

**BERKSHIRE REGIONAL PLANNING COMMISSION**  
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KYLE HANLON, Chair  
SHEILA IRVIN, Vice-Chair  
MARIE RAFTERY, Clerk  
CHARLES P. OGDEN, Treasurer

NATHANIEL W. KARNS, A.I.C.P.  
Executive Director

## **AGENDA**

**Rest of River Municipal Committee**  
**October 20, 2016, 9:00 a.m.**  
**Community Room, Stockbridge Town Office Building**

1. Introductions
2. Review of minutes of September 23, 2016 meeting
3. Renewal of the Intergovernmental Agreement
4. Executive Session – further legal strategy for probable EPA appeal and appeals court proceedings
5. Adjournment

***City and Town Clerks: Please post this notice pursuant to M.G.L. Chapter 39, Section 23B.***

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## Meeting Minutes

### Rest of River Municipal Committee October 20, 2016, 9:00 a.m., Stockbridge Town Office Building

**1. Introductions.** The meeting opened at 9:11 a.m. Attending the session were the following Committee members:

Warren Archey, Lenox Select Board  
Pat Carlino, Lee Select Board  
Christopher Ketchen, Lenox Town Manager  
Jim McGrath, Pittsfield Community Development  
Bob Nason, Lee Town Administrator  
Christopher Rembold, Great Barrington Planner  
Steve Shatz, Stockbridge Selectman

Others present:

Lauren Gaherty, BRPC  
Nat Karns, BRPC

**2. Review of minutes of Sept. 23, 2016 meeting.** Motion to accept by C. Rembold, seconded by W. Archey. Minutes unanimously accepted as written.

**3. Renewal of the Intergovernmental Agreement (IGA).** N. Karns notified the Committee that Mayor Tyer of Pittsfield will be meeting with N. Karns and representatives from Lee and Lenox on Oct. 24<sup>th</sup>, where the Mayor will explain the city's position regarding the IGA. L. Gaherty reported that she'd spoke with R. Wood of Sheffield about that town's willingness to pay its share of the legal costs incurred to date, and Ms. Wood reported that she believes the town will pay its share; she will confirm with the Sheffield Selectmen.

L. Gaherty presented a revised Preamble to the IGA for consideration. Edits in this revision included the five major concerns that the Committee listed at the last meeting as being the highest priority of the Committee as a body. The Committee agreed on the five goals listed in the Preamble. The Committee agreed to keep most of the history of events in the Preamble, but agreed to delete the last sentence of the second paragraph and delete the full third paragraph. Minor edits were agreed to regarding the first full paragraph of page 2 and to minor edits within the list of 5 goals. L. Gaherty offered to take additional edits from the Committee via email.

The discussion then turned to the main body of the IGA and its contents. L. Gaherty reported that the revisions to the IGA did not include removal of references to negotiations with GE because she did not get a clear mandate from the Committee on whether they wanted to do this. S. Shatz reiterated his belief that the IGA shouldn't contain reference to GE negotiations or compensation because inclusion could lead to the impression that the towns were committed to continued pursuit of compensation. If negotiations or compensation never materialize, the Committee could face criticism on why these didn't occur. If by some miracle GE offered to negotiate it would likely be with only one or a few select communities, not the entire group, and this type of action could always be inserted into the IGA at a later time when this might occur. C. Ketchen concurred.

S. Shatz had previously offered to work on the main body of the IGA. His suggestions summarized are:

- The existing IGA refers specifically to the Pawa Law firm, and he believes that it should instead refer to legal counsel in a more general term. This makes it simpler for the Committee to change legal counsel if needed in the future.
- Pittsfield will obviously be removed as one of the signatories unless conditions change after the Oct. 24<sup>th</sup> meeting.
- He then turned to the concept of "dividing the spoils." The current IGA says that the first payments out of the spoils reimburses all signatories for their incurred share of the legal fees and after that each one gets a minimum of 5%. There was no clear pathway to disperse the remainder of the funds. It would be better to have a clear pathway spelled out.
- The current IGA requires a unanimous vote for dispersal of funds, which could result in one member having veto power. Although resolution of disputes is mentioned, there is no clear direction for mediation or arbitration. S. Shatz suggested instead that each member should be reimbursed for prior expenses and then each would get a minimum of 10%. This would leave the remaining 50% for the towns most effected by the cleanup, which would likely be Lee and Lenox, and possibly Great Barrington.

