

**Confidential – FINAL 5/14/09**

This Settlement Agreement (“Agreement”) is made by and among Linda Hiesiger, Ellen Tobiassen, Michael S. Fedora, Lillian B. Fedora, Erica Hiesiger, Sheila Townsend, Douglas Townsend, Joanne Bushey, Robert Aronson and Roger Benoit, individuals whose residences are listed below (collectively the “Plaintiffs”), the City of Northampton, a municipal corporation, with an address of City Hall, 210 Main Street, Northampton, Massachusetts 01060, Malcolm B.E. Smith, David Bloomberg, and Sara Northrop, as they are members of the City of Northampton Zoning Board of Appeals (“ZBA”) whose address is City Hall, Room 11, 210 Main Street, Northampton, Massachusetts 01060; and Ameresco Northampton, LLC a Delaware limited liability company with an address of Suite 410, 111 Speen Street, Framingham, Massachusetts 01701 (collectively the “Parties”).

**WHEREAS**, the City of Northampton (the “City”) owns and operates, through its Board of Public Works, a sanitary landfill located on Assessor’s Map-Block-Lot numbers 42-089-001 and 42-079 at 170 Glendale Road, Northampton (the “Landfill”), which receives for disposal municipal solid wastes from the City of Northampton, several other municipalities, and commercial waste haulers;

**WHEREAS**, Ameresco Northampton, LLC (“Ameresco”) owns and operates a landfill gas to energy facility on the City’s Landfill property where it uses landfill gas to produce electricity under an Easement and a Landfill Gas Purchase Agreement with the City (the “Gas Facility”);

**WHEREAS**, Linda Hiesiger, Ellen Tobiassen, Lillian Fedora and Michael Fedora are plaintiffs in an action entitled Hiesiger, et al. v. City of Northampton Zoning Board of Appeals, et al., Land Court Misc. Case No. 08-385513 (the “Land Court Action”), an appeal pursuant to G.L. c. 40A, § 17 to annul and set aside the decision of the Northampton Zoning Board of Appeals upholding the decision of the Northampton Building Commissioner declining to take zoning enforcement against the City operation of the Landfill and Ameresco’s operation of its landfill gas to energy facility and finding, among other things, that the City’s current use of the parcel for a sanitary landfill is a continuation and not an extension, expansion or change of its lawful non-conforming pre-existing landfill use of the subject parcel pursuant to G.L. c. 40A, § 7 and that Ameresco’s landfill gas to energy facility is a lawful “accessory use” under the Northampton Zoning Ordinance;

**WHEREAS**, the City and Ameresco are intervenors in the Land Court Action;

**WHEREAS**, Linda Hiesiger, Ellen Tobiassen, Lillian Fedora and Michael Fedora have also brought an action against the City in Hampshire Superior Court entitled Hiesiger, et al. v. City of Northampton, Civil Action No. 2008-00206 (the “Superior Court Action”), alleging that odors, noise and other impacts from the City’s landfill operation constitute a nuisance and have unreasonably interfered with the use and enjoyment of the property (Counts One and Two);

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**WHEREAS**, the Plaintiffs have asserted a claim in said Superior Court Action against the City under G.L. c. 214, § 7A, alleging violations of the Wetlands Protection Act, G.L. c. 131, § 40, and the Massachusetts Clean Waters Act, G.L. c. 21, §§ 42-43 (Count Three).

**WHEREAS**, the City, Ameresco and the ZBA deny all allegations of the plaintiffs asserted in the Land Court Action;

**WHEREAS**, the City denies all allegations of the plaintiffs asserted in the Superior Court Action;

**WHEREAS**, the Parties wish to settle all claims that were or could have been brought in either the Land Court or Superior Court Actions with respect to the Landfill or the Ameresco landfill gas to energy facility and to avoid the cost, expense and uncertainty of litigation, with no admission of any responsibility, liability or fault;

**WHEREAS**, G.L. c. 214, § 7A, requires court approval of the compromise of any action brought pursuant to its provisions; and

**WHEREAS**, the Parties wish to document the resolution of their disputes in the form of stipulations of dismissal and an agreement for compromise.

