EXHIBIT G

Agreement and Covenant Not To Sue for Pittsfield Economic Development Authority

Original Agreement (January 2002)

First Amendment of Agreement and Covenant Not To Sue (February 2012)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

IN THE MATTER OF:	)	
	)	
GE-PITTSFIELD/HOUSATONIC RIVER SITE	)	Docket No.: CERCLA 01-2002-0007
	)	
UNDER THE AUTHORITY OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, 42 U.S.C. § 9601, et seq., as amended.	)	AGREEMENT AND COVENANT NOT TO SUE:
	)	
	)	PITTSFIELD ECONOMIC DEVELOPMENT AUTHORITY

I. INTRODUCTION

1. This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States, on behalf of the Environmental Protection Agency ("EPA"), and the Pittsfield Economic Development Authority ("Settling Respondent" or "PEDA") (collectively, the "Parties").

2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq., and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. EPA, PEDA, the City of Pittsfield, the Commonwealth of Massachusetts, the State of Connecticut, and the General Electric Company ("GE") entered into a Consent Decree (defined below) regarding the Site (defined below). Pursuant to the Consent Decree, GE will respond, among other obligations, to contamination at the GE plant located in Pittsfield primarily by

groundwater treatment, and a combination of soil capping and soil excavation and removal.

4. Pursuant to a Definitive Economic Development Agreement ("DEDA") entered into between GE, Settling Respondent, and the City of Pittsfield, GE will transfer, in phases, certain portions of the Site to Settling Respondent, totaling approximately 52 acres (defined below as the Property). Prior to transfer, GE will demolish certain buildings on the Property and provide existing building foundations or appropriate sites for new foundations for building construction. Subject to this Agreement and pursuant to the DEDA, Settling Respondent intends to redevelop the Property for light industrial and office uses and other uses approved under the DEDA and consistent with the Institutional Controls (defined below).

5. The Property currently contains many vacant buildings and is mostly unused. Redevelopment of the Property pursuant to the DEDA is expected to provide a public benefit through the construction of new buildings, the creation of jobs, and by returning the Property to productive use. Under the DEDA, GE will also make funds in the amount of fifteen million, three hundred thousand dollars ($15,300,000) available to Settling Respondent for redevelopment projects on the Property, and will make a gift to the City of one million dollars ($1,000,000) for each of the ten years following the effective date of the DEDA.

6. This Agreement is part of a much larger resolution of certain responsibility GE has for natural resource damages, and remediation of the Housatonic River, the entire Plant Site, and other related areas of contamination. Pursuant to the terms of the Consent Decree, the United States provided GE with certain covenants with respect to, *inter alia*, the Property including covenants not to sue under Sections 106, 107(a), and 113(f) of CERCLA; Sections 3004(u) and (v), 3008, and 7003 of RCRA; Section 7, and 17 of the Toxic Substances Control Act ("TSCA");

Sections 309, 311, 404 and 504 of the Clean Water Act; Sections 1002, 1005, 1006, 1009 and 1015 of the Oil Pollution Act; and Section 10 of the Rivers and Harbors Act, all of which were subject to certain limitations and reservations. Because GE received these covenants, and because PEDA is acquiring the Property on the same Site for which GE received these covenants, it is appropriate, in these limited circumstances, to provide PEDA with similar covenants. Unless PEDA receives these same covenants that GE received, PEDA's efforts to redevelop the Property will likely be more costly and otherwise more difficult. Under the Consent Decree, PEDA agrees to provide the federal and state natural resource trustees with up to $4 million in natural resource restoration funding, dependent on the extent of the ultimate net revenue from the redevelopment.

7. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII, VIII, IX, and X, the potential liability of the Settling Respondent for the Existing Contamination at the Property that would otherwise result from Settling Respondent becoming the owner of the Property.

8. The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.

9. The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA of a substantial benefit, is in the public interest.

II. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning

assigned to them in CERCLA or in such regulations, including any amendments thereto.

(A) "City of Pittsfield" or "City" shall mean the City of Pittsfield located in Berkshire County in the Commonwealth of Massachusetts.

(B) "Consent Decree" shall mean the Consent Decree entered by the United States District Court for the District of Massachusetts on October 27, 2000 in United States of America, et. al. v. General Electric Company, Civil Action No. 99-30225 MAP (D. Mass.) and entered into by the United States, the Commonwealth of Massachusetts, the State of Connecticut, the General Electric Company, PEDA, and the City of Pittsfield.

