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MEMORANDUM OF AGREEMENT

AMONG

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS,

THE STATE OF CONNECTICUT,
DEPARTMENT OF ENVIRONMENTAL PROTECTION,

THE UNITED STATES DEPARTMENT OF THE INTERIOR,

AND THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

CONCERNING NATURAL RESOURCE DAMAGES IN THE MATTER OF
UNITED STATES, ET AL. V. GENERAL ELECTRIC COMPANY,
CIVIL ACTION NOS. 99-30225-MAP; 99-30226-MAP; AND 99-30227-MAP (D. MASS.)

I.

INTRODUCTION

In October of 1999, the United States, the Commonwealth of Massachusetts, the City of Pittsfield, the Pittsfield Economic Development Authority, and the State of Connecticut reached a comprehensive settlement agreement with the General Electric Company related to alleged violations of federal and state laws concerning releases of certain hazardous substances and materials, particularly polychlorinated biphenyls ("PCBs"), into the environment. The terms of this agreement are detailed in a Consent Decree approved by the United States District Court of Massachusetts in the matter of United States, et al. v. General Electric Company, Civil Action Nos. 99-30225-MAP; 99-30226-MAP; and 99-30227-MAP (D. Mass.) (hereinafter "U.S. v. G.E."). The Consent Decree provides for, among other things, the cleanup of the Housatonic River and certain associated areas, cleanup of the General Electric Plant facility, environmental restoration of the Housatonic River, compensation for natural resource damages, and government recovery of past and future response costs.

This Memorandum of Agreement (hereinafter "MOA") among the United States, acting by and through the Fish and Wildlife Service of the Department of the Interior (hereinafter "DOI") and the National Oceanic and Atmospheric Administration of the Department of Commerce (hereinafter "NOAA"), the State of Connecticut, acting by and through its Department of Environmental Protection, and the Commonwealth of Massachusetts, acting by and through its Executive Office of Environmental Affairs (hereinafter "Trustees ") is entered into in recognition of the common interests of the Trustees in ensuring a coordinated handling of natural resource damages arising from the releases of PCBs and other hazardous substances by the General Electric Company into the Housatonic River and surrounding environments, of the common interest of the Trustees in the restoration, replacement, enhancement and/or acquisition of equivalent natural resources which have been injured, destroyed or lost as a result of such

releases, and of the common interests of the Trustees in working with the Environmental Protection Agency ("EPA"), the Massachusetts Department of Environmental Protection ("MADEP"), and the Connecticut Department of Environmental Protection ("CTDEP") in the coordinated and cooperative handling of cleanup, remediation, and restoration, activities relating to said releases, in connection with any settlement or other payments to the United States, the State of Connecticut or the Commonwealth of Massachusetts in the matter of U.S. v. G.E.

Pursuant to Section 107(f)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9607(f)(2)(A); Executive Order No. 12580 (January 23, 1987); and Subpart G of the National Oil and Hazardous Substance Pollution Contingency Plan ("NCP"), 40 C.F.R. part 300.600, the Secretaries of the United States Department of Commerce and the Interior have been designated as Federal natural resource trustees for purposes of CERCLA, and otherwise have statutory responsibilities related to the natural resources injured, destroyed or lost as a result of the release of hazardous substances and materials into the Housatonic River environment, the General Electric facility and certain associated areas. The Secretary of Commerce has delegated the Department's natural resource trustee authority under CERCLA to the Under Secretary of Oceans and Atmosphere of NOAA, a bureau of the United States Department of Commerce. The Secretary of the Interior has designated the Regional Director, United States Fish and Wildlife Service, Region 5, to act as the Authorized Official, and has delegated to the Regional Director authority to act as natural resource trustee under CERCLA for natural resource damages and restoration matters related to U.S. v. G.E. and the Housatonic River.

Pursuant to Section 107(f)(2)(B) of CERCLA, as amended, 42 U.S.C. § 9607(f)(2)(B), the Secretary of Environmental Affairs for the Commonwealth of Massachusetts has been designated as the Commonwealth's trustee for natural resources for purposes of CERCLA and state law, and otherwise has statutory responsibilities related to the natural resources injured, destroyed or lost as a result of the release of hazardous substances and materials into the Housatonic River environment, the General Electric facility and certain associated areas in Massachusetts. Pursuant to Section 107(f)(2)(B) of CERCLA, as amended, 42 U.S.C. § 9607(f)(2)(B), the Commissioner of Environmental Protection for the State of Connecticut has been designated as the State's trustee for natural resources for purposes of CERCLA and state law, and otherwise has statutory responsibilities related to the natural resources injured, destroyed or lost as a result of the release of hazardous substances and materials into the Housatonic River environment and certain associated areas in Connecticut.

