractors and excluding those matters set forth in Section 1(f) above, HMLP shall defend, indemnify and save harmless the Town, or HMLP shall cause its sub-licensee to defend, indemnify and save harmless the Town, its members, officers and employees against and from any and all liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses (including reasonable attorneys' and expert fees) including, but not limited to, (a) those which may be imposed upon, incurred by or asserted against Licensor by reason of any act or omission on the part of Licensee or any of its agents, servants, invitees, or sub-licensee for which Licensor may be found liable, (b) any accident, injury (including death) or damage to any person or property occurring on the Property, arising out of any use thereof by Licensee or any of its agents, servants, or sub-licensee to the extent caused by the negligence or willful misconduct of Licensee or its agents, servants or sub-licensees, and (c) any failure on the part of Licensee or sub-licensee to perform or comply in any material respect with any of the covenants, terms or conditions in this Agreement. Licensee shall pay all of the Town's direct and reasonable cost of defense under the provisions of this section.

The express obligation of indemnification set forth above shall not be construed to negate or abridge any other obligation or indemnification running to the Licensor which would exist at common law or under any other provision of this Agreement, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Agreement. The obligation to defend and indemnify Licensor shall survive the expiration or earlier termination of this Agreement.

(c) Licensee shall carry and maintain during its occupancy thereof commercial general liability insurance covering bodily injury, death and/or property damage in the minimum

single limit of \$1 million per occurrence and \$3 million in the aggregate plus excess liability in the amount of \$2 million per occurrence and \$2 million in the aggregate naming the Licensor as additional insured. Licensee shall provide Licensor with a copy of Licensee's additional insured endorsement page reflecting that Licensor has been named as an additional insured. Licensee shall also carry such insurance as will protect it from all claims under any Worker's Compensation Laws in effect that may be applicable to it.

Certificates evidencing such insurance shall be delivered to the Licensor at the commencement of the Term and upon each renewal of the insurance required herein. Upon Licensor's request, Licensee shall deliver copies of these policies to Licensor. Said policies shall contain a provision that such policies cannot be cancelled or modified unless Licensor is given at least thirty (30) days' prior written notice of such cancellation or modification, and a provision that any loss payable thereunder shall be payable notwithstanding any act or negligence of Licensor or Licensee which might, absent such provision, result in a forfeiture of all or part of the payment of such loss. Licensor may from time to time require that the amount of the general liability insurance to be provided and kept in force by Licensee under this Agreement be reasonably increased.

(d) If Licensee or its sub-licensees or contractors discover any pre-existing Hazardous Substances or suspected Hazardous Substances during construction or operation of the Facility, such party/ies shall immediately stop work in the affected area and notify Licensor. Licensor shall investigate the area and shall be responsible for all required abatement or remediation of pre-existing Hazardous Substances required under law. Licensor shall hold Licensee and its sub-licensees harmless from and against any costs relating to pre-existing Hazardous Substances discovered at the Property. Licensee shall have no obligation to resume work during construction until Licensor can demonstrate that all Hazardous Substances have been remediated as required by law. Licensee and its sub-licensees shall be responsible for handling and disposing of any Hazardous Substances brought onto the Property. As used herein "Hazardous Substances" means asbestos and asbestos-containing materials; any chemical, material or substance defined as or included in the definition of "hazardous substances" "hazardous wastes," "hazardous materials," "pollutant," "toxic," under applicable laws; any oil, petroleum, petroleum derived substance.

ARTICLE 6 - ASSIGNMENT OF RIGHTS

Licensee shall not assign or transfer this Agreement or any authorization granted hereunder, except upon the written consent of Licensor, provided, however, that Licensee is permitted to enter into a sub-license agreement for the development, construction, operation and maintenance and removal of the Facility.

Licensors acknowledge that sub-licensee may be financing the acquisition and installation of the Facility with financing accommodations from one or more financial institutions, which may be secured by, among other collateral, a pledge or collateral assignment of the sub-license. Licensors acknowledge that it has been advised that part of the collateral securing financial accommodations of sub-licensee may be the granting of a first priority security interest in the Facility to be perfected by a filing under the Uniform Commercial Code. Licensors agree to such filings. Licensors agree to execute any consents, estoppel certificates or other commercially reasonable instrument requested by sub-licensee as part of the financing(s) of the Facility.

If a lender providing financing for construction or operation of the Facility requests additional terms and conditions to this Agreement, Licensors agree to consider such requests and shall not unreasonably withhold any approval of such additional terms and conditions.