L. Gaherty stated that at this time there were too many unknowns about the cleanup because the current remedy is broad and vague. The landfill issue, which is a large issue, was still unknown, and details about construction such as where staging areas, treatment areas and access roads would be located was still undetermined. Truck routes might go through areas we don't even know about yet. So apportioning that second 50% now might not reflect later conditions.

B. Nason stated this hope that Pittsfield will reconsider and rejoin the IGA. Perhaps one reason the city is leaving the IGA is because they don't agree that less-impacted towns such as Sheffield should get a minimum 5%; if we raise the minimum of 10% it will be even more of a reason not to rejoin. S. Shatz responded by saying that he was presuming that the city was out of the IGA and there were 5 remaining members, and that he was not wedded to the 10% figure.

P. Carlino asked if it might be better if the exact percentages were not spelled out in the revised IGA? If by some change compensation were being offered the Committee could reconvene at that time to discuss the payment percentages and details. S. Shatz said that the decision could be delayed until later, but the IGA needs to include a mechanism by which that happens. The 5% minimum per member is fine, as long as the vote for dispersal of funds would be by majority vote instead of being

unanimous, to avoid having a possible veto and stalemate. L. Gaherty asked why we were discussing the apportionment of compensation when we agreed that all references to GE compensation were being removed. Wouldn't this whole section of the IGA be deleted in this case?

C. Ketchen offered that any remote compensation from GE would likely be on an individual basis. N. Karns responded that if that were true it would play into GE's hands and their strategy of divide and conquer. He felt that the towns should stick together and force GE to deal with them all as a united group rather than as individuals. GE tried this years ago when they went to each town individually, and more recently they might have succeeded if Pittsfield sticks with its intent to leave the IGA.

N. Karns reminded the Committee that the acceptance and siting of a local landfill was the one single most important issue that the Committee agreed would require a unanimous vote. B. Nason reiterated Lee's position that any decision on a local landfill should remain unanimous. Lee has consistently held this position. C. Ketchen noted that if one community was holding veto power and felt ganged up on, it could leave the IGA in accordance with the termination clause in the IGA.

S. Shatz said he will take the results of this discussion with him and revise the IGA. He then raised his last issue with the current IGA, which states that each member who has incurred expenses prior to leaving the Committee will be reimbursed for those as part of any negotiated settlement. He is wondering why we are rewarding those who have withdrawn – why should they receive funds from an effort that is now only being done by the remaining members? Mr. Shatz would like to make the revised IGA very clear: that if you leave, if you walk, then you get nothing. The Committee agreed with this. L. Gaherty reminded the group that this question was raised at the last meeting and J. Akerstrom of Pittsfield stated that the city will expect no reimbursement going forward because they are leaving.

Lastly, Mr. Shatz returned to the issue of dispute resolution. The current language should be improved to outline how disputes should be settled, including a timeline. Mediation is where a mediator is typically assigned by a judge; where resolution is not achieved the issue is sent back to the judge for an ultimate ruling. Arbitration is binding, and arbitrators sometimes do not have the skills to make an informed decision on the level of a judge. Mr. Shatz recommended that the group go with a mediator because it has "the hammer of litigation facing you", which brings with it a cost. This tends to make opposing sides work harder. He also noted that the mediation would extend to all in the IGA, not just between BRPC and the Committee as is currently written.

All at the table thanked Mr. Shatz for his work on this.

4. **Executive Session.** The Committee moved into Executive Session to discuss legal strategy at 10:00 a.m., with the intent of not returning to regular session, motion made by P. Carlino and seconded by W. Archey. Roll call vote: S. Shatz, Stockbridge AYE; W. Archey, Lenox AYE; P. Carlino, Lee AYE; J. McGrath, Pittsfield, AYE; C. Rembold, Great Barrington, AYE; Sheffield not present.

