



TOWN OF HOPKINTON
SELECT BOARD MEETING AGENDA
Thursday, March 9, 2023 6:00 PM
HCAM Studios - 77 Main St. #15, Hopkinton, MA

Watch on HCAM-TV: [Select Board - YouTube](#)

- 6:00 PM** **FY 2024 BUDGET - JOINT WORKING SESSION WITH SCHOOL COMMITTEE**
1. The Select Board will hold a Joint Working Session with the School Committee on the proposed Comprehensive FY 2024 budget.
Supporting Exhibits: [FY24 Budget Questions for Select Board](#); [Comprehensive Budget information: Annual Town Meeting and Budgets](#); [Budget - Hopkinton Public School District](#)
- 6:45 PM** **DRAFT IMA - SOUTHBOROUGH MWRA INTERCONNECTION PROJECT**
2. The Select Board will review the draft Intermunicipal Agreement (IMA) for the Southborough indirect Massachusetts Water Resource Authority (MWRA) connection project.
Supporting Exhibits: [Hopkinton Southborough MWRA Connection IMA](#)

ADJOURN

Correspondence to Select Board

1. [Correspondence for March 9th 2023 Select Board Meeting](#)

Upcoming Select Board Meetings

1. March 14, 2023
2. March 28, 2023
3. April 4, 2023
4. April 11, 2023

The listed matters are those reasonably anticipated by the Chair to be discussed at the meeting. Not all items may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. Unless an agenda item is a posted public hearing, the matter may be considered earlier than the indicated time if there are last minute cancellations or other unforeseen events which cause the Board to move more quickly through the agenda.

INTERMUNICIPAL WATER SUPPLY AGREEMENT
By and between the Towns of Hopkinton and Southborough

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THIS AGREEMENT ("the Agreement") is entered into as of [insert date] ("Effective Date") by and between the Town of Southborough, through its Board of Selectmen, ("Southborough"), and the Town of Hopkinton, through its Select Board, ("Hopkinton" and, together with Southborough, "the Parties").

RECITALS

Whereas, the Parties, in furtherance of a public purpose, agree to enter into an agreement whereby Hopkinton will receive its potable water supply through a Massachusetts Water Resources Authority ("MWRA") connection to Southborough's water lines in order to secure and supply water for drinking and other uses in Hopkinton;

Whereas, the Parties intend for this Agreement remain in full force and effect for 25 years, unless sooner terminated or extended as provided in this Agreement;

Whereas, Southborough intends to supply quantities of water to Hopkinton for the price and under the terms set forth in this Agreement.

Whereas, both Parties propose to upgrade and install new equipment to existing facilities to provide water supply to Hopkinton.

Whereas Hopkinton will bear the full costs of said upgrades and installation of new equipment, which will provide significant water system investments, performance, and reliability improvements to Southborough including:

- Installation of approximately 2,000 feet of new 12" DI water main in the vicinity of the proposed interconnection on Cordaville Road, Southville Road, and River Street (Route 85) and approximately 2,800 feet of new 12" DI water main on Parkerville Road from Route 9 to Fairview Drive.
- Upgrades to the Boland and Hosmer pump stations increasing those station's capacity to approximately 3.5 million gpd (defined below.)
- Installation of a new booster pump station between Deerfoot Road and Sarsen Stone Way to improve water distribution to the Fairview/Skylar Drive neighborhood.
- Replacement of the aging Oak Hill Tank will be replaced with a taller, larger tank with an increased storage capacity of up to but not exceed 1 million gallons.
- Curb-to-curb resurfacing of any streets that are excavated as part of the Project.