II.

DEFINITIONS

For the purposes of this MOA,

A. **"CERCLA"** means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

B. **"CTDEP"** means the Department of Environmental Protection of the State of Connecticut not in its role as a trustee under 42 U.S.C. § 9607(f)(2)(B) but in its role as

the state agency charged with administering, implementing or enforcing CERCLA and state laws and regulations concerning response, remedial and removal actions for releases of hazardous substances.

C. **"Conn. Trustee"** means the Commissioner of Environmental Protection for the State of Connecticut or the Commissioner's designee.

D. **"Ex Officio Delegate"** means a non-governmental citizen appointed by unanimous agreement of the Federal Trustees and either the Mass. Trustee (for matters pertaining to the geographic area of the Commonwealth of Massachusetts) or the Conn. Trustee (for matters pertaining to the geographic area of the State of Connecticut), as applicable, to participate in Trustee Council or SubCouncil proceedings as described in Section VI of this MOA; provided, however, that no such Ex Officio Delegate shall be considered a voting member of the Trustee Council or SubCouncil(s).

E. **"Federal Trustees"** means the Secretary of Commerce acting through NOAA, and the Secretary of the Interior acting through the United States Fish and Wildlife Service.

F. **"Housatonic River Environment"** means the Housatonic River in Massachusetts and Connecticut and the adjacent shore areas which have been or may be injured, destroyed or lost as a result of the releases of hazardous substances as described in the Consent Decree.

G. **"LAT"** means the Lead Administrative Trustee as described in Section VI of this MOA.

H. **"Letter of Understanding" or "LOU"** means a document titled "GE Pittsfield/Housatonic River Site Letter of Understanding among the Federal and State Natural Resource Trustees" and executed in October 1999 concerning allocation of natural resource damages between the separate geographic areas of the State of Connecticut and the Commonwealth of Massachusetts.

I. **"MADEP"** means the Department of Environmental Protection of the Commonwealth of Massachusetts as the state agency charged with administering, implementing or enforcing CERCLA and state laws and regulations concerning response, remedial and removal actions for releases of hazardous substances.

J. **"Mass. Trustee"** means the Secretary of Environmental Affairs for the Commonwealth of Massachusetts.

K. **"Natural Resource Damage Recovery(ies)" or "NRD Recovery(ies)"** means any settlement or other payment, including interest thereon, to the Trustees which is received or controlled by any of the Trustees, individually or collectively, for or as a result of claims for natural resource damages under the Consent Decree involving the General Electric Company, including restoration work, protection, other actions or payments as described in section XXI of the Consent Decree, but excluding any such payment in reimbursement of natural resource damage assessment costs incurred by any of the Trustees or payment of Trustee Oversight Costs.

L. **"Natural Resources"** shall have the same meaning as set forth in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

M. **"OSWER MOU"** means the Memorandum of Understanding between NOAA and EPA concerning the notification and coordination of activities pursuant to CERCLA, executed by the Under Secretary of Oceans and Atmosphere and the Assistant Administrator of EPA's Office of Solid Waste and Emergency Response (OSWER), and referred to as OSWER directive 9295.0-02.

N. **"Oversight Expenses"** means any reasonable and appropriate costs associated with the participation of any Trustee in the restoration planning process, Trustee Council or Sub Council proceedings, costs associated with the use of consultants, coordinators or any other technical or administrative services associated with the development or implementation of a restoration plan, or any other costs reasonably related to the implementation of this MOA.

O. **"Restoration" means** any actions undertaken by the Trustees pursuant to Section 107(f)(1) of CERCLA, 42 U.S.C. §9601(f)(1), and other applicable federal and state laws and regulations, including planning, implementation, administration and oversight, which serve to enhance, restore, replace, acquire the equivalent of, or provide substitutes for natural resources or natural resource services injured, destroyed or lost as a result of releases at the Site.

P. **"Restoration Coordinator"** means a person, consultant, or firm appointed/hired by the Trustee Council, SubCouncils, or Federal or State Trustees to conduct activities as described in Section VII, Paragraph F, Duties, sub paragraph 7.