5. **Adjournment.** The Committee did not return to regular session.

Meeting Materials:

- Meeting Agenda

- Meeting Minutes of 9-23-16
- Intergovernmental Agreement Amendment 10-20-16

Respectfully submitted,  
Lauren Gaherty, BRPC

**PREAMBLE**

**Draft Version 10-20-16**

The cleanup of the Housatonic River of PCBs is viewed as one of the most important regional issues in recent Berkshire County history due to the geographical extent of the cleanup, the duration of proposed cleanup activities and the associated socioeconomic impacts on Berkshire communities. The Housatonic River Watershed encompasses approximately 53% of Berkshire County and contains all or a portion of 26 of the 32 Berkshire communities. The Commonwealth of Massachusetts has designated portions of the watershed as Areas of Critical Environmental Concern, and the Massachusetts Natural Heritage and Endangered Species Program has noted the rich biodiversity of the Housatonic River Watershed.

The East and Main branches of the Housatonic River between Pittsfield and Sheffield in Massachusetts are heavily contaminated by PCBs due to the handling and disposal operations of General Electric Company (GE). Under the Consent Decree of 1999 and its subsequent amendments GE has agreed to conduct cleanup activities to remove PCBs from the river. GE's Corrective Measures Study of 2010 has projected cleanup activities could last between five and 50 years, depending on the level of work that is required by the U.S. Environmental Protection Agency (EPA). The impacted section of the Housatonic River in Massachusetts encompasses the City of Pittsfield and the Towns of Lenox, Lee, Stockbridge, Great Barrington, and Sheffield (the "Rest of River Communities"). ~~As referenced in the Cleanup of the Housatonic "Rest of River" Socioeconomic Impact Study of 2012, the Rest of River Communities expect to experience a series of negative socioeconomic impacts during the cleanup including, but not limited to, property devaluation, damages to road infrastructure, loss of tax revenues, a decrease in outdoor recreation and tourism, and a diminished quality of life for residents near construction sites or along transportation routes.~~

~~In 2013 the six Massachusetts municipalities that will be effected by Rest of River cleanup joined together to create the Housatonic Rest of River Municipal Committee (the Committee), formally and legally bound by the Intergovernmental Agreement (IGA) of October 22, 2013. The main intent of entering into an IGA was to jointly and as a united entity negotiate a settlement with GE that would provide financial compensation to the municipalities to offset the adverse financial and socioeconomic costs that the municipal governments and their residents and businesses could suffer due to several years or decades of cleanup activities. The second intent of entering into an IGA was as a united entity to actively participate in the EPA permitting process and gain a "seat" at the negotiations table that at that time included the GE, EPA and the states of Massachusetts and Connecticut. **IS THIS HISTORY RELEVANT?**~~

~~In 2014 the EPA issued its Draft Modification to the Reissued RCREA Permit (Permit) which directed GE to clean up the "Rest of River", which is defined as the Housatonic River downstream of the confluence of the West and East Branches and extending south to Long Island~~

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Sound. The Permit outlines a cleanup that is estimated by the EPA to reduce the downstream transport of PCBs by 88-89% by removing approximately 990,000 cubic yards of contaminated material over an estimated period of 13-15 years. Overall the Housatonic Rest of River Municipal Committee supports the EPA's Permit, although there are areas where the Committee believes that the Permit could be improved to provide more long-term protection of human health and the environment, as noted in its October 8, 2014 comment letter to EPA.

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The following amendment reflects the events that have occurred since the signing of the original IGA of 2013 and the current strategy of the Rest of River municipal governments as they jointly and as a united entity move forward through the EPA permitting process and the high probability of a federal appeals court process. The Committee has determined that the cleanup of the Housatonic River must at a minimum meet the following goals to be protective of human health, the natural environment and residents' quality of life:

1. A strict adherence to the Permit's directive that GE "shall dispose of all contaminated sediment and soil, as well as other waste material, off-site at existing licensed facilities that are approved to receive such waste material and are in compliance with EPA's off-site rule (40 C.F.R. 300.440.) The Permittee shall maximize the transport of such waste material to off-site facilities via rail" (Permit, Sec. II.B.6 and Attachment D).