(C) "Definitive Economic Development Agreement" or "DEDA" shall mean the agreement entered into by PEDA, the City of Pittsfield, and GE that provides for, *inter alia,* the transfer to PEDA and redevelopment of the Property and economic aid to the City.

(D) "DOI" shall mean the United States Department of Interior and any successor departments or agencies of the United States.

(E) "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

(F) "Existing Contamination" shall mean:

a. any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the effective date of this Agreement;

b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the effective date of this Agreement; and

c. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the effective date of this

Agreement.

(G) "Institutional Controls" shall mean the covenants, conditions, restrictions, and other equivalent requirements and controls, including, but not limited to, any Environmental Restriction and Easement or ERE, as defined in the Consent Decree, developed and/or implemented or to be developed and/or implemented pursuant to the Consent Decree, any future Record of Decision, and/or Action Memoranda for the Site for the purpose of implementing, ensuring non-interference with, and/or ensuring the integrity and protectiveness of the response actions performed and to be performed at the Site.

(H) "Natural Resource Damages" shall mean damages for injury to, destruction of, or loss of natural resources at the Property, including costs of damages assessment, recoverable under Section 107 of CERCLA, for injury to, destruction of, or loss of any and all Natural Resources at the Property.

(I) "NOAA" shall mean the United States National Oceanic and Atmospheric Administration and any successor departments or agencies of the United States.

(J) "Parties" shall mean the United States, on behalf of EPA, and the Settling Respondent.

(K) "Pittsfield Economic Development Authority" or "PEDA" shall mean the authority established pursuant to Mass. St. 1998, c. 194, Section 268, as amended by St. 1998, c. 486, Section 2.

(L) "Property" shall mean those portions of the Site, encompassing approximately fifty-two (52) acres, as described and depicted in Exhibit 1 of this Agreement.

(M) "Settling Respondent" shall mean the Pittsfield Economic Development Authority, and any person or entity to whom the rights, benefits and obligations of this Agreement have been

assigned or transferred pursuant to Section XI (Parties Bound/Transfer of Covenant).

(N) "Site" shall mean the GE-Pittsfield/Housatonic River Superfund Site as defined in the Consent Decree. The Site primarily consists of the current and former GE plant located in Pittsfield, Massachusetts and portions of the Housatonic River, as depicted generally on the maps attached as Exhibit 2.

(O) "United States" shall mean the United States of America, its departments, agencies, and instrumentalities, including, but not limited to, the EPA.

III. STATEMENT OF FACTS

11. The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

12. The Site, including the Property, contains sediments, soil, and groundwater contaminated with hazardous substances, including, without limitation, polychlorinated biphenyls. Pursuant to the Consent Decree and the Statement of Work attached to the Consent Decree, GE will respond to contaminated soil at the Property primarily by a combination of capping and soil excavation and removal. GE will investigate and respond to contaminated groundwater at the Property as required by the Consent Decree and the Statement of Work attached to the Consent Decree.

13. With respect to the Property, after GE has completed its non-groundwater related response activities, demolished buildings, and performed other activities required under the DEDA, the Settling Respondent intends to acquire title to the Property in phases and redevelop the Property for light industrial and office uses and other uses approved under the DEDA and consistent with the Institutional Controls.

14. The Settling Respondent is a prospective "owner" and/or "operator" of a facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

15. The Settling Respondent represents, and for the purposes of this Agreement EPA relies upon those representations, that Settling Respondent's involvement with the Property and the Site has been limited to the following:

(a) Evaluating the Property and the Site for purposes of acquiring title to and redeveloping the Property;

(b) Negotiating to acquire title to the Property pursuant to the DEDA; and

(c) Leasing from GE space in Building 42 and approximately 3000 square feet of office space in Building 45 on the GE plant as administrative office space for PEDA.

The Settling Respondent represents that none of the activities listed in subparagraphs (a) through (c) of this Paragraph has caused or contributed to the release or threatened release of a hazardous substance at the Property under Section 107 of CERCLA, 42 U.S.C. § 9607.