Q. **"Site"** means the GE/Housatonic River Site, and encompasses and includes all areas of the Housatonic River and surrounding environs which have received PCBs or other hazardous substances released from GE facilities at or near the Housatonic River in Pittsfield, Massachusetts, together with any and all impacts to natural resources arising from said releases.

R. **"SubCouncil"** means the council, consisting of three voting members (these are the two federal trustees and the Connecticut or Massachusetts trustee as appropriate) and may include the two non-voting advisers consisting of EPA, CT DEP or MA DEP, as appropriate and any appointed ex-officio delegate.

S. **"Trustees"** means the Mass. Trustee, the Conn. Trustee, and the Federal Trustees.

T. **"Trustee Council"** means the council consisting of four voting-members (these are: the Federal Trustees, the Conn. Trustee and the Mass. Trustee), and may include the three nonvoting advisers consisting of MADEP, CTDEP, EPA, and any appointed Ex-Officio Delegates.

U. **"Trustee Representative"** means the designee of a particular Trustee authorized to act on behalf of that Trustee in all matters relating to that particular trusteeship.

All terms used in this MOA that are capitalized but not expressly defined shall have the same meaning as used in the Consent Decree approved by the Court in the matter of U.S. v. G.E.

III.

SCOPE & AUTHORITY

This MOA provides a framework for intergovernmental coordination among the Trustees, and for implementation of their activities in furtherance of their natural resource trustee responsibilities under CERCLA, and other applicable Federal law, and State statutory and common law, with respect to the Site and with respect to the assessment, development, implementation, and oversight of restoration activities appertaining to or relating to the Site. This MOA covers natural resources as defined under Section 101(16) of CERCLA, 42 U.S.C. § 9601(16), (and as used in Section 5 of M.G.L. c. 21E or Conn. Gen. Stat. § 22a-6a, as applicable)

belonging to or managed by, controlled by, or appertaining to the Trustees in the vicinity of the Site. The Trustees enter into this MOA in accordance with the Natural Resource trustee authorities provided for each Trustee in Section 107(f) of CERCLA, 42 U.S.C. §9607(f); Section 311(f) of the Clean Water Act, 33 U.S.C. §1321(f); Section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. § 2706(a)-(g), and other applicable Federal and State law and authority including, but not limited to, the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300.

In accordance with Section 107(f)(2) of CERCLA, 42 U.S.C. § 9607(f)(2), Subpart G of the NCP, 40 CFR, 300.600 through 300.615, the following officials or their designees shall act on behalf of the public as Federal and State Trustees for natural resources under this MOA:

A. The Secretary of Environmental Affairs for the Commonwealth of Massachusetts.

B. The Commissioner of Environmental Protection for the State of Connecticut.

C. The Secretary of the Interior, for DOI.

D. The Under Secretary for Oceans and Atmosphere, Administrator of NOAA, for the Secretary of Commerce.

IV.

ALLOCATION OF NRD RECOVERY

A. Use of Natural Resource Damage Recovery allocated to the geographic regions of Connecticut and Massachusetts.

1. The Trustees recognize, consistent with the LOU, which is attached and incorporated in this MOA as "Exhibit A," that the primary use of Natural Resource Damage Recovery allocated to the geographic regions of Connecticut and Massachusetts shall be to implement projects identified in each state's restoration plan and for necessary restoration planning and oversight costs.
2. The Trustees recognize that said funding may also be utilized on joint projects having a beneficial impact in both states.
3. The Trustees recognize that the Mass. Trustee will have no decision-making role in the utilization of that portion of the Natural Resource Damage Recovery allocated to the geographic area of Connecticut referred to in Table I. All decisions as to the use and expenditure of the Connecticut allocation of the NRD Recovery shall be made only with the unanimous consent of the Federal Trustees and the Conn. Trustee. The Conn. Trustee shall be responsible for developing and implementing a restoration plan for Natural Resource Restoration in Connecticut to utilize the NRD Recovery allocated to Restoration in Connecticut subject to the requirements of CERCLA (including, specifically, but not limited to 42 U.S.C. § 9611(i)) and other applicable federal and state laws and regulations.
4. The Trustees recognize that the Conn. Trustee will have no decision-making role in the utilization of that portion of the Natural Resource Damage Recovery

allocated to the geographic area of Massachusetts referred to in Table I. All decisions as to the use and expenditure of the Massachusetts allocation of the NRD Recovery shall be made only with the unanimous consent of the Federal Trustees and the Mass. Trustee. The Mass. Trustee shall be responsible for developing and implementing a restoration plan for Natural Resource Restoration in Massachusetts to utilize the NRD Recovery allocated to Restoration in Massachusetts subject to the requirements of CERCLA (including, specifically, but not limited to 42 U.S.C. § 9611(i)) and other applicable federal and state laws and regulations.