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2. The Massachusetts Hazardous Waste Facility Siting Act (MGL c21D) is listed as an Applicable or Relevant and Appropriate Requirement (ARAR) for all temporary cleanup activities that are listed in that act (staging and construction areas, storage areas, dewatering and treatment facilities, etc.). The Committee acknowledges that handling, moving, dewatering and stockpiling of contaminated sediments and soils will occur during the cleanup, but all agree that such activities must be temporary and derived solely from Rest of River PCB cleanup activities.

3. GE remains responsible **in perpetuity** for monitoring, controlling and removing PCBs whenever contamination levels exceed performance standards during and after completion of the cleanup. EPA's Permit allows significant volumes and concentrations of PCBs to remain in the Rest of River environment, employing capping throughout the river system to control PCBs left behind after the cleanup is completed. It is imperative that the entirety of the legal liability and financial burden remains squarely on the shoulders of GE and any of its successors to avoid becoming an unfair burden of future generations to monitor and manage those PCBs left behind.

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4. EPA requires GE to aggressively search for and employ new or emerging technologies that have the potential to destroy PCBs or break them into less- or non-toxic components as alternatives to conventional technologies that include excavation/dredging and disposal of contaminated soils and sediments. New or emerging technologies that reduce disturbance of significant floodplain or wetland habitats or that can be done in situ should be given highest priority.

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5. The definition of “on-site” is narrowly confined to only those areas that are currently contaminated **and** are specifically listed in the *Permit* as sites that GE must clean up. On-site does not extend to areas that are currently uncontaminated by PCBs or are contaminated by PCBs in concentrations that are below the standards listed in the *Permit*. The EPA’s *Permit* is already allowing PCBs to remain in millions of cubic yards of river/wetland/impoundment sediment, riverbank and floodplain soils throughout the river corridor, from Pittsfield to Long Island Sound. It is unconscionable to allow GE to expand the area of land within the Housatonic River Watershed that would be permanently impacted by PCB contamination, including the siting of any permanent hazardous materials or waste facility.

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This IGA outlines how the Rest of River Municipal Committee will proceed through and retain legal counsel to proceed through the EPA permitting process and the federal appeals court process if necessary.

### **INTERGOVERNMENTAL AGREEMENT**

This AGREEMENT (the “Agreement”) is made and entered into this ~~22<sup>nd</sup> day~~ of October, 201~~36~~ by and among the BERKSHIRE REGIONAL PLANNING COMMISSION (hereafter “BRPC”), having principal offices at 1 Fenn Street, Suite 201, Pittsfield, MA 01201, and the municipalities of Great Barrington, Lee, Lenox, Pittsfield, Sheffield and Stockbridge (hereafter “MUNICIPALITIES”), all governmental units as defined under M.G.L. c. 40, §4A.

The MUNICIPALITIES will continue to actively participate in the EPA permitting and appeals process and, where deemed necessary, participate in the U.S. Court system (NEED TERM) to protect the health and welfare of the environment and the people within the six Rest of River communities. The MUNICIPALITIES may pursue opportunities to ~~will begin~~ negotiations with GE regarding compensation for socioeconomic damages to the MUNICIPALITIES associated with the contamination and cleanup of the Housatonic River Site, as defined by the EPA. The MUNICIPALITIES, while undertaking ~~these~~ actions as the six municipalities cited in the Rest of River cleanup studies and/or agreements, are deeply mindful of the impacts and consequences that ~~the~~ cleanup activities will have on Berkshire County residents, businesses, resources, economic development and municipal operations.