Whereas, Hopkinton has agreed to fund additional upgrades, "Incentive Payments" that are not directly required by the Project but will offset and mitigate impacts of the Project on Southborough including : reimbursing Southborough, in an amount not to exceed

\$1,000,000 in total, for the costs incurred to (1) install approximately 1,000 FT of 12" DI water main to connect Presidential Drive and Fisher Road, including the acquisition of easements across private property, including an easement across a rail line; (2) install approximately 800 FT of 8" DI water main on Mt. Vickery Road, from Middle Road to Vickery Hill Road; and (3) install approximately 200 FT of 4" DI water main on Valade Court. Only projects described in this paragraph which have been completed within 5 years from the date of execution of this agreement are eligible for reimbursement. If the costs of the projects total less than \$1,000,000, Southborough shall not be entitled to any additional compensation.

Whereas, following the Project, Southborough proposes to deliver to Hopkinton a minimum of 0 and a maximum of 2.7 million gpd from the new connection[s].

Whereas, the estimated construction cost of the Project is \$XX million dollars, per ...

Whereas, the Hopkinton will be responsible for all costs related to the design and construction of the Project.

Whereas, Southborough will charge for the water based on the same fee schedule per gallon as charged to Southborough by the MWRA at the time of usage.

Whereas, the fee schedule may be revised on an annual basis based on actual costs as further defined and shall be provided to Hopkinton no less than 90 days prior to any fee changes.

Whereas, the Parties are authorized pursuant to G.L. c. 40, §4A, G.L. c, 40, §38 to enter into the Agreement.

NOW, THEREFORE, in consideration of the mutual agreements and provisions set forth herein, and the payments and obligations hereunder, and for other good and valuable consideration, the receipt and adequacy of which consideration is hereby acknowledged, the Parties hereby agree as follows:

TERMS AND OBLIGATIONS

I. Definitions

For all purposes of this Agreement and any amendments to the same, the following terms shall have the following meanings:

Hopkinton: Town of Hopkinton (defined previously).

Southborough: Town of Southborough (defined previously).

GAAP: Generally Accepted Accounting Principles.

GPD: gallons per day.

MADEP: Massachusetts Department of Environmental Protection.

Maximum Allocated Capacity: the total amount of water allocated by Southborough for Hopkinton's use, as set forth in Section [insert] of this Agreement.

MEPA: Massachusetts Environmental Policy Act.

Milestones: intermediate steps and completion dates specified for Project-related activities as identified in Section [insert] of this Agreement.

MWRA: Massachusetts Water Resources Authority (defined previously).

Net Project Cost: the total cost of all construction and capital obligations described in Section [insert] of this Agreement.

Project: the project described in Appendix A to this Agreement, and excluding any upgrades to Southborough's water system funded by the Incentive Payments.

Project Completion: [insert]

Project Completion Date: the date specified in this Agreement, in Section [insert], for Project Completion (defined above).

OMR: activities required to assure the dependable and economical functioning of the Project.

OMR Charge: the proportion of OMR costs for which Hopkinton is responsible to pay.

Turnover Point: the physical point at which Southborough supplies water to Hopkinton and possession and ownership of said water transfers from Southborough to Hopkinton as set forth in Section [insert] of this Agreement.

USEPA: United States Environmental Protection Agency.

WRC: Massachusetts Water Resources Commission.

II. Permits and Approvals

A. MADEP Notification. Hopkinton shall notify MADEP of the proposed construction of the Project.

B. Permits and Approvals.

1. Hopkinton shall be responsible to secure and maintain all necessary approvals, including but not limited to permits, required for design and construction of the Project under MEPA or required by the MADEP, MWRA, and WRC. Southborough shall provide all necessary and reasonable assistance for Hopkinton to obtain such approvals.

2. Southborough shall be responsible to secure and maintain all necessary approvals, including but not limited to permits, for operation of the Project. Hopkinton shall provide all necessary and reasonable assistance for Southborough to obtain such approvals.

III. Supply of Water.

A. Southborough agrees to furnish, and Hopkinton agrees to purchase, water supplied by the MWRA.

B. The means and methods of supplying water shall be as determined and approved by the Southborough Select Board and the Hopkinton Select Board.

C. Southborough shall provide an allocation of 2.7 million gpd for use by Hopkinton after Project Completion.

1. Southborough has no obligation to increase its Maximum Allocated Capacity, unless an increase in the same is required by Federal or State law or regulation.