IV. CONSIDERATION

16. In consideration of and in exchange for the United States' Covenant Not To Sue contained in Section VIII herein Settling Respondent agrees to:

(a) comply with all requirements of the Consent Decree applicable to PEDA, including, without limitation, Consent Decree Paragraphs 12, 53, and 65 (regarding, generally, PEDA's grant of access to the Property, PEDA's abiding by the terms of any Institutional Controls on the Property, PEDA's performance of post-removal site control work, and PEDA's provision of notice of conveyances

from GE to PEDA and from PEDA to third parties), and Consent Decree Paragraph 124 (regarding PEDA's payment to the natural resource trustees of up to a total of four million dollars ($4,000,000), consisting of in-kind services and/or a percentage of PEDA's net revenues);

(b) comply with paragraph V.A (environmental insurance) of the DEDA, as may be amended from time to time; and

(c) abide by and comply with any Institutional Controls on the Property.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

17. Commencing upon the date that it acquires title to the Property or any portion thereof and continuing each day thereafter, in addition to any access rights granted by PEDA to EPA pursuant to the Consent Decree, Settling Respondent agrees to provide to EPA, its authorized officers, contractors, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property, and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing, operating, maintaining, and overseeing response actions and post-removal site control work at the Site under federal law. EPA agrees to provide reasonable notice to the Settling Respondent of the timing of non-emergency response actions to be undertaken at the Property. EPA also agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by the exercise of the access rights granted under this Paragraph.

18. Notwithstanding any provision of this Agreement, EPA retains all of its access

authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et. seq., and any other applicable statute or regulation, including any amendments thereto.

19. At the same time as the recordation of the first deed, title, or other instrument conveying any portion of the Property to Settling Respondent (or as soon as practicable thereafter, but no more than fifteen (15) days after the recordation of such first deed, title or other instrument), Settling Respondent shall record a copy of this Agreement with the Registry of Deeds for Berkshire County, Massachusetts, and/or with the appropriate land registration office, if any of the Property is registered land. Each deed, title, or other instrument conveying an interest in the Property or a portion thereof, either to or from the Settling Respondent, shall contain a notice stating that the Property is subject to this Agreement, including the book and page or other recording information indicating where this Agreement has been recorded or registered. Settling Respondent shall send certified copies of these documents, with recording information, to the persons listed in Section XV (Notices and Submissions), as soon as practicable after the recordation of such documents.

20. The Settling Respondent shall ensure that copies of this Agreement and any EREs on the Property are provided to any current lessee or sublessee on the Property as of the effective date of this Agreement. Prior to the conveyance of any interest in the Property, including, but not limited to, fee, leasehold, subleasehold, and mortgage interests, the Settling Respondent shall give copies of this Agreement and any EREs on the Property to the grantee, lessee, and/or sublessee, as applicable (collectively, "Grantee" for the purposes of this paragraph). If Settling Respondent is

aware that the Grantee will conduct any of the activities described in Paragraph 8 of Exhibit 4, then Settling Respondent shall give written notice to EPA of the proposed conveyance, including the name and address of the Grantee, and the date upon which copies of the Agreement and any EREs on the Property were given to the Grantee.

21. The Settling Respondent shall ensure that any leases, subleases, assignments, or transfers of the Property or any portion thereof or any interest in the Property or any portion thereof are consistent with this Section, Paragraph 15, Section XI (Parties Bound/Transfer of Covenant) of this Agreement, and with any Institutional Controls. Prior to any transfer of any interest in the Property or any portion thereof by the Settling Respondent, the Settling Respondent shall ensure that assignees, successors in interest, lessees, and sublessees of the Property will comply with any Institutional Controls on the Property and will provide the same access, notifications, cooperation (including the securing of any Institutional Controls) as is required by this Agreement. Settling Respondent shall condition the transfer of any fee interest or its equivalent (e.g., a long term ground-lease) in the Property on the subsequent assignee or successor in interest agreeing to comply with the requirements of this Section and agreeing to incorporate provisions requiring compliance with the requirements of this Section into subsequent sale documents as a condition of such sale or transfer and future sales or transfers.

22. Pursuant to this Agreement, Settling Respondent shall take such actions as the United States directs to secure, modify, and/or implement Institutional Controls on the Property as required by the Consent Decree for implementation of response actions (including, without limitation, design, construction, operation, maintenance, monitoring, post-removal site control work, and use restrictions) for or pertaining to the Site. Settling Respondent acknowledges and

agrees that the Property shall be subject and subordinate to any Institutional Controls. If Institutional Controls are not recorded and/or registered pursuant to Section XIII of the Consent Decree prior to the date that Settling Respondent acquires any interest in the Property, Settling Respondent agrees to execute and record and/or register, at its expense, subordination agreements and any other necessary documentation to make the Property subject and subordinate to such Institutional Controls.