The MUNICIPALITIES have agreed that BRPC, as agent for the MUNICIPALITIES, shall continue to retain~~hire~~ the law firm of Pawa Law Group, P.C., 1280 Centre Street, Suite 230, Newton, MA 02459 (hereafter “Pawa Firm”); that BRPC shall communicate the position of the MUNICIPALITIES to the Pawa Firm regarding filing of legal arguments ~~for~~during the- EPA permit and appeals process, during federal court proceedings and for negotiations with GE; and that, if it is deemed necessary by the MUNICIPALITIES to pursue litigation related to the river cleanup; including but not limited to the EPA Environmental Appeals Board, the U.S. First Circuit Court of Appeals and further into the court process if such action is needed ~~including but not limited to an appeal of EPA’s remedy under the federal Resource Conservation and Recovery Act (“RCRA”)~~.

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BRPC shall so communicate the position of the MUNICIPALITIES to the Pawa Firm for the purposes of pursuing such litigation. The MUNICIPALITIES have agreed that BRPC will be responsible for all coordination between Pawa Firm and the MUNICIPALITIES; that BRPC shall act as the agent and representative of the MUNICIPALITIES, subject to advice and approval from the MUNICIPALITIES per this Agreement, in assisting the Pawa Firm in these matters; and that BRPC shall act as the MUNICIPALITIES' fiscal agent as described in Section 2.

Each party to this Agreement has obtained authority to enter into this Agreement pursuant to M.G.L. c. 40, § 4A. The MUNICIPALITIES have obtained authorization by vote of their Boards of Selectmen or City Council with the approval of the Mayor. BRPC has obtained authorization by vote of the Commission. NAT – DO WE HAVE TO GO TO COMMISSION FOR RENEWED PERMISSION?

Therefore, in consideration of the mutual promises, payments and agreements contained herein, the parties, intending to be legally bound thereby, agree as follows:

1. Governing Body and Voting Procedures. The MUNICIPALITIES shall form a governing body (“COMMITTEE”) consisting of two representatives from each municipality. The Mayor of Pittsfield shall appoint the two City representatives. The Boards of Selectmen from the Towns of Great Barrington, Lee, Lenox, Sheffield and Stockbridge shall each appoint two representatives from their respective towns. Each municipality shall have one vote on the COMMITTEE, unless a municipality has withdrawn in accordance with Section 5b, whereupon it shall lose its vote on the COMMITTEE. A majority of MUNICIPALITIES must have at least one appointed representative present in order to constitute a quorum and to conduct any business. General business shall be conducted using a majority vote of the MUNICIPALITIES present and constituting a quorum. Business involving the EPA appeals process and the federal court process shall require a majority vote of the MUNICIPALITIES present and constituting a quorum. Business involving negotiating positions and final settlement agreements with GE shall require a unanimous vote of the COMMITTEE and can only be voted on at a meeting where an appointed representative from each member municipality is present and able to vote, unless a municipality has withdrawn in accordance with Section 5b, whereupon it shall lose its vote on the COMMITTEE.;

- a) The Pawa Firm. The COMMITTEE shall deliberate and provide direction to the BRPC in order for BRPC to provide direction to Pawa Firm regarding the negotiations on the MUNICIPALITIES' behalf with GE regarding compensation for socioeconomic damages to the MUNICIPALITIES associated with the contamination and cleanup of the Housatonic River Site and, if necessary, in prosecuting litigation through the EPA appeals process or the federal court appeals process (e.g., an appeal of EPA's remedy under RCRA).

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The COMMITTEE shall, by majority vote of the MUNICIPALITIES present and constituting a quorum, establish rules that govern its operating practices, and vote and approve estimated budgets of time and out-of-pocket costs payable to the Pawa Firm and BRPC prior to incurring any costs.

b. GE. Decisions regarding settlement offers to GE, or acceptance of settlement offers by GE, shall require a unanimous vote of the COMMITTEE where an appointed representative from each member municipality is present and able to vote, unless a municipality has withdrawn in accordance with Section 5b, whereupon it shall lose its vote on the COMMITTEE, and subject to acceptance by the appropriate municipal authority in each municipality. Any position to allow (i.e., to propose or accept a settlement offer or not to pursue an appeal of) an in-county landfill of PCB's from the Rest of River site shall require a unanimous vote of the COMMITTEE where an appointed representative from each member municipality is present and able to vote, unless a municipality has withdrawn in accordance with Section 5b, whereupon it shall lose its vote on the COMMITTEE.