2. If an increase in the Maximum Allocated Capacity is required by state or federal laws or regulation, the Parties shall mutually confer in good faith to develop a plan for expansion of the Parties' water supply system to increase the Maximum Allocated Capacity to the necessary amount and the cost of such expansion shall be prorated based on the amount of additional capacity each Party is to receive.

D. Hopkinton may purchase any amount of water , with no minimum purchase requirement.

E. Southborough shall provide water to Hopkinton at a point at the Hopkinton/Southborough town line at a physical point to be referred to as the Turnover Point.

F. Hopkinton shall be solely responsible for all water so furnished by Southborough following provision of the same at the Turnover Point, including at all times said water is in the Town of Hopkinton distribution system.

G. Hopkinton and Southborough shall operate their respective municipal water facilities and systems in compliance with all applicable laws, regulations, permits, orders, or other legal authorities issued by USEPA, MADEP, or any other governmental authority having jurisdiction over the production, treatment, transmission, distribution, or storage of water.

IV. Water Monitoring and Sampling

A. Southborough shall perform all required water testing, monitoring, and sampling required by applicable legal authority, on its side of the Turnover Point and shall provide the results of such monitoring to Hopkinton within [INSERT] days.

V. Operations, Maintenance, and Repair (OMR)

A. OMR shall comprise but not be limited to the following:

1. **Maintenance and Repair:** Repair and preservation of the functional integrity and efficiency of any pumps, facilities, pipes, conduits, or equipment that make up the Project. This includes preventive and corrective maintenance. Repair does not cover increase in the pump station capacities referred to as a Future Capital Upgrade under **Section 12**.

2. **Replacement Equipment Costs:** Replacement of machinery required to supply water. Hopkinton will pay for a pro rata share of the depreciation of any pumps, facilities, pipes, conduits, or equipment that make up the Project, with such payments deposited to a special fund from which all future replacement of such equipment during the term of the Agreement shall be funded. Prior to undertaking any replacement work, the Parties shall consult with each other to ascertain the need for such replacement.

3. **Operation:** Control and Operation of the Project. This includes but is not limited to supervision, financial and personnel management, record keeping, safety and emergency planning, monitoring and sampling, measuring water flow, obtaining permits, performing inspections and audits, and administering this Agreement.

B. Hopkinton shall be solely responsible for all OMR on Hopkinton's side of the Turnover Point.

C. Southborough and Hopkinton shall allocate OMR on Southborough's side of the Turnover Point as follows:

- 12" DI water main in the vicinity of the interconnection on Cordaville Road, Southville Road, and River Street (Route 85) and approximately 2,800 feet of new 12" DI water main on Parkerville Road from Route 9 to Fairview Drive. [then we need to define how the costs of this are allocated]
- Boland and Hosmer pump stations. [same comment]
- New booster pump station between Deerfoot Road and Sarsen Stone Way [same comment] New Oak Hill Tank .[same comment]

D. Southborough shall perform all OMR work subject to cost allocation between the Parties, unless the Parties mutually agree otherwise in writing.

E. Annual OMR Charges Paid by Hopkinton

1. Water flow for which Hopkinton shall be responsible to pay an OMR charge, to be referred to as the "OMR Charge," shall be only that water that flows beyond the Turnover Point into Hopkinton's water distribution system. The cost of any other OMR shall be borne solely by Southborough.

2. The OMR Charge shall be calculated by: (i) measuring and recording actual water flows at Southborough's interconnection point with the MWRA's water transmission system; (ii) measuring and recording actual water flows at the Turnover Point; and (iii) using the flows recorded as (i) and (ii) to derive the portion of total MWRA water flows attributable to each

party's usage.

3. Hopkinton shall pay part of the OMR in the proportion that Hopkinton's actual water flow—the OMR Charge—and Southborough shall pay the remainder of the total OMR cost.

