

Executive Summary

I. BACKGROUND

In October, 1997, the City of Pittsfield, Massachusetts (“the City”), General Electric Company (“GE”) and various federal and state government agencies entered into mediation with the hope that a comprehensive settlement could be reached regarding PCB contamination caused by GE at its Pittsfield transformer plant, the Housatonic River, and related environs. The parties viewed the goal of the mediation to be three-fold: 1) remediation of the contamination; 2) restoration of natural resources; and 3) redevelopment of the long dormant GE site in the heart of Pittsfield. With respect to the third objective, on May 28, 1998 GE and the City reached an agreement in principle as to the underlying terms of an economic redevelopment plan, which were set forth in a document entitled Economic Memorandum of Agreement Term Sheet (“the Term Sheet”). Central to the economic redevelopment plan was GE’s agreement to transfer certain portions of its industrial site to a transferee entity. The transferee entity will be the Pittsfield Economic Development Authority (“PEDA”), which was specifically created by the Massachusetts Legislature for that purpose with the enactment of St. 1998, c. 194, §268, as amended by St. 1998, c. 486, §2.

Following extensive negotiations, PEDA, the City and GE have agreed upon the final terms of the economic redevelopment plan, which are set forth in a document entitled Definitive Economic Development Agreement (“the Agreement”), attached hereto, and are summarized below. The parties to the comprehensive settlement process simultaneously negotiated a Consent Decree that addresses remediation of the PCB contamination and restoration of natural resources. The Consent Decree was lodged with the United States District Court. By its terms, the Agreement became effective and legally binding upon the District Court’s approval of the Consent Decree. It should be noted, however, that GE agreed to perform certain of its obligations under the Agreement prior to that time.

II. TERMS OF THE AGREEMENT

A. Pre-Transfer Activities and Transfer of Certain Portions of the GE Site

GE has agreed to transfer to PEDA, without charge, approximately 52 acres of its Pittsfield facility, which is 14 acres more than originally agreed to in the Term Sheet. The transfer will occur in two phases, as indicated in Attachments B and C to the Agreement. Phase I will entail transfer of the 20s Complex, the 30s Complex, and the 40s Complex. Phase II will entail transfer of the complex comprised of Buildings 1 through 6, the 8s, 11, the 15s, the 16s, the 17s, and 19. GE has agreed to modify the property transfer sequence, if PEDA wishes, as long as costs are not materially affected.

Prior to the transfer of any property, the following activities will occur: GE will remediate the property in accordance with the requirements of the Consent Decree. In conjunction with the remediation, GE will demolish nearly all of the buildings on the property to be transferred, as shown in Attachment B to the Agreement, and will properly dispose of all demolition debris. GE will pay all costs associated with the demolition.

After GE finishes the demolition, it will ensure that at least 350,000 square feet of building foundations or areas suitable for building foundations (in at least eight separate sites) remains upon which PEDA can direct the construction of new buildings. GE will ensure that such foundations and/or foundation areas are suitable in all respects to support new buildings at reasonable construction costs. Toward that end, GE will bear all costs related to soil management, compaction and stability issues to ensure the guaranteed amount of suitable foundation area. Assuming new buildings of more than one story, this provision will potentially translate into 700,000 to 1,000,000, or more, square feet of new space in 8 to 10 buildings.

This approach to redeveloping the site was favored by PEDAs economic planning and real estate consultants, who reported that new construction on a cleared site (as opposed to refurbishment of the existing buildings) would greatly increase PEDAs ability to attract tenants, create jobs, generate income, and enhance the Citys tax base as compared to retaining more existing buildings. This is so because, among other things, an excess supply of underutilized comparable older space exists within the relevant market, the relevant market is largely driven by new, owner-occupied industrial buildings in the 40,000 to 60,000 square foot range, and new construction can be accomplished for less money than adaptive reuse of older buildings.