VI. DUE CARE/COOPERATION/EMERGENCY RESPONSE

23. The Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondent recognizes that the implementation of response actions at the Site may interfere with the Settling Respondent's use of the Property and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with EPA, and all other persons performing response actions at the Site under EPA oversight, in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and response.

24. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to

complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

VII. CERTIFICATION

25. By entering into this Agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Settling Respondent and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Settling Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

26. Subject to the Reservation of Rights in Section IX of this Agreement, upon the effective date of this Agreement, the United States, on behalf of EPA, NOAA and DOI, covenants not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to the following:

a. Sections 106 or 107(a) of CERCLA, Section 7003 of RCRA, Section 7 of the Toxic Substances Control Act ("TSCA"), and/or Section 504 of the Clean Water Act with respect to the Existing Contamination; and

b. Sections 1002, 1005, 1006, 1009 and 1015 of the Oil Pollution Act, Section 113(f) of CERCLA, Sections 3004(u) and (v) and 3008 of RCRA, Section 17 of TSCA, Sections 309, 311 and 404 of the Clean Water Act, and/or Section 10 of the Rivers and Harbors Act with respect to Existing Contamination. The United States' covenant set forth in this Paragraph 26.b with respect to such statutory provisions does not apply to any action or claim other than an action or claim to compel Settling Respondent to implement, comply with, or fund response actions, corrective actions or measures, or other similar judicial or administrative response-type injunctive relief, or for recovery, reimbursement, contribution or equitable share of response costs or Natural Resource Damages, and specifically does not apply to any action or claim for civil penalties under these statutory provisions.

If the United States determines that PEDA has not satisfactorily performed its obligations hereunder, the United States' Covenant Not to Sue, and the Contribution Protection provided by Section XVIII, with respect to PEDA shall be null and void, and the United States reserves all rights it may have.

IX. RESERVATION OF RIGHTS

27. The Covenant Not to Sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves and this Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to, Section IV (Consideration), Section V (Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation/Emergency Response), and Section

XIV (Payment of Costs);

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondent, its successors, assignees, lessees or sublessees;

(c) any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

(d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

(e) criminal liability; and

(f) liability for violations of local, State or federal law or regulations.

28. With respect to any claim or cause of action asserted by the United States, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

29. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the United States may have against any person, firm, corporation or other entity not a party to this Agreement, except for any party that obtains the benefit of the United States' Covenant Not to Sue pursuant to Section XII (Parties Bound/Transfer of Covenant).

30. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondent to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way

restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Respondent acknowledges that it is obtaining Property where response actions may be required.

X. SETTLING RESPONDENT'S COVENANT NOT TO SUE

31. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States, and its authorized officers, employees, or representatives, with respect to the Site or this Agreement, including but not limited to, the following:

(a) any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 107, 111, 112, 113, or any other provision of law;

(b) any claims under Sections 107 or 113 of CERCLA, Section 7002 of RCRA, Section 504 of the Clean Water Act, or Sections 1002, 1005, 1008, 1009, or 1015 of the Oil Pollution Act related to the Site;

(c) any claims under the United States Constitution or the Tucker Act, 28 U.S.C. § 1491, including claims based upon the United States' oversight of response activities or approval of plans for such response activities, access to the Property, or selection or implementation of Institutional Controls on the Property;

(d) any claims arising out of response activities at the Site, including claims based on the United States' selection or performance of response activities, oversight of response activities or approval of plans for such activities; provided, however, that this subparagraph shall not limit or

expand Settling Respondent's right to participate in any administrative or other process respecting response actions at the Property;

(e) any claims or causes of action for interference with contracts, business relations or economic advantage; or

(f) any claims for costs, attorneys fees, other fees, or expenses incurred in this action, including claims under 28 U.S.C. § 2412 (including claims under the Equal Access to Justice Act, as amended 28 U.S.C. § 2412 (d)) .

32. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities or of response plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

33. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that Settling Respondent may have against any person, firm, corporation, or other entity other than the United States. Settling Respondent reserves all rights (including any rights to cost recovery and/or contribution), claims, defenses, and causes of action against any and all such entities.