4. If increased flows from the Project require (a) greater monitoring or sampling, pursuant to 310 CMR 22.05 through 310 CMR 22.09; or (b) additional or more highly trained operators for the Project pursuant to 310 CMR 22.1 1B, then the incremental costs thereof shall be included in the total OMR cost.

5. If increases in the population served by the Project trigger new requirements under 310 CMR 22.00 or any applicable Federal or State regulation, the additional costs of compliance with these requirements shall be included in the total OMR cost.

6. Hopkinton shall include in its rates billed to local residents and businesses amounts sufficient to cover the OMR Charge.

7. Southborough shall include in its rates billed to local residents and businesses amounts sufficient to cover Southborough's OMR costs.

F. OMR Measurements and Measuring Devices

1. Southborough shall be responsible to ensure that all measuring devices are calibrated quarterly.

2. The Parties shall regularly inspect measuring devices upon a mutually-agreed to schedule. Southborough shall be responsible to repair or replace any measuring device or any part of a measuring device that: (i) has registered a larger total volume of water flow than prescribed by standard AWWA practice; (ii) has been in service longer than established AWWA practice; or (iii) is known or suspected to be registering incorrectly. The cost to repair or replace any measuring device or any part of a measuring device shall be part of OMR.

3. Hopkinton shall have the right to test measuring device at any reasonable time with reasonable notice to Southborough. If such a measuring device is found to be registering a larger total volume of water flow than prescribed by standard AWWA practice, then Southborough shall immediately repair or replace the measuring device or the part of the measuring device at fault.

4. If either Party believes that a measuring device is registering incorrectly, the Party, acting through the Party's chief executive body, shall prepare an estimate of the amount of water furnished through the faulty measuring device. The estimate shall be based upon the average of three (3) preceding readings of the meter, exclusive of incorrect readings. If less than three (3) correct readings are available, fewer readings, including some obtained after the period of incorrect registration, may be used. The Parties shall forthwith adjust the OMR charges to either Party to accurately reflect the appropriate charge.

G. Responsible Officials. Southborough shall notify Hopkinton in writing, and keep Hopkinton informed, of the name and title of its official or officials responsible for water supply to Hopkinton and for implementation of the terms of the Agreement. Hopkinton shall notify Southborough in writing, and keep Southborough informed, of the name and title of its official or officials responsible for water in Hopkinton and for implementation of the terms of the Agreement.

VI. Project Procedures and Governance

A. Total Project Costs. Hopkinton shall pay for all costs for design and construction of the Project as specified in and subject to the provisions of this Agreement.

1. In no event shall Hopkinton be required to pay more than [insert cap] in total costs for design and construction of the Project, unless a written amendment to this Agreement is executed by both Parties.

2. Southborough shall not be authorized under this Agreement to incur any cost chargeable to Hopkinton without prior approval from Hopkinton.

B. Grants: It is the policy and intention of the Parties to apply for, receive and utilize all appropriate financial and other aid which can be effectively used for the Project. To that end, the Parties shall make joint or separate applications (as appropriate and after discussion between the Parties) as the circumstances and requirements of the grantor or grantors may require and will provide and pledge to each faithful cooperation. Any aid received that is attributable to the Project will be administered and employed in accordance with the terms thereof. To the extent that it becomes available, aid shall be utilized to defray, reduce, or reimburse costs of the joint undertaking pursuant to the Agreement.

C. Schedule. The Project shall be fully constructed and operational no later than [date] (the "Project Completion Date"). In order to achieve this date, the Parties shall achieve the following Project milestones ("Milestones"):

[insert]

Failure by a Party to comply with a milestone shall serve as a material breach of this Agreement.

D. Design

1. Qualified engineering firm or firms as may be selected by Hopkinton, shall prepare construction-ready design plans and specifications for the Project or portions of the Project, which shall be shared with Southborough. The design fee shall be as agreed to by Hopkinton, and any design contract amendments shall be approved by Hopkinton. The design contract scope shall include construction administration, including a full-time resident engineer, who shall report to Hopkinton but be responsible for keeping both Hopkinton and Southborough apprised of the status of construction.