c. Appeals. Decisions regarding settlement offers that may arise out of the EPA appeals or the federal court processes, or acceptance of settlement offers made during these processes, shall require a unanimous vote of the COMMITTEE where an appointed representative from each member municipality is present and able to vote, unless a municipality has withdrawn in accordance with Section 5b, whereupon it shall lose its vote on the COMMITTEE, and subject to acceptance by the appropriate municipal authority in each municipality. Any position to allow (i.e., to propose or accept a settlement offer or not to pursue an appeal of) an in-county landfill of PCB's from the Rest of River site shall require a unanimous vote of the COMMITTEE where an appointed representative from each member municipality is present and able to vote, unless a municipality has withdrawn in accordance with Section 5b, whereupon it shall lose its vote on the COMMITTEE.

b. Weighting of Votes. Any ~~future~~ decisions regarding weighting of votes based on contributions for payments of costs and/or based on socioeconomic impacts suffered by the individual MUNICIPALITIES due to cleanup activities shall require a unanimous vote of the COMMITTEE where an appointed representative from each member municipality is present and able to vote, unless a municipality has

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withdrawn in accordance with Section 5b, whereupon it shall lose its vote on the COMMITTEE.

2. Payment of Fees, Costs and Expenses.

- a. Subject to the provisions of this Agreement, the MUNICIPALITIES have agreed to pay all approved fees, costs and expenses, including reasonable out-of-pocket costs, payable to the Pawa Firm, for legal services in accordance with its legal contract, and all approved fees, costs and expenses incurred by BRPC, subject to approval by the COMMITTEE as required in Section 1 of this agreement.
- b. The MUNICIPALITIES have ~~initially~~ funded this Agreement by ~~an~~through specific appropriations ~~beginning in fiscal year 2013, with a current approved FY17 budget of \$164,103.30, as shown in Attachment~~ of Sixty Thousand Dollars (\$60,000), ~~which is~~These funds are available for payment of costs to the Pawa Firm and BRPC as stipulated in Section 1.a., 2.a., 2.c. – 2.f.
- c. The MUNICIPALITIES have agreed that a negotiating team of COMMITTEE members selected by the COMMITTEE will participate with the Pawa Firm in negotiations between the MUNICIPALITIES and GE, ~~should such negotiations take place.~~ The Pawa Firm will participate in an initial meeting with GE in this matter under a capped fee agreement, ~~to be negotiated and agreed upon by the COMMITTEE prior to the commencement of the negotiations.~~ ~~Pawa Firm will cap fees on its preparation and participation in the initial meeting at \$23,000 such that any time incurred in excess of the cap will not be billed to BRPC. In addition, out-of-pocket costs of up to \$1,000 are also budgeted.~~
- d. BRPC will review and submit all estimated budgets, including time and out-of-pocket costs, prepared by Pawa Firm to the COMMITTEE for review and approval prior to incurring expenses as set forth in Section 1. Upon receipt of bills from the Pawa Firm for time and expenses which have been authorized by the COMMITTEE, BRPC will promptly circulate the bills to the representatives of the COMMITTEE who shall indicate their approval or any objections to BRPC within five days. If there are no objections, BRPC will promptly invoice the MUNICIPALITIES who will promptly process payment to BRPC. When all MUNICIPALITIES have paid, BRPC will promptly process payment to the Pawa Firm, however BRPC shall have authority but no obligation to make partial payments to the Pawa Firm when fewer than all the MUNICIPALITIES have made payment to BRPC with respect to a Pawa Firm bill. Provided that the COMMITTEE has previously approved the Pawa Firm bill, the MUNICIPALITIES hereby agree to make prompt payment to BRPC so that BRPC may remit payment to the Pawa Firm within 40 days of receiving a bill.