XI. PARTIES BOUND/TRANSFER OF COVENANT

34. This Agreement shall apply to and be binding upon the United States and shall apply to and be binding upon the Settling Respondent, its officers, directors, and employees. The United States' Covenant Not to Sue in Section VIII and Contribution Protection in Section XVIII shall apply to Settling Respondent's officers, directors, or employees, to the extent that the alleged liability of the officer, director, or employee is based on its status and in its capacity as an officer, director, or employee of Settling Respondent, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondent. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

35. Notwithstanding any other provision of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person or entity, including future owners or operators of all or any portion of the Property, only with the prior written consent of EPA in its sole discretion. At least thirty (30) days prior to any proposed transfer of this Covenant Not to Sue, the proposed transferee shall submit to EPA the following information: (i) an agreement in writing to be bound by all of the terms of this Agreement; (ii) an affirmative adoption of the certification set out in Section VII (Certification) of this Agreement; (iii) an executed signature page using the form attached hereto as Exhibit 3; and (iv) a completed "Description of Activities of Settling Respondent" using the form attached hereto as Exhibit 4. Notwithstanding the requirements of the foregoing sentence, the United States may require additional information or impose additional conditions on any transfer of this Agreement. If at any time, EPA determines that the transferee's certification or

other information submitted by the transferee is not materially accurate or complete, the Covenant Not to Sue and Contribution Protection shall be null and void with respect to the transferee, and the United States reserves all rights it may have against the transferee.

36. Notwithstanding any other provision of this Agreement, a tenant or sub-tenant leasing all or any portion of the Property (collectively, "Tenant" for the purposes of this Paragraph and Paragraph 37), but excluding a ground-lessee of all or any portion of the Property, may be automatically assigned the rights, benefits and obligations under this Agreement (except that any successor Tenant shall not be obligated to comply with Paragraphs 16(a) and/or 16(b) of this Agreement), so long as such Tenant: (i) agrees in writing to be bound by all of the terms of this Agreement (except for Paragraphs 16(a) and/or 16(b) as noted in this Paragraph); (ii) affirmatively adopts the certification set out in Section VII (Certification) of this Agreement; (iii) submits to EPA an executed signature page using the form attached hereto as Exhibit 3; (iv) submits to EPA a "Description of Activities of Settling Respondent" using the form attached hereto as Exhibit 4; and (v) answers "NO" to questions 8(a)-(g) in said "Description of Activities of Settling Respondent" (collectively the "Tenant's Transfer Requirements"). If at any time EPA determines that the Tenant's certification, the Description of Activities of Settling Respondent, or any other information supplied by the Tenant is not materially accurate or complete, the United States' Covenant Not to Sue and Contribution Protection shall be null and void with respect to such Tenant, and the United States reserves all rights it may have against the Tenant. In order to satisfy the Tenant's Transfer Requirements, all required documents must be submitted to EPA, with a copy to PEDA (or any successor owner), via certified mail - return receipt requested in accordance with Section XV (Notices and Submissions), at least thirty (30) days prior to the commencement

of any tenancy or subtenancy. Satisfaction of the Tenant's Transfer Requirements does not by itself remove or waive the statutory protections afforded by Sections 101(20) and 107(n) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(n). Any party that does not qualify for assignment of this Agreement according to the provisions of this Paragraph may seek assignment pursuant to the other provisions of this Section.

37. PEDA and/or any successor owner of the Property or any portion thereof (collectively, for the purposes of this Paragraph "Property Owner") shall maintain all documents submitted to EPA in connection with the Tenant's Transfer Requirements and shall allow EPA to inspect such documents upon request. Each year, on or before the thirty-first day of January, any Property Owner shall submit a report to EPA listing all of the Tenants and certifying, to the best of its information and belief, that, during the preceding calendar year, all Tenants: (i) have not conducted any of the activities described in Paragraph 8 of Exhibit 4 or, if applicable, have not violated the terms of any assignment of this Agreement (provided the Property Owner is provided a copy of any such assignment); (ii) have not violated any lease of the Property; and (iii) have complied with this Agreement and with any Institutional Controls. If any Property Owner has knowledge or has any reason to believe that the foregoing subparagraphs 37 (i), (ii) and/or (iii) is not true for any Tenant, the Property Owner shall identify the Tenant and describe, in detail, the circumstances surrounding the Tenant's performance of any of the activities listed in Paragraph 8 of Exhibit 4, any violation of the terms of any assignment of this Agreement of which the Property Owner has notice, and/or the Tenant's non-compliance with any lease of the Property, this Agreement, and/or any Institutional Controls.