2. The Project design shall meet or exceed all requirements imposed by Federal or State law or regulation and, further, to qualify for financial assistance as may be available

from USEPA, MADEP, or other governmental body.

3. Hopkinton shall pay all reasonable costs to design the Project.

4. Hopkinton shall reimburse Southborough for all reasonable costs up to but not exceeding \$200,000 for Southborough's retention of an independent engineering firm to peer review final design plans and specifications for the Project. Southborough shall provide to Hopkinton monthly statements itemizing any costs incurred by said independent engineering firm.

5. The Parties shall mutually agree to the design fee, and any peer review contract amendments

6. Prior to the commencement of procurement for any construction contract, both Parties shall mutually agree in writing to the final set of Project bid documents. Any contracts for construction of the Project shall include the following provisions:

- The work shall be sequenced in a such a way that disruption to Southborough's existing system during construction shall be kept to a minimum but in no event shall work on the Project be sequenced in such a way that the Project fails to achieve the Project Milestones or Project Completion Date specified in this Agreement;
- Prior to commencement of the work, Southborough shall test its existing system for leaks. Said testing shall include certification that there are no leaks or other problems in Southborough's "Low Zone" prior to the proposed pressure increase, and any such leaks or other problems shall be repaired at Southborough's cost prior to the commencement of the work;
- Testing must be completed prior to acceptance of the work, subject to approval by Southborough. Said testing shall include certification that there are no leaks or other problems in Southborough's "Low Zone" as a result of the implemented pressure increase, and any such leaks or other problems must be repaired to the satisfaction of Southborough prior to final acceptance of the work;
- Construction and design performance bonds shall name both Hopkinton and Southborough as obligees/beneficiaries, including use of a dual obligee rider if required by the surety to name both entities.
- Indemnification clauses shall include Southborough as an indemnified party.
- Warranties for portions of the Project that are constructed in Southborough shall name Southborough as the holder of the warranty.

E. Bidding

1. Southborough shall confer with Hopkinton in the evaluation of bids for each construction contract procured for the Project. The Parties shall mutually agree whether a bidder is the lowest eligible and responsible bidder prior to Southborough awarding a contract.

2. Southborough will reject all bids for a contract if Hopkinton determines that said rejection is in the best interests of Hopkinton.

F. Construction.

1. The Project shall be constructed in accordance with bid documents developed by PARE Corporation or such other engineering firm as the Parties may select for a particular portion of the Project within their Town (jurisdiction).

2. Once procurement of the construction contractor is complete, construction of the Project may proceed under Hopkinton's supervision. Southborough shall have the right to observe any and all construction activities.

3. Hopkinton shall provide Southborough with monthly reports concerning the progress of the construction during the prior month.

4. Hopkinton shall be responsible for paying for all costs of construction. Southborough shall require in the contract with the construction contractor that applications for payment be submitted simultaneously to Southborough and Hopkinton. Hopkinton shall pay the construction contractor directly.

VII. System Upgrades and Expansion.

A. Procedure. The Parties shall mutually agree to future system upgrades and expansions. The Parties shall engage in good faith, mutual negotiations concerning the same, if requested by either Party. Unless required by another provision in this Agreement, no Party shall be obligated to upgrade or expand any portion of the Project or either Party's respective water facilities or system.

B. Capital Upgrades

1. For all future capital upgrades that are required by application of Federal or State law or regulation, Hopkinton shall pay its *pro rata* share based upon its maximum allocated capacity compared to the total capacity of the pump station.

2. Any upgrades or additional processes which either Party shall request to be installed and that are not required by Federal or State law or regulation shall be paid solely by the Party requesting the same, unless the Parties otherwise agree.

VII. System Management and Operations

A. Management and Control. Subject to the specific terms of this Agreement, the Southborough water facilities and system shall be under the management and control of Southborough and the Hopkinton water facilities and system shall be under the management and control of Hopkinton.