Table I: *Allocation of NRD Damage Recovery*

NRD Settlement Components	*Overall Value*	*Allocation of Overall Value*		
		Joint Allocation	*Restoration in Connecticut*	*Restoration in Massachusetts*
GE/EPA Restoration Work	(non-cash)			
NRD Cash	$15,000,000	$235,000	$7,750,000	$7,015,000
Wetlands Mitigation	$600,000			$600,000
Silver Lake Restoration	$75,000			$75,000
Add'l Habitat Restoration	$60,000			$60,000
PEDA Obligation	$4,000,000	$4,000,000		
Total Value	$19,735,000	$4,235,000	$7,750,000	$7,750,000

B. Use of the Joint Allocation Natural Resource Damage Recovery allocated to the Trustees.

1. The Trustees shall develop, as necessary, a joint restoration plan (hereinafter the "Joint Plan") for the reasonable use of the funds allocated to the Trustees described as "Joint Allocation" in Table 1. The Trustees recognize consistent with the LOU, which is attached to and is incorporated in this MOA as "Exhibit A," that the use of Natural Resource Damage Recovery allocated to the Trustees may be used for:
   (a) Restoration projects in either Connecticut or Massachusetts having no shared benefit;
   (b) Restoration projects in Massachusetts having a shared benefit in Connecticut and Massachusetts;
   (c) Restoration projects in Connecticut having a shared benefit in Massachusetts and Connecticut; and,
   (d) Restoration planning and oversight costs.
2. In lieu of a Joint Plan, the NRD Recovery allocated to the Trustees may be utilized to undertake projects identified in the Connecticut or Massachusetts restoration plans prepared pursuant to Section VI, provided that there is unanimous consent of the Trustees pursuant to paragraph B.4 of this section.
3. The Mass. Trustee shall be responsible for implementing all restoration projects identified in the Joint Plan that are within the geographic area of Massachusetts, and the Conn. Trustee shall be responsible for implementing all restoration

projects identified in the Joint Plan that are within the geographic area of Connecticut.

4. The Trustees recognize that all decisions as to the use and expenditure of the Joint Natural Resource Damage Recovery allocated to the Trustees shall be made only with the unanimous consent of the Trustees.

C. Oversight Expenses.

1. Oversight Expenses for restoration planning to be funded by the NRD Recovery shall be subject to the unanimous approval of the voting members of the Trustee Council or the relevant SubCouncil. The Trustees shall make a good faith effort to minimize the total costs of Oversight Expenses from both the Joint Allocation NRD Recovery and the NRD Recovery allocated to any geographic area as described in this Agreement in furtherance of maximizing funds expended towards Restoration.

V.
OVERSIGHT OF TRUSTEE-RELATED WORK REQUIRED UNDER THE CONSENT DECREE

1. Trustee-related work required under the CD and subject to Trustee oversight includes the following:

(a) Restoration work to be funded or performed by GE or EPA as part of response actions;

(b) Performance of other natural resource protection and restoration by GE, including dam integrity studies, conservation easements, and greenway/walkway projects;

(c) Performance of Pittsfield Economic Development Authority (PEDA) obligations;

(d) Performance of response actions to be undertaken or funded by GE or EPA that may have an impact on natural resources and restoration.

2. The Trustees agree that oversight expenses of the Trustees or individual Trustees associated with Trustee-related Work under the CD may be funded (i.e., transferred to a trustee(s) for the purpose of oversight) out of Joint Allocation Funds as determined by the Trustee Council, or out of the NRD cash allocations for Connecticut and Massachusetts as determined by the applicable SubCouncil for Connecticut or Massachusetts. Oversight expenses of the Trustees or individual trustees associated with Trustee-related Work under the CD may also be funded out of Oversight Costs recovered by individual Trustees as part of the CD at the sole discretion of the individual Trustee that recovered the Oversight Costs.

VI.