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- e. If the Pawa Firm legal services contract is cancelled, the MUNICIPALITIES will be responsible for any fees, costs or expenses, including out-of-pocket expenses, incurred by Pawa Firm and pre-approved by the COMMITTEE and payable by BRPC up to the time of notice of cancellation.
- f. The MUNICIPALITIES have agreed to provide compensation to the BRPC for its services in contracting with the Pawa Firm on behalf of the MUNICIPALITIES and in coordinating negotiations and/or litigation between the MUNICIPALITIES and GE. BRPC will submit estimated budgets, including time and direct costs, to the COMMITTEE for review and approval prior to incurring expenses.

g. INSERT PROPORTION OF FUNDS HERE

g-h. At any point in the future, if additional funds are needed beyond the initial \$60,000 current fiscal year budget provided in Section 2.b., the COMMITTEE will have the option to redefine what portion of the additional funds will be supplied by each member municipality. Any additional funds will be subject to municipal appropriation. Approving the redefined share of costs shall require a unanimous vote of the COMMITTEE.

3. Distribution of Future Settlement(s).

- a. The initial payments from any future financial settlement between the MUNICIPALITIES and GE, or through any EPA or federal court appeals process, shall be issued to each of the MUNICIPALITIES to reimburse them for their portion of the approved costs incurred under this Agreement, including any municipality which has withdrawn from the Agreement.
- b. All efforts will be made to fully reimburse each of the MUNICIPALITIES for costs incurred in negotiating a final settlement agreement with GE or through any EPA or federal court appeals process. In the event that the signed settlement agreement between the MUNICIPALITIES and GE does not cover the total amount of the approved costs incurred by the MUNICIPALITIES, initial settlement payments to each of the MUNICIPALITIES shall be proportionally pro-rated to reflect the costs incurred by each municipality as a percentage of the total costs incurred by the MUNICIPALITIES as a whole. In the event that no settlement funds are recovered as part of the signed agreement between the MUNICIPALITIES and GE or through the EPA appeals or federal court processes, none of the MUNICIPALITIES will receive reimbursement funding.

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c. After payments described in Sections 3.a. and 3.b. have been made, the COMMITTEE will determine the proportional distributions of the value of any settlement(s) between the MUNICIPALITIES and GE, or the MUNICIPALITIES and the paying entity, depending on circumstances at the time of the settlement(s). Such distributions shall require a unanimous vote of the COMMITTEE where an appointed representative from each member municipality is present and able to vote, unless a municipality has withdrawn in accordance with Section 5b, whereupon it shall lose its vote on the COMMITTEE, and be subject to approval by the appropriate municipal authority in each municipality. Each municipality that is a member of the COMMITTEE at the time negotiations between the MUNICIPALITIES and GE or between the MUNICIPALITIES and the paying entity, are finalized and committed to writing by the MUNICIPALITIES and GE or between the MUNICIPALITIES and the paying entity, shall receive a minimum of 5% of any financial settlement, net of the payments described in Sections 3.a. and 3.b. Distribution of any remaining balance of the settlement(s) shall require a unanimous vote of the COMMITTEE where an appointed representative from each member municipality is present and able to vote, unless a municipality has withdrawn in accordance with Section 5b, whereupon it shall lose its vote on the COMMITTEE.

4. Term. The term of this Agreement shall be for three years, commencing with the date of execution of the Agreement. It is further understood and agreed that the initial three year term may be extended by a majority vote of the COMMITTEE present and constituting a quorum with renegotiations commencing three (3) months prior to the expiration of the three-year period.

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5. Termination.

a. The COMMITTEE, upon majority vote of those present and constituting a quorum, or BRPC may terminate this agreement upon thirty (30) days written notice, without cause. Upon notice of termination, all work shall cease, except that necessary to close the agreement. BRPC will immediately inform the Pawa Firm of the termination and order that all work cease. The MUNICIPALITIES will be responsible for paying the budgeted and pre-approved costs incurred to the date of termination as described in Sections 2.a.-2.f.

b. Any individual municipality may terminate its involvement in this Agreement and the COMMITTEE upon thirty (30) days' notice, without cause. Notification will be submitted to the COMMITTEE and BRPC in writing. The withdrawing

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municipality will continue to be responsible for paying its share of the pre-approved budgeted expenses that exist on the date that the termination notice is submitted to the COMMITTEE and will continue to strictly abide by the terms of the Confidentiality and Non-Disclosure section of this Agreement.