ARTICLE 7 – DEFAULT

(a) In the event there is a default by Licensee with respect to any of the provisions of this Agreement or any of its obligations under it, the Licensors shall give Licensee written notice of such default in accordance with the provisions of this Agreement. After receipt of such written notice, the Licensee shall have fifteen (15) days in which to cure any monetary default and thirty (30) days in which to cure any non-monetary default; provided, however, that in instances where such default cannot reasonably be cured in such thirty (30) day period, if Licensee shall have commenced such cure within said thirty (30) day period and proceeds promptly to cure the same and prosecute such curing with due diligence, the time for curing such default shall automatically be extended by Licensors for such period of time as may be necessary for Licensee to complete such curing.

(b) If, after such notice and opportunity to cure, any such default remains uncured, Licensors may terminate this Agreement upon written notice to Licensee with no liability to Licensors, except for those provisions which survive termination. In addition to the remedy of termination for Licensee's default, Licensors shall have all other rights and remedies against Licensee provided by law, all of which shall survive the termination of this agreement.

(c) For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor's liability will be limited to direct actual damages only, and such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. **IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING BUT NOT**

LIMITED TO, LOSS OF PROFITS OR REVENUE, DOWNTIME COSTS, LOSS OF USE OF ANY PROPERTY, COST OF SUBSTITUTE EQUIPMENT OR FACILITIES, WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE. This Section 7(c) shall survive termination of this Agreement. For greater clarity, the Parties agree that any Early Termination Payment and any Removal Costs do not constitute consequential, incidental, punitive, exemplary or indirect damages.

(d) Licensee's aggregate liability to Licensor under this Agreement over the Term (whether for breach of contract, strict liability, and/or other cause) shall not exceed a total of Fifty Thousand Dollars (\$50,000); provided that claims by Licensor asserted pursuant to Articles 1(g), 3 and 5 and Licensee's obligations pursuant to Section 1(g) hereof shall not be subject to such limitation.

ARTICLE 8 - COMPLIANCE WITH LAWS

Licensee and Licensor shall observe and cause their respective sub-licensees, agents, servants, contractors and invitees to observe and obey all applicable laws, rules, regulations or ordinances, local, state or federal, whether such laws, rules, regulations and ordinances are now existing or hereafter promulgated in connection with this License. Nothing in this Article shall be construed, however, as relieving Licensor of its obligations with regard to the landfill as set forth in Section 1 (f) and (g) above.

ARTICLE 9 - FORCE MAJEURE

Neither the Licensor nor Licensee shall be liable for any costs, losses or damages incurred by the other or any party claiming through the other or for any failure to perform their obligations hereunder where such costs, losses or damages or failures arise from or are in consequence of any event of force majeure, including but not limited to an act of God, natural disaster, war, civil disturbance, fire, explosion, failure of electrical distribution equipment, any federal, state or local law or any rule, regulation or order of a court or other governmental agency, labor disputes, inability to secure materials, or any other cause or causes, whether similar or dissimilar to the causes enumerated above, beyond the reasonable control and without the fault or negligence of the party asserting force majeure. The party asserting force majeure must give notice in writing to the other party as soon as practicable after the occurrence of the cause relied on, and such cause shall be remedied with all reasonable dispatch. If any force majeure event makes this Agreement materially impossible to perform for a period of one hundred eighty days, then once Licensee has paid all outstanding fees through the day on which notice of the materially impairing force majeure event was served, both parties shall be relieved of their responsibilities and obligations hereunder and either party may terminate this Agreement.

ARTICLE 10 - SEVERABILITY

In the event any provision of this Agreement is deemed invalid or unenforceable by a court of law, the Agreement will be interpreted as though such provision does not appear and the Agreement will be otherwise fully enforceable, unless such a course would have a material effect on the rights and obligations of any party or otherwise frustrates the purpose of this Agreement, in which case the parties shall have the right to rescind the Agreement.

ARTICLE 11 - NOTICES

Notices under this Agreement shall be sent by registered or certified mail, postage prepaid, to the addresses set forth below or to such other address or addresses as may from time to time be designated by such party by like notice.

If intended for Licensor as follows:

Town Administrator
Town of Hingham
210 Central Street
Hingham, MA 02043

If intended for Licensee as follows:

General Manager
Hingham Municipal Lighting Plant
31 Bare Cove Park Drive
Hingham, MA 02043

All such notices shall be effective upon receipt or failure to accept delivery.