OBJECTIVES

The Trustees shall coordinate their efforts to meet their respective natural resource trustee responsibilities under CERCLA and other applicable Federal law and State statutory and common law. In pursuing these objectives, the Trustees shall remain cognizant of all relevant principles and concerns, including without limitation, the goals of CERCLA, the nature and extent of each Trustee's resource concerns, and general principles of equity. The Trustees agree to work together and coordinate their activities under this MOA to achieve their objectives which include, but are not limited to, the development of and implementation of a restoration plan subject to the requirements of 42 U.S.C. § 9611(i), the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., DOI assessment regulations, 43 CFR Part 11, and other applicable federal and state law. The Mass. Trustee and Conn. Trustee will be responsible for developing and implementing, for the NRD Recovery allocated for their respective jurisdiction, a comprehensive restoration plan that addresses Restoration of injured Natural Resources at, resulting from, or appertaining to the Site within their geographic jurisdiction. The Massachusetts restoration plan must receive unanimous approval by the Federal Trustees and the Mass. Trustee. The Connecticut restoration plan must receive unanimous approval by the Federal Trustees and the Conn. Trustee. The Joint Plan must receive unanimous approval of all Trustees.. The restoration activities identified in a restoration plan can not be implemented until approval of such restoration plan.

A. The development of the restoration plans and, therefore, selected Restoration alternatives, shall include and ensure:

1. identification, consideration and evaluation of a range of potential Restoration alternatives.

2. public participation in the development and implementation of the Connecticut, Massachusetts and joint Restoration Plans as developed in accordance with Section IV.

B. The Trustees recognize EPA, MADEP and CTDEP as the governmental agencies that administer and enforce CERCLA and the NCP and analogous state laws and regulations. For the purpose of furthering coordination of their actions, including planning and implementation, associated with "cleanup" of the Site and the Trustees' Restoration actions, including planning and implementation, the Trustees shall request that EPA, MADEP and CTDEP agree to work with the Trustees to coordinate activities and planning, and provide appropriate notification of activities and concerns so that Restoration planning and implementation will occur in an informed manner and coordinated with remedial or response actions undertaken pursuant to the Consent Decree. The Trustees may establish further procedures to achieve this objective with EPA, MADEP and CTDEP. As such, the Trustees may request that EPA coordinate with and provide notification to the Trustees, through the LAT, in accordance with the OSWER MOU as if the LAT were NOAA, as used in the OSWER MOU.

VII.

HOUSATONIC RIVER TRUSTEE COUNCIL AND SUBCOUNCILS

A. Trustee Council

1. Purpose: The Trustees recognize the importance of coordinating their efforts in order to effectively and efficiently address their respective natural resource concerns and responsibilities under applicable law and to ensure coordination of response actions with Restoration of Natural Resources. Accordingly, the Trustees hereby agree to create the Housatonic River Natural Resource Trustee Council ("Trustee Council").

2. Composition: The Trustee Council shall have four voting members. Each Trustee, as specified under Section III, shall designate one primary voting representative to the Trustee Council and one alternate representative to act in the absence of the primary voting representative. The Trustee Council may invite one representative from each of the state and federal remedial agencies, EPA, CTDEP and MADEP, to serve as a non voting advisor to the Trustee Council and one non voting alternate to act in absence of their primary advisor. The Trustee Council may also include any Ex Officio Delegates designated by the Trustee Council.

3. Authority: The Trustee Council shall authorize the expenditure of the Joint Allocation of Natural Resource Damage Recovery and shall coordinate and authorize trustee activities and matters under this MOA as described in paragraphs F, H, I, and J of this section.

4. Ex Officio Delegates: Designation of any individual as an Ex Officio Delegate on the Trustee Council does not mean or require that such Ex Officio Delegate be designated to serve on any SubCouncil

B. SubCouncils.

1. Purpose and Composition-Geographic Area of Massachusetts: For the purposes of developing and implementing a Restoration Plan for the recovery allocated to the geographic area of Massachusetts, the Mass. Trustee and Federal Trustees may establish a SubCouncil of the Trustee Council consisting of the three voting members (Mass. Trustee and the Federal Trustees, but not the Conn. Trustee) and any non voting Ex Officio Delegates as designated by unanimous agreement of the Mass. Trustee and the Federal Trustees. EPA and MADEP may participate on this SubCouncil as non-voting advisers, as described in paragraph A of this section.

2. Purpose and Composition- Geographic Area of Connecticut: For the purposes of developing and implementing a Restoration Plan for the recovery allocated to the geographic area of Connecticut, the Conn. Trustee and Federal Trustees may establish a SubCouncil of the Trustee Council consisting of three voting members (the Conn. Trustee and the Federal Trustees, but not the Mass. Trustee) and any non

voting Ex Officio Delegates as designated by unanimous agreement of the Conn. Trustee and the Federal Trustees. EPA and CTDEP may participate on this SubCouncil as non-voting advisers, as described in paragraph A of this section.