B. Employees. Southborough employees, servants, and agents shall not be deemed to be Hopkinton's employees, and Hopkinton's employees, servants and agents shall not be deemed

to be Southborough's employees for any including, but not limited to, either Workers' Compensation or unemployment purposes.

C. Leak Identification. The Parties shall each maintain and fund a continuous leak identification program within the respective towns on an annual basis in accordance with applicable MADEP regulations and guidelines prior to the initiation of work.

D. Inspections. Hopkinton has the right to inspect and test any equipment which Southborough is required to install and/or maintain under this Agreement such as, but not limited to, any meters, mains, pumps, valves, tanks, towers or other equipment which are used to provide water to Hopkinton.

E. Water Conservation. Hopkinton shall meet or exceed MWRA required water conservation measures.

F. Capacity Limits

1. Southborough's obligation to supply water under this Agreement is contingent on the MWRA supplying Southborough with water flows sufficient to meet the needs of both Parties.

2. If there is a deficiency in the MWRA water flows such that both Parties' required water flows cannot be maintained, then the deficiency shall be borne by both Parties in the same proportion as the allocated capacities established under this Agreement.

3. Southborough shall only ration or curtail service as a result of the order of a public authority or agency having jurisdiction over the MWRA, or as the result of an emergency condition, a specific result of which rationing, or curtailment of service is required. Southborough shall take such measures as are necessary or appropriate to restore full water service as promptly as possible.

4. If Southborough is required to ration or curtail service, Southborough shall first notify Hopkinton's Department of Public Works and Office of the Town Manager. Such notice shall be given as soon as practicable after the need to curtail or ration is identified. If Southborough determines to ration or curtail service as above provided, it shall concurrently ration or curtail service to its own customers in the same manner and to the same extent.

VIII. Recordkeeping and Billing

A. Reports

1. Each Party shall, at the request of the other, promptly provide any records, reports, documents, or information reasonably related to the rights and obligations of the Parties under this Agreement and to the performance of the terms of this Agreement.

2. Southborough shall provide quarterly and annual water flow summaries to Hopkinton. Such summaries shall contain the amount of all water delivered at Southborough's interconnection points with the MWRA and the amount of water delivered at the Turnover Point to

Hopkinton.

3. Southborough shall maintain records for documenting the total OMR costs in a manner consistent with that shown in Appendix 2. Southborough shall make those records available to Hopkinton for viewing and copying upon reasonable notice.

4. Southborough shall maintain all records regarding the operation and structural aspects of the water supply system as required pursuant to 310 CMR 22.17. Southborough shall make those records available to Hopkinton for viewing and copying upon reasonable notice.

5. To the extent Hopkinton has information regarding water supply from Southborough that is required to be kept by Southborough and upon written request from Southborough to Hopkinton, Hopkinton shall provide to Southborough all such records or information.

6. All records maintained by Southborough under this Agreement shall be prepared and maintained in accordance with sound and appropriate business practices which shall be subject to reasonable review by Hopkinton.

B. Financial Statements

1. All financial statements, records, bills, statements, and reports of any type relating to this Agreement shall be prepared and maintained in accordance with GAAP and procedures consistently applied for the operation of municipal water systems.

2. Hopkinton shall have the right to review and examine such accounting systems, financial statements, records, bills, statements, and reports by agents and representatives of its choice. Hopkinton shall have the right to request review of any financial information and statements based upon its review and examination thereof.

C. Audits by Hopkinton. Hopkinton, at its sole expense, may have the records and statements referenced in Sections [insert] audited by an independent Certified Public Accounting firm. If the auditor identifies discrepancies over a 2-year period that exceed 5% of the total OMR costs of Southborough's operation of the water facilities and systems subject to this Agreement, Southborough shall pay for the reasonable cost of the audit and, in any event, shall reimburse Hopkinton any amount overpaid by it to Southborough.

D. Payment Schedule and Budgeting.

1. Once water is being supplied to Hopkinton, Hopkinton shall make all payments to Southborough that are required by this Agreement quarterly. Payments for OMR costs under this Agreement shall be included in the quarterly assessments or bills.