ARTICLE 12 – REPRESENTATIONS, WARRANTIES AND COVENANTS

(a) Licensor hereby represents and warrants to Licensee as follows, and acknowledges that the sub-licensee may rely upon such representations and warranties:

(i) There are no leases, licenses, easements, restrictions, liens, encumbrances, remediation conditions or occupancy arrangements in place or in effect with respect to the Property which will interfere with, prevent or adversely impact the installation, construction and

operation of the Facility. Licensor shall cooperate and use reasonable efforts in removing or amending restrictions, easements or encumbrances which may adversely impact development, construction or operation of the Facility.

(ii) Licensor is the fee owner of the Property.

(iii) Licensor is a municipality of the Commonwealth of Massachusetts and has all requisite power and authority to enter into the Agreement, to perform its obligations and to consummate the transactions contemplated hereby;

(iv) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary action;

(v) Licensor represents and warrants that the use of the Property for the Permitted Use is not in conflict with the Licensor's mission.

(b) Licensor has, or will prior to execution of this Agreement, record a notice of landfill operation as required by M.G.L. c. 111, § 150A.

(c) To the extent applicable, Pursuant to Chapter 209, Section 53 of the Acts of 2012, Licensor agrees to execute and record an amendment to any applicable instrument recorded at the Plymouth County Registry of Deeds, to allow the Permitted Use.

(d) Licensor hereby represents and warrants to Licensor that Licensor is engaged in a request for proposal process with multiple solar companies by which a Developer will be chosen by Licensor based on matters such as experience in design, construction, operation and maintenance and removal of solar facilities as well as financial ability of Developer to complete the Facility and based on financial PPA terms including pricing.

(e) Licensor hereby represents and warrants to Licensor that Licensor will cause its sublicense agreement with its Developer to be executed within two (2) years of the 2016 Annual Town Meeting as required by Article 26 of the 2016 Town of Hingham Annual Town Meeting.

ARTICLE 13 - MISCELLANEOUS

(a) Successors and Assigns. This Agreement is personal to the parties and shall bind and inure to the benefit of HMLP and the Town only; and their respective successors and assigns shall not be bound by, or have the benefit of, this Agreement unless specifically permitted by this Agreement.

(b) Entire Agreement; Governing Law. This Agreement supersedes all previous agreements, whether written or oral, between Licensor and Licensor regarding use of the Property, and there are no other provisions, terms or conditions to this Agreement except as expressed herein. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

(c) No Waiver. Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement terminated shall not constitute a general waiver or relinquishment of any such terms, conditions or acts but the same shall be and remain at all times in full force and effect.

(d) No Personal Liability. No officer or employee of Licensor shall be charged personally or held contractually liable under any term or provision of this Agreement or because of any breach thereof or because of the execution or attempted execution of this Agreement.

(e) Amendment. All modifications to this Agreement shall be by mutual agreement of the Parties as evidenced by a written amendment signed by both Parties.

(f) Memorandum of License. At the request of any lender providing financing for the Facility, Licensor and Licensee agree to execute a memorandum of this Agreement in recordable form which Licensee may record at the Plymouth County Registry of Deeds.

(g) Liquidated Damages Not Penalty. The parties acknowledge and agree that any Early Termination Payment and any Removal Costs shall constitute liquidated damages and not a penalty. Further that the Licensee's damages resulting from an early termination are difficult to estimate, and that any Early Termination Payment and any Removal Costs are a reasonable approximation of Licensee's damages only to the extent that Licensee is obligated to make such payments to a Developer.

(h) The parties agree that the Licensee is authorized to own, operate and maintain the Facility itself following construction of the Facility, in the event that HMLP determines, in its sole discretion, that such course of action is in the best interests of HMLP and its ratepayers.

(i) The Licensee shall provide the Licensor with quarterly project updates upon written request by the Licensor during the design and construction phase of the Facility and shall provide the Licensor with annual project updates following the completion of the construction phase of the Facility or as more frequently requested by the Licensor in writing to the Licensee.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals.

LICENSOR:

TOWN OF HINGHAM

LICENSEE:

HINGHAM MUNICIPAL LIGHTING
PLANT

BY: Mary M. Power
Name: Mary M. Power
Title: Selectman, Hingham

BY: Paul Heanue
Name: Paul Heanue
Title: General Manager

BY: Paul Healey
NAME: PAUL HEALEY
TITLE: SELECTMAN - HINGHAM

BY: Karen A. Johnson
NAME: KAREN A. JOHNSON
TITLE: BOARD OF SELECTMAN.

EXHIBIT A

[DRAWING THAT WILL SHOW AREA TO BE LICENSED WITHIN LANDFILL SITE
TBD]