3. Authority: Subject to unanimous agreement among the relevant State Trustee and the Federal Trustees, a SubCouncil may authorize the expenditure of NRD Recovery allocated solely to the geographic area of the SubCouncil (e.g. restoration planning and implementation), and coordinate and authorize Trustee activities and matters as described in paragraphs F, H, I, and J of this section consistent with, and limited by, the requirements of this agreement pertaining to the Trustee Council. Decisions within the authority of a SubCouncil shall not be subject to review by the Trustee Council. The State Trustee of the relevant SubCouncil shall keep the LAT reasonably informed of matters and activities of the SubCouncil for the purpose described in paragraph G of this section.

4. Ex Officio Delegates: Designation of any individual as an Ex Officio Delegate on a SubCouncil shall not mean or require that such Ex Officio Delegate be designated to serve on another SubCouncil or the Trustee Council.

C. **Communications.** To the extent not designated herein, within thirty (30) days of the execution of this MOA each Trustee shall notify all of the other Trustees of the name(s), address(es), phone number(s), facsimile number(s), and electronic mail addresses of the Trustee's primary and alternate representatives to the Trustee Council and SubCouncils who shall receive, and shall be responsible for on behalf of that Trustee , all correspondence and communications on behalf of such party. In addition, the United States Department of Justice and the Office of the Attorneys General for the Commonwealth of Massachusetts and the State of Connecticut shall be directly and contemporaneously provided copies of all significant and relevant documents, notices and notifications.

D. **Decision making.** The voting members of the Trustee Council or relevant SubCouncil shall have equal authority, and all decisions under this MOA shall be made by unanimous agreement of all voting members of the Trustee Council or relevant SubCouncil. The Trustees agree that all selected Restoration projects or alternatives, whether funded or undertaken directly by the Trustees or otherwise, must not:

1. be otherwise required by an independent legal obligation to perform the project pursuant to statute, regulation, ordinance, consent decree (excluding the consent decree that is the subject of this MOA), judgement, court order, permit condition or contract or if otherwise required by federal, state, or local law. Regardless of whether a governmental body or agency has elected to exercise its discretion to enforce a provision of law, if any governmental body or agency has the authority to order a party to commence certain work or activities subject to enforcement actions then the Trustee Council or relevant SubCouncil will consider the project "otherwise required" and not appropriate to be considered for funding.

2. be inconsistent with any ongoing or anticipated remedial action.

E. **Dispute Resolution.** In the event of a dispute involving any decisions under this MOA, the Trustee Council or SubCouncils shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining consensus among the voting members involved in the dispute and consensus by the Trustee Council or SubCouncils as a whole. In resolving any such disputes, the voting members shall remain cognizant of all relevant principles and concerns, including without limitation, the goals of CERCLA, the nature and extent of each Trustee's resource concerns, and general principles of equity. If unanimous consent cannot be reached, the matter shall be elevated to the Trustees for decision or further instructions.

F. **Duties.** In accordance with applicable law, the Trustees hereby authorize the Trustee Council and SubCouncils to carry out the following duties. In addition, the Trustees hereby authorize the Trustee Council or SubCouncils to empower the individual Trustees to carry out the following duties:

1. share information with and consult the other members on the Trustee Council or SubCouncils as is appropriate and consistent with this MOA.

2. conduct or oversee the conduct of scientific and technical studies, sampling, and other activities to the extent appropriate as part of the restoration planning and implementation process.

3. working with the state Trustee, oversee the development and implementation of a restoration plan when said plan is conducted by a state Trustee in accordance with Section VI of this MOA; or conduct and /or oversee the development and implementation of a restoration plan when said plan is not conducted by a state Trustee.

4. reach agreement, as described in Paragraph D of this Section, on all decisions relating to Restoration activities or the use of NRD Recovery(ies) for achieving the objectives of this MOA; provided that no money allocated to the Trustees may be expended for any purpose without first obtaining the approval of the Trustee Council or SubCouncil

5. provide for the management and disbursement of any NRD Recovery(ies) allocated to the Trustees, including any interest accrued thereon, for Restoration (and associated administrative or other costs) as described in this Agreement that the Trustee Council or SubCouncil finds reasonable and necessary.

6. carry out any other actions and make any decisions reasonably necessary to the fulfillment of the purposes and objectives of this Agreement or required under applicable law.