2. Hopkinton shall make payment of all charges described in the Agreement within 90 days of receipt of the invoice relating to such charges.

3. If Hopkinton detects any error or inaccuracy in any invoice received by it,

it shall promptly notify Southborough in writing of the same. Any sum affected by such notice shall be paid by Hopkinton pending resolution of such discrepancy. If Southborough finds that an error or inaccuracy did occur, Hopkinton shall promptly rebate the amount overcharged.

4. Both Parties agree to appropriate annually sufficient money to pay for each Party's obligations under this Agreement.

5. Prior to the first of February preceding the beginning of each Fiscal Year of this Agreement, Southborough shall prepare and deliver to Hopkinton a copy of an estimated operating budget for OMR costs. The operating budgets as well as the previous year's water consumption shall be used in the forecasting of Southborough's and Hopkinton's anticipated costs in any given fiscal year.

6. Prior to the close of each fiscal year, the Parties shall each encumber sufficient funds or if sufficient funds are not available, shall appropriate at the next Town Meeting such funds in order to properly credit the other Party with its *pro rata* share of OMR costs.

7. It is understood that Southborough may prepare consolidated budgets and forecasts, and it is agreed that they will be in such form as to permit complete and concise identification of those portions of the total budget and forecast that relate to the Project, and sufficient for Hopkinton to encumber those funds as are properly related thereto.

8. Attached hereto and incorporated herein as part of Appendix [insert] is a spreadsheet setting forth the direct and indirect OMR costs of the Project. It should be noted that certain line items are actual, specified amounts while other portions thereof are variable amounts. The actual, specified amounts relate to: (i) operations, administrative, and support personnel, and (ii) other listed items; and Hopkinton's share thereof shall be the percentage of the line items set forth on the schedule.

IX. Dispute Resolution and Enforcement

A. Dispute Resolution

1. The Parties agree to work in good faith to resolve all disputes under this Agreement. In the event that any Party believes the other in breach or default of any obligation under this Agreement, the Party shall provide written notice of the same to the other Party. Said notice shall reasonably describe the breach or default alleged, including identifying all provisions of this Agreement related to said breach or default.

2. No later than 30 days following such a notice, the Parties shall meet and negotiate in good faith to resolve the dispute. Each Party shall have the right to reasonably request information from the other Party related to the dispute, and any Party receiving such a request shall furnish the requested information within 14 days of the request.

B. Enforcement

1. This Agreement's validity, interpretation, construction, performance, and

enforcement shall be governed by Massachusetts law, without regard to Massachusetts' choice-of-law or conflicts-of-law principles or rules. Any claim or action arising under or relating to this Agreement may be brought only in Middlesex County Superior Court, and the parties hereby agree that venue is proper, and shall be proper, only in that forum.

2. No Party shall file any action in a court earlier than 60 days following a notice provided under Section [insert] of this Agreement.

3. Each Party shall bear its own costs, fees, and expenses related to the enforcement of this Agreement. No Party shall be liable for any reliance or consequential damages if that Party is determined by a court to be in breach or default of any obligation under this Agreement.

X. Term and Renewal of Agreement

A. Term. The term of the Agreement is twenty-five (25) years from the Effective Date.

B. Renewal

1. On or before 10 years from the end of the term of the Agreement, the Parties shall meet to negotiate a renewal of this Agreement. The Parties shall continue negotiations in the utmost of good faith with the objective of reaching agreement and entering into an amendment to the Agreement or a new agreement.

2. If the Parties do not accomplish the foregoing on or before 1 year prior to the end of the term of the Agreement, the Parties agree to submit the issue to MADEP and MADEP shall issue orders relating to all terms of renewal and such orders shall be enforceable under applicable laws and regulations. If at the end of the term of the Agreement the Parties have neither reached agreement (to enter into an amendment to the Agreement or a new agreement) nor received such orders from MADEP, the terms of the Agreement shall remain in full force and effect until such time as an agreement is reached or the enforceable orders issued.