38. The Settling Respondent agrees to pay the reasonable costs incurred by EPA to review

any subsequent requests for consent to assign or transfer the benefits conferred by this Agreement.

39. In the event of an assignment or transfer of the Property or any portion thereof or an assignment or transfer of an interest in the Property or any portion thereof, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement, except that, (i) if the Settling Respondent no longer possesses any interest in the Property, it shall have no further obligations under Paragraphs 17, 20, 21, 22 and 24; and (ii) EPA and the assignor or transferor may agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property, or any portion thereof, the assignee or transferee must consent in writing to be bound by the terms of this Agreement, including but not limited to, the certification requirement in Section VII of this Agreement, in order for the Covenant Not to Sue in Section VIII to be available to that party. The Covenant Not To Sue in Section VIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA. To the extent that any one Settling Respondent fails to comply with the terms of this Agreement, the consequences of that failure as set forth in this Agreement shall only apply to that Settling Respondent.

XII. DISCLAIMER

40. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

41. The Settling Respondent agrees to retain and make available to EPA for ten (10) years following the effective date of this Agreement (i) all site studies and investigations relating to

environmental conditions at the Property; (ii) all filings or notifications made pursuant to CERCLA, the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001-11050, the Massachusetts Toxics Use Reduction Act, M.G. L., c.21*I*, or any other statute that requires the filing of notifications or the keeping records regarding the storage, disposal, or use of hazardous substances; (iii) all documents required to be kept pursuant to Paragraph 37 of this Agreement; and (iv) all business and operating records, contracts and documents relating to the use and/or disposal of hazardous substances at the Property, excluding documents regarding the retail sale of products for household use that contain hazardous substances or documents regarding products used in routine office and grounds keeping operations that contain hazardous substances (except for the exterior applications of pesticides). The Settling Respondent also agrees to retain and make available to EPA for ten (10) years following EPA's issuance of a Certificate of Completion pursuant to Paragraph 89 of the Consent Decree (Completion of the Work for the Site) all records and documents that relate in any manner to the performance of any Post Removal Site Control work performed by Settling Respondent. At the end of the applicable ten year period, the Settling Respondent shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at EPA's expense. After receipt of such notice, EPA shall have 180 days within which to notify the Settling Respondent that it wants to copy such documents. Such documents may be retained on microfilm, CD-rom, computer disc, or in their original form. In the event that records are maintained in a format other than their original form, the Settling Respondent shall certify that the documents are true and accurate embodiments of the originals.

XIV. PAYMENT OF COSTS

42. If the Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Consideration), it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

43. Whenever, under the terms of this Agreement, written notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices shall be considered effective upon receipt. Notices made pursuant to Paragraph 36 shall be made by certified mail – return receipt requested.

As to EPA

EPA Project Coordinator
GE-Pittsfield/Housatonic River Superfund Site
United States Environmental Protection Agency, Region I
One Congress Street, Suite 1100 (HBO)
Boston, MA 02114-2023

and

Enforcement Counsel
GE-Pittsfield/Housatonic River Superfund Site
United States Environmental Protection Agency, Region I
One Congress Street, Suite 1100 (SES)
Boston, MA 02114-2023

As to Settling Respondent

Director, Pittsfield Economic Development Authority
100 Woodlawn Avenue

Building 45
Pittsfield, MA 01201

with a copy to

Jeffrey M. Bernstein, Esq.
Bernstein, Cushner & Kimmell, P.C.
585 Boylston Street
Boston, MA 02116

XVI. EFFECTIVE DATE

44. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondent that EPA has fully executed the Agreement after review of and response to any public comments received.

XVII. TERMINATION

45. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s). A response to any termination request shall be made within 180 days of receipt of the request.

XVIII. CONTRIBUTION PROTECTION

46. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this

Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

47. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

48. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on it.

XIX. EXHIBITS

49. The following Exhibits are attached to and incorporated into this Agreement:

a. "Exhibit 1" is the description of the Property.

b. "Exhibit 2" is the map depicting the Site.

c. "Exhibit 3" is the Signature Page for Settling Respondent.

d. "Exhibit 4" is the Description of Activities of Settling Respondent.