7. approve the expenditure of NRD Recovery and work activities to be undertaken by a Restoration Coordinator. Said activities may include but not be limited to:

a. preparation of a Restoration Plan for the NRD Recovery allocated to the Trustees;

b. coordination, management, reporting and monitoring of the Natural Resource Restoration process;

c. preparing and issuing, from time to time, public reports on the work of the Trustee Council or appropriate SubCouncil;

d. conducting public outreach and fostering public participation in the development and implementation of the Restoration Plan;

e. to the extent permitted by applicable law, identify and secure, wherever possible, other financial resources such as, but not limited to, grants that may be available to the Trustee Council for Restoration consistent with this MOA;

f. schedule meetings of the Trustee Council or Sub-Councils and preparation of agendas for those meetings;

g. maintain records and other relevant documents for the Trustee Council or Sub-Councils for development of restoration plans; and,

h. such other duties as are agreed upon by the Trustee Council or appropriate SubCouncil.

8. procure or approve the procurement of professional services, such as consultants, to assist or advise the Trustees in furtherance of the objectives of this MOA.

G. **Lead Administrative Trustee.** The Trustees shall designate a Trustee to act as Lead Administrative Trustee ("LAT") under this MOA. The LAT shall fully coordinate its activities with and act only under the direction of the Trustee Council. The LAT may delegate its responsibilities to the Restoration Coordinator(s) with the prior approval of the Trustee Council. Initial responsibilities of the LAT include:

1. acting as central contact point and spokesperson for the Trustee Council with respect to activities under the MOA;

2. scheduling meetings of the Trustee Council and preparation of agendas for those meetings;

3. maintaining records and relevant documents for the Trustee Council and circulation of documents among the Parties;

4. serving as liaison for the Connecticut and Massachusetts Sub-Councils, but

not official record keeper for such Sub-Councils. Whereas, the Sub-Councils shall be responsible for maintaining records and relevant documents for development of their respective restoration plans.

5. serving as the contact representative of the Trustees, consistent with Paragraph 113 of the Consent Decree ("CD") for all Trustee-related matters under the CD including:
   (a) oversight of Restoration Work to be performed or funded by GE or EPA,

   (b) performance of other natural resource protection and restoration actions to be undertaken by GE, including dam integrity studies, conservation easements, and greenway/walkway projects,

   (c) performance of PEDA obligations, and

   (d) performance of response actions to be undertaken or funded by GE or EPA.

6. coordinating the development of a Joint Restoration Plan if undertaken by the Trustees.

7. such other duties as are agreed upon and assigned to the LAT by the Trustee Council.

H. **Meetings.** Any member of the Trustee Council (or a member of a SubCouncil), except Ex Officio Delegates, may, upon reasonable notice through the LAT, call a meeting of the Trustee Council (or such SubCouncil) to be conducted either in person or by telephone conference call. Meetings of the Trustee Council or SubCouncils shall be generally held open to the public, except for telephone conference calls. The Trustees may invite members of the public or other governmental entities to attend a meeting of the Trustee Council or a SubCouncil. The Trustee Council, or a SubCouncil, may, by unanimous vote, decide to enter into a private executive session, subject to applicable law, if the Trustees determine that the subject of the meeting is privileged for the purposes of litigation or that public disclosure of the Trustee Council's (or SubCouncil's) work would prejudice the effectiveness of the Trustee Council (or SubCouncil). The Trustees may exclude all non-Trustees, including Ex Officio Delegates, from any executive session.

I. **Advisory Groups or Public Meetings.** The Trustee Council, SubCouncil, or any individual Trustee, acting either separately or collectively, may organize and convene public meetings or establish and use an Advisory Group to provide review, technical comment, guidance and recommendations on proposals for Natural Resource Restoration, the restoration plan, work in progress or that has been completed under contract or other agreement (to ensure satisfactory compliance with such contract or other agreement), or other technical matters relating to the objectives of this MOA. An Advisory Group may include members from Federal, state or local governmental agencies, non-profit

organizations, citizens or private businesses who agree to voluntarily participate. Any Advisory Group "established" and "used" solely by either the Mass. Trustee or the Conn. Trustee (or both) shall not be considered a Federally "established" or "used" advisory committee within the meaning of the Federal Advisory Committee Act ("FACA"), 5 U.S.C. app. 2 §§ 1-15, by virtue of the fact that either the Mass. Trustee or Conn. Trustee provides or shares the comments or work product of the Advisory Group with other members of the Trustee Council or SubCouncil or that such comments or work product is considered in informing decisions of the Trustee Council. The reasonable costs of any Trustee in convening such a public meeting or Advisory Group shall be considered a cost of restoration planning.