c. An individual municipality withdrawing from this Agreement shall be reimbursed for its contributed costs incurred for negotiations between the MUNICIPALITIES and GE or between the MUNICIPALITIES and the paying entity, as described under Section 3.a. and 3.b. An individual municipality withdrawing from this Agreement before negotiations ~~between the MUNICIPALITIES and the GE~~ are finalized and signed by the MUNICIPALITIES and by GE or the paying entity should expect to have forfeited its right to any further recovery from any settlements arising out of such negotiations under Section 3.c. The MUNICIPALITIES hereby acknowledge that in the event any of them withdraw from this Agreement, the Pawa Firm may continue to represent BRPC as agent of the MUNICIPALITIES who have not withdrawn.

6. Confidentiality and Non-Disclosure. To the extent permitted by law, all municipal representatives currently serving, or who have served, on the COMMITTEE or other municipal officials who have been briefed on the negotiations and/or litigation, as well as involved BRPC staff, shall treat all communications labeled as privileged and confidential and briefings, deliberations and decisions made in Executive Session as privileged and confidential and legally protected. If any municipality determines to withdraw from this Agreement, all such communications and briefings, deliberations and decisions shall continue to be treated as privileged and confidential and legally protected unless and until agreements are reached which require final action in open session.

To the extent permitted by law, all communications between the Pawa Firm and BRPC, between the Pawa Firm and any of the MUNICIPALITIES and between BRPC and the MUNICIPALITIES concerning the Pawa Firm's legal advice shall be protected by the attorney-client privilege when labeled as privileged and confidential, that such information provided by the Pawa Firm to BRPC and/or the MUNICIPALITIES shall be treated as privileged and confidential attorney work product (whether or not such information is shared by BRPC with the municipalities), and that privileged and confidential information shared under this agreement is to be protected from disclosure under the Public Records Act.

7. Amendment and Payment Schedules. This Agreement and the payment provisions contained herein, may be amended from time to time but only by a written amendment signed by all parties.

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- 8. Notices. BRPC shall be responsible for providing notice of meetings and copies of all material to the COMMITTEE members and shall provide copies of all agendas to the six municipal clerks for posting to the extent required by the Open Meeting Law. BRPC shall also post all COMMITTEE agendas on its website to the extent required by the Open Meeting Law and shall maintain the official copy of all meeting materials and minutes.
  
- 9. Resolution of Disputes. In the event of any dispute between the BRPC and the COMMITTEE, whether arising out of this Agreement or under the provisions of this Agreement, the BRPC and the COMMITTEE agree to submit their disputes to a neutral third party for mediation. BRPC and the COMMITTEE shall pay an equal share of the cost of such mediation. In this instance, consent of the COMMITTEE shall mean a majority vote of the MUNICIPALITIES present and constituting a quorum. In the absence of the consent of a majority of the COMMITTEE and BRPC, either party may seek dispute resolution through a court of competent jurisdiction.
  
- 10. Law Governing. This Agreement and all rights and obligations, including matters of construction, validity and performance shall be governed by the law of Massachusetts.
  
- 11. Severability. Should any part of this Agreement be rendered or declared invalid by a court of competent state or federal jurisdiction, such invalidation shall not invalidate the remaining portions thereof, and they shall remain in full force and effect.
  
- 12. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Agreement nor the intent of any provision hereof.
  
- 13. Entire Agreement. This Agreement constitutes the entire agreement between the parties and any other agreements, whether written or oral, that may exist are excluded from the terms herein.

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Linda M. Tyer, Mayor  
City of Pittsfield

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Sean A. Stanton, Chairman  
Great Barrington Board of Selectmen

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Thomas Wickham, Chairman  
Lee Board of Selectmen

---

Warren Archey, Chairman  
Lenox Board of Selectmen

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Nadine A. Hawver, Chairman  
Sheffield Board of Selectmen

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Ernest J. Cardillo, Chairman  
Stockbridge Board of Selectmen

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Nathaniel W. Karns, Executive Director  
Berkshire Regional Planning Commission

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