In addition to the demolition on the property to be transferred, GE will demolish nearly all of the buildings in the 60s Complex and perform minor refurbishment on the limited number of buildings that will remain on the affected portions of the facility site. Specifically, GE will refurbish the guardhouse at the East Street entrance (eventually to be demolished), the electrical substation, and the wastewater treatment system buildings, as indicated on Attachment B to the Agreement. GE will perform the additional demolition and the refurbishments at its own expense.

Also at its own expense, GE will perform extensive landscaping on the property to be transferred and surrounding areas, such as the 60s Complex and near Silver Lake. In addition, after the area has been fully remediated in accordance with the Consent Decree, GE constructed a combined youth soccer/softball/little league baseball field, with related facilities, at the southwest corner of East Street and Newell Street. GE and the City have entered into a 99-year, no rent lease for use of the new athletic field.

B. Additional GE Obligations

GE will make a redevelopment fund in the amount of \$15,300,000 available to PEDA. PEDA may use the fund for redevelopment projects consistent with the Agreement associated with the property to be transferred. For example, PEDA may use the fund for the construction of new buildings, or as part of economic incentive packages to attract owner-occupants to construct new buildings on land leased by PEDA. PEDA may also use the fund for additional landscaping, insurance, roadway and infrastructure projects associated with the transferred property, and/or its administrative and support expenses. At its option, PEDA may either direct GE to conduct and pay for a redevelopment project (drawing down from the fund) or have GE make payments to PEDA or to third parties.

GE will also make a gift to the City in the amount of \$10,000,000, payable in ten annual installments. Pursuant to the Agreement, GE has already made a separate \$100,000 gift to the City to pay for the economic reuse analysis.

Beyond its financial obligations, GE has promised to make 100,000 square feet of interim space available to PEDA in the event that PEDA secures a tenant prior to when appropriate space on the transferred property is ready for that tenant. GE will lease the interim space to PEDA, rent free, for up to six years and recover only its out-of-pocket costs for preparing and operating the space. PEDA, in turn, will be entitled to sublease the space to its tenant. PEDA has 18 months to exercise this option.

GE will lease the four acre parking lot located at the northeast corner of Kellogg Street and Woodlawn Avenue to PEDA for use by its tenants. The lease will be for a minimum of 25 years and will be at no cost to PEDA or its tenants. In addition, GE will continue, for up to 5 years, to provide PEDA with 3,000 square feet of office space at no cost.

C. PEDAs Rights and Obligations With Respect To The Transferred Property

PEDA will be the owner in fee of all property it receives from GE. Immediately upon receipt of property, PEDA will be able to enter into leases with tenants. Five years following PEDA's receipt of any parcel of property, it will be entitled to transfer fee title to that parcel. PEDA may transfer title to any newly constructed building (exclusive of the land upon which it is situated) after only 18 months from the date of the Agreement. Eventual transferees of land or buildings must agree to abide by any applicable use restrictions, provide GE with a release and indemnity from liability (except liability that arises from GE's acts or failures to act post-transfer), obtain appropriate insurance, reasonably demonstrate financial viability, and provide access to GE and the governments for maintaining and conducting appropriate investigative or response activities. In addition, PEDA must obtain GE's written approval, which cannot be unreasonably withheld if the above requirements are met, prior to transferring fee title to any land within the 15 years following PEDA's receipt of such land from GE. After expiration of the 15 year period, PEDA may transfer fee title to land without GE's written approval.

While PEDA and the City would prefer that there be no limitations on PEDA's power to transfer property, GE was concerned about the ability of subsequent transferees to indemnify GE and to provide the same type of financial guarantees that PEDA will be providing. These concerns were addressed by inclusion of the conditions outlined above. In light of the circumstances, PEDA and the City felt that these conditions were reasonable, and in essence simply required potential transferees to provide GE with the same protection and guarantees that PEDA itself agreed to provide under the Agreement.