J. **Public Participation**. The Trustee Council or SubCouncil as appropriate shall approve procedures and mechanisms for public participation subject to the requirements of CERCLA pertaining to the development and implementation of any Restoration Plan.

VIII.

GENERAL

A. **Limitation of Authority**. Nothing in this MOA shall be construed as obligating any of the Trustees to expend any funds in excess of appropriations or other amounts authorized by law.

B. **Third Parties**. This MOA is not intended to, nor shall it, vest rights in persons who do not represent the Trustees to this MOA or who are not parties to this MOA.

C. **Effective Date/ Amendment and Termination**. This MOA shall be effective when executed by all of the Trustees and may not be amended except by written agreement of all the Trustees. This MOA can be executed in one or more counterparts, each of which will be considered an original document. This MOA shall continue in effect until the restoration plans implemented under this MOA have been completed or funds have been depleted unless terminated before that time or extended beyond that time by written agreement of all the Trustees. However, any Party may terminate its participation in the MOA upon giving sixty (60) days written notice to all other Trustees or as otherwise provided for herein, but only after efforts have been made to resolve any dispute in accordance with Paragraph D of Section VI.

1. the withdrawal of any signatory to this MOA for whatever reason, shall not affect the subsequent validity of this MOA among the remaining Trustees.

2. in the event a Trustee withdraws from this MOA, disposition of any unobligated Natural Resource Damage Recover(ies), including interest thereon, shall be determined by further agreement of the Trustees , or if an agreement can not be reached, by allocation of such recoveries and interest by the United States District Court for the District of Massachusetts, in accordance with applicable law. In making

a fair and reasonable allocation of recoveries among the Trustees, the Trustees agree that the Court primarily should consider the need to achieve, to the maximum extent practicable, the objectives of this MOA and of Section 107(f)(1) of CERCLA, 42 U.S.C. § 9607(f)(1), to restore the injured, destroyed or lost Natural Resources that are the subject of the Consent Decree. If such a division and allocation occurs, the Trustees expressly agree that they will continue to coordinate their activities to the greatest extent practicable to Restore the Natural Resources that are the subject of the Consent Decree, and that they will be guided by the objectives of this MOA.

IN WITNESS WHEREOF the Trustees have executed this Agreement on the dates attested to below.

Signing the Memorandum Of Agreement among the Commonwealth of Massachusetts, the State of Connecticut, the United States Department of the Interior, and the National Oceanic and Atmospheric Administration concerning natural resource damages in connection with the GE/Housatonic River Site, consisting of 19 pages including all signature pages, **as Trustee for the U.S. Department of Commerce,**

CRAIG R O'CONNOR BY: [signature] SENIOR ATTY-ADVISOR NOAA 1/30/2002, 2001

Craig R. O'Connor, Acting General Counsel
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

Signing the Memorandum Of Agreement among the Commonwealth of Massachusetts, the State of Connecticut, the United States Department of the Interior, and the National Oceanic and Atmospheric Administration concerning natural resource damages in connection with the GE/Housatonic River Site, consisting of 19 pages including all signature pages, **as Trustee for the State of Connecticut,**

December 3, 2001

Arthur J. Rocque, Jr., Commissioner
For the State of Connecticut
Department of Environmental Protection

Signing the Memorandum Of Agreement among the Commonwealth of Massachusetts, the State of Connecticut, the United States Department of the Interior, and the National Oceanic and Atmospheric Administration concerning natural resource damages in connection with the GE/Housatonic River Site, consisting of 19 pages including all signature pages, **as Trustee for the United States Department of the Interior,**

James H. Haigh ACTING

December 31, 2001

Dr. Marnie A. Parker, Regional Director
Northeast Region, U.S. Fish and Wildlife Service
United States Department Of The Interior
Natural Resource Trustee
Authorized Official

Signing the Memorandum Of Agreement among the Commonwealth of Massachusetts, the State of Connecticut, the United States Department of the Interior, and the National Oceanic and Atmospheric Administration concerning natural resource damages in connection with the GE/Housatonic River Site, consisting of 19 pages including all signature pages, as **Trustee for the Commonwealth of Massachusetts,**

Bob Durand 12/13, 2001

Bob Durand, Secretary
Executive Office of Environmental Affairs
Trustee for the Commonwealth of Massachusetts