XX. PUBLIC COMMENT

50. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate. Settling Respondent consents to the execution of this Agreement without further notice.

[The remainder of this page is left intentionally blank.]

In the matter of GE-Pittsfield Housatonic River Site, Agreement and Covenant Not to Sue for the Pittsfield Economic Development Authority. Docket No. CERCLA 01-2002-0007

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: _____

Robert W. Varney
Regional Administrator, New England Region
U.S. Environmental Protection Agency
One Congress Street
Boston, MA 02114-2023

DATE: January 3, 2002

In the matter of GE-Pittsfield Housatonic River Site, Agreement and Covenant Not to Sue for the Pittsfield Economic Development Authority. Docket No. CERCLA 01-2002-0007

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY: _____

John C. Cruden, Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C., 20530

DATE: 12-20-01

In the matter of GE-Pittsfield Housatonic River Site, Agreement and Covenant Not to Sue for the Pittsfield Economic Development Authority. Docket No. CERCLA 01-2002-0007

IT IS SO AGREED:

PITTSFIELD ECONOMIC DEVELOPMENT AUTHORITY

BY: Thomas E. Hickey Jr.

Thomas E. Hickey, Jr.
Director
Pittsfield Economic Development Authority
100 Woodlawn Avenue, Building 45
Pittsfield, MA 01201

DATE: 1/03/02

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

IN THE MATTER OF: GE-PITTSFIELD HOUSATONIC RIVER SITE	)	Docket No. CERCLA 01-2002-0007
UNDER THE AUTHORITY OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPSENSATION, AND LIABILITY ACT OF 1980, 42 U.S.C. § 9601, et seq., as amended	)	AGREEMENT AND COVENANT NOT TO SUE: PITTSFIELD ECONOMIC DEVELOPMENT AUTHORITY

FIRST AMENDMENT OF AGREEMENT AND COVENANT NOT TO SUE: PITTSFIELD ECONOMIC DEVELOPMENT AUTHORITY

WHEREAS, the United States, on behalf of the Environmental Protection Agency ("EPA"), and the Pittsfield Economic Development Authority ("Settling Respondent" or "PEDA") made and entered into an Agreement and Covenant Not to Sue ("Agreement") that became effective on January 3, 2002.

WHEREAS, the Agreement sets forth certain covenants not to sue relating to approximately 52 acres of the GE-Pittsfield Housatonic River Site located in the City of Pittsfield, Massachusetts, which approximately 52 acres are defined in the Agreement by the term "Property."

WHEREAS, under a Consent Decree entered into by the General Electric Company ("GE"), the United States, the Commonwealth of Massachusetts, PEDA, the City of Pittsfield, and other parties, GE is required, *inter alia,* to respond to contamination at the Site, including

contamination on the Property. United States of America et al. v. General Electric Company, CA No. 99-30225 (D. Mass., October 27, 2000).

WHEREAS, GE has completed the response to contamination on the Property and has conveyed the Property to PEDA.

WHEREAS, GE is required under the Consent Decree to respond to contamination at Silver Lake, including contamination on a strip of land located between Silver Lake and Silver Lake Boulevard, defined as the "Silver Lake Parcels" herein and described in more detail in Paragraph 1 below. GE is also required to implement certain natural resource restoration and enhancement work, including planting trees and constructing a public walkway on the Silver Lake Parcels.

WHEREAS, to facilitate the implementation of GE's natural resource restoration and enhancement work, PEDA intends to acquire the Silver Lake Parcels. The Silver Lake Parcels are located opposite the 30s Complex portion of the Site that PEDA now owns. (The 30s Complex is a 15.75 acre parcel of land in Pittsfield bordered by East Street to the south and Silver Lake Boulevard to the west, as further described in Exhibit 1 of the Agreement.)

WHEREAS, PEDA agrees to impose on the Silver Lake Parcels an Environmental Restriction and Easement ("ERE"), as described in the Consent Decree.

WHEREAS, PEDA's ownership of the Silver Lake Parcels will provide a public benefit, including maintenance of the natural resources restoration and public access to restored open space, and will improve PEDA's redevelopment of the Property. Accordingly, resolution of potential liability related to the Silver Lake Parcels, in exchange for provision by PEDA to EPA of a substantial benefit, is in the public interest.