In addition to the transfer restrictions outlined above, PEDA and the City must wait for seven years following the execution date of the Agreement before exercising eminent domain authority to take any other GE-owned property. After this period, the City and PEDA may take GE-owned property that is not actively being used by GE (unless GE can demonstrate that the non-use is temporary). In the event of a taking, all liability for the property will be transferred to the City or PEDA (whichever party does the taking) except that GE will remain responsible for performing certain continuing groundwater and contamination monitoring, assessment, and recovery duties required by the Consent Decree and for any damages arising out of pre-taking exposure to contamination at or from the property.

As noted above, GE will transfer property to PEDA in two phases. Within each phase, GE and PEDA have agreed to develop a mutually agreeable, modifiable schedule for transfer of the various parcels. GE is not required to transfer property in accordance with the schedule, however, if PEDA lacks the financial ability to support the protections it is affording GE or property previously transferred to PEDA is not being utilized or under contract to be utilized for any economic purposes, is not otherwise capable of sustaining itself financially, or no new structures have been constructed or are under construction. Beyond the initial two phases, the parties have agreed to discuss, as appropriate, additional property for transfer from GE to PEDA.

PEDA and all future transferees shall be required to abide by any environmental restriction and easements or use limitations that apply to the property. In order to prevent future users or visitors from conducting any activities on the transferred property that could pose a risk from a health, safety or risk management perspective, use of the property will be mainly limited to light-industrial and office uses. If PEDA violates the applicable environmental restriction and easements or use limitations or is unable to meet its financial obligations under the Agreement, GE has a limited right of last resort to repossess the transferred property if PEDA is unable to cure its failure to meet these obligations.

D. GE's Continuing Responsibilities With Respect to Transferred Property

As noted above, GE will be responsible for performing all remediation required by the Consent Decree, as well the demolition, refurbishment, and redevelopment activities outlined in Attachment C, prior to trans-

ferring property to PEDDA. GE is also responsible for off-site disposal of waste and soil from the property prior to transfer.

After transfer, GE will remain responsible for continuing groundwater and non-aqueous phase liquid (NAPL) related activities under the Consent Decree. These include continued operation of GE's current systems for NAPL containment and recovery and groundwater treatment, as well as groundwater and NAPL monitoring, assessment, and response activities.

GE will also remain responsible for any contamination that migrates off the transferred property, unless PEDDA or a future user for whom GE is not responsible causes the migration. For fifteen years, GE must also manage any soil and groundwater issues associated with existing or new utility corridors at the transferred property.

Finally, as noted above, if either the City or PEDDA takes additional GE property via eminent domain (after the seven year waiting period), GE will remain responsible for the groundwater and NAPL related activities required by the Consent Decree, as well as for any damages arising out of pre-taking exposure to contamination at or from the property.

E. Cross Releases and Indemnifications

GE is obligated to indemnify PEDDA, as well as its officers, representatives and employees, against any claims relating to the responsibilities that it will retain with respect to the transferred property, as described in the preceding section. GE has also agreed to indemnify the City, as well as its officers, representatives and employees, against any claims related to the City's past practice of providing PCB-contaminated sewage sludge for use on residential properties. GE has also agreed not to sue the City for any claim arising out of PEDDA's acts or obligations.

PEDDA will indemnify GE against claims related to environmental liabilities not retained by GE, including remedial requirements on the transferred property beyond those that GE will have performed under the Consent Decree. Any additional remedial requirements caused by GE's negligence or failure to use good engineering practices in performing its Consent Decree remedial requirements, however, will be the responsibility of GE. PEDDA will also indemnify GE against claims related to tort liability associated with PEDDA's ownership, use, or occupancy of the property; off-site migration of contamination caused by PEDDA or a user for which GE is not responsible; damage with a remedy caused by PEDDA or a user for which GE is not responsible; maintenance and operation of the transferred property; and unknown issues, except those that GE had a responsibility to disclose.

The City has agreed not to sue GE regarding contamination at the property to be transferred to PEDDA, contamination migrating from the transferred property onto property owned by someone other than the City, and contamination at City-owned property that is being remediated by GE under the Consent Decree. Regarding contamination at City-owned property that is not being remediated under the Consent Decree, the City and GE have agreed upon an expedited arbitration procedure to resolve any claims the City may have against GE.

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