XI. Termination of Agreement

A. Either Party, by a vote of its Select Board or Board of Selectmen, may withdraw from and terminate this Agreement effective at the end of the fiscal year ten (10) years following written notice to the other Party.

B. No such Notice shall be effective sooner than 10 years following the Effective Date of this Agreement.

C. In the event of termination by Southborough, Hopkinton shall be entitled to recover a *pro rata* share of capital costs and Incentive Payments incurred under this Agreement, according to the following schedule:

Termination on or before 15 years following Effective Date - Hopkinton shall

recover 100% of total Project costs and Incentive Payments, including capital costs and other costs incurred.

Termination after 15 years following the Effective Date but on or before 20 years following the Effective Date - Hopkinton shall recover 75% of total Project costs and Incentive Payments, including capital costs and other costs incurred.

Termination after 20 years following the Effective Date - Hopkinton shall recover 50% of total Project costs and Incentive Payments, including capital costs and other costs incurred.

XII. Indemnity

A. Southborough shall defend, indemnify, and hold harmless Hopkinton, including Hopkinton's Select Board, its agents, servants, employees, and/or elected officials from and against all liability, damage, loss, costs, claim, demands, and actions of any nature whatsoever for any personal injury, death, or physical damage which arises out of or are connected with, or are claimed to arise out of or be connected with, Southborough's violation of its water use regulations or MADEP regulations.

B. Hopkinton shall defend, indemnify, and hold harmless Southborough, including Southborough's Select Board, its agents, servants, employees, and/or elected officials from and against all liability, damage, loss, costs, claim, demands, and actions of any nature whatsoever for any personal injury, death, or physical damage which arises out of or are connected with, or are claimed to arise out of or be connected with, Hopkinton's violation of its water use regulations or MADEP regulations.

XIII. Other General Terms

A. Notices. All notices permitted or required by this Agreement shall be in writing and delivered by certified mail, return receipt requested, to such persons who may be specified from time to time by each Party and to the other Party's Town Clerk. No notice shall be effective until received by the other Party's Town Clerk.

B. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding on the Parties and their successors and assigns.

C. Force Majeure. If and to the extent that a Party is directly prevented from performing an obligation under this Agreement by an event of force majeure, that Party shall be excused from performing that obligation and shall not be liable in damages or otherwise for the time period that the force majeure event directly prevents such performance, and the parties may also negotiate in good faith with respect to appropriate modifications to the provisions of this Agreement. The term "force majeure" shall mean only the supervening causes described here, each of which is beyond the reasonable control of the affected party: fire, earthquake, floods, explosion, war, terrorism, riots, mob violence, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, laws or orders of governmental or military authorities, epidemic or

pandemic, or any other cause similar to the foregoing, and shall explicitly exclude changed market conditions.

D. Reliance. Nothing contained in the Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either or both Parties.

E. Entire Agreement. This Agreement and the Appendices to this Agreement represent the entire agreement among the Parties pertaining to the subjects covered in this Agreement and expressly supersede all prior negotiations, representations and formal or informal agreements leading up to the final approval and execution of the Agreement respecting such subjects.

F. Amendments and Modifications. The Agreement may be amended or modified only by written instrument signed by all the Parties.

G. Invalidity or Unenforceability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections herein contained by a Court of competent jurisdiction shall not affect the validity or enforceability of the remaining portions the Agreement.

H. Counterparts. This Agreement may be executed in any number of counterpart copies, all of which constitute one and the same agreement and each shall constitute an original.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, each Party has executed the Agreement as an instrument under seal as of the date first written above.

Authorized by Vote of the

Authorized Vote of the

TOWN OF HOPKINTON

TOWN OF SOUTHBOROUGH

By its Select Board

By its Select Board

Chair

Chair

ASSENTED TO:

MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
Commissioner

By: _____
Director

Approved as to form:

Approved as to form:

Hopkinton Town Counsel

Southborough Town Counsel

APPENDIX A
Project Description

[Insert Project Description provided from Pare]