**NOW THEREFORE**, the Parties hereto, for and in consideration of the mutual benefits to be derived hereunder, hereby agree as follows:

1. Approval by City Council and Board of Public Works. Upon full execution of this Settlement Agreement, the City shall present this Settlement Agreement including a request for appropriation of funds (a) to an Executive Session of the Northampton City Council on May 21, 2009, for the Council's approval; and (b) to an Executive Session of the Board of Public Works on May 13, 2009 for the Board's approval. The City shall diligently pursue approval of this Settlement Agreement by the City Council and the Board of Public Works. This Settlement Agreement is contingent upon the appropriation of funds for performing this Settlement Agreement by the City Council and the approval of the Board of Public Works, each in the form and content acceptable to the City and City's bond counsel. The City shall promptly notify the plaintiffs in writing at the time the appropriation and approvals are granted.

2. Stipulations of Dismissal with Prejudice of Land Court Action and Superior Court Action Counts One and Two and Joint Motion for Approval of Compromise of Superior Court Action Count Three. Within five (5) days of the later of City Council appropriation for or Board of Public Works approval of this Settlement Agreement, the Parties, through their respective attorneys, will cause to be filed in the Land Court Action and the Superior Court Action Stipulations of Dismissal with Prejudice and without Costs and a Joint Motion for Approval of Compromise of Superior Court Action Count Three in the form of Exhibits A, B, and C, respectively, attached hereto. The Parties and their attorneys shall cooperate fully in scheduling and

participating in oral argument, if any, before the Superior Court for Approval of the Compromise of Count Three of the Superior Court Action. This Settlement Agreement and the transactions contemplated herein are contingent upon the dismissal with prejudice and without costs of all counts in the Land Court Action and Counts One and Two in the Superior Court Action and allowance of the Joint Motion for Approval of the Compromise of Count Three of the Superior Court Action.

3. City Purchase of Fedora Property. The City and the Fedoras shall (a) by June 1, 2009, enter into a Purchase and Sale Agreement for the purchase by the City of the Fedora property at 238 Glendale Road in the form of Exhibit D attached hereto, and (b) thereafter perform their obligations under that Purchase and Sale Agreement. If the City breaches its obligations under said Purchase and Sale Agreement through no fault of the Fedoras, then (a) the Fedoras may seek enforcement of the terms of this Settlement Agreement and (b) the Fedoras' commitments under paragraph 9, except those with respect to the Gas Facility, shall be suspended while the City remains in breach of the Purchase and Sale Agreement, provided that if said breach is cured the Fedoras shall withdraw any appeal made during the time the City was in breach..

4. City Purchase of Hiesiger/Tobiassen Property. The City on the one hand, Linda Hiesiger and Ellen Tobiassen on the other hand, shall (a) by June 1, 2009, enter into a Purchase and Sale Agreement for the purchase by the City of the Hiesiger/Tobiassen property at 981 Park Hill Road in the form of Exhibit E attached hereto, and (b) thereafter perform their obligations under that Purchase and Sale Agreement. If the City breaches its obligations under said Purchase and Sale Agreement through no fault of Linda Hiesiger and Ellen Tobiassen, then (a) Linda Hiesiger and Ellen Tobiassen may seek enforcement of the terms of this Settlement Agreement and (b) the commitments of Linda Hiesiger and Ellen Tobiassen under paragraph 9, except those with respect to the Gas Facility, shall be suspended while the City remains in breach of the Purchase and Sale Agreement, provided that if said breach is cured Linda Hiesiger and Ellen Tobiassen shall withdraw any appeal made during the time the City was in breach..

5. Property Value Protection. For a period of thirty (30) days after the later of dismissal with prejudice of the Land Court Action and Superior Court Action or allowance of the Joint Motion for Approval of Compromise of Count Three of the Superior Court Action as provided in Section 2 above, each of the plaintiffs Sheila Townsend, Douglas Townsend, Joanne Bushey, and Roger Benoit shall have the option to enter into a Property Value Protection Agreement with the City substantially in the form of Exhibit F attached hereto.

6. Public Statements. The City agrees to provide to the plaintiffs for review and comment an advance copy of a press release announcing this Settlement Agreement. The plaintiffs shall not make any other statement to the press or media regarding this Settlement Agreement or the transactions contemplated hereby.

7. Additional Payment The City shall pay to Linda Hiesiger, Ellen Tobiasen, Michael Fedora, and Lillian Fedora, at the time of the later of the closings on the purchases of their respective residences, the additional amount of \$ 67,500.00, by way of cash or certified check, or attorney's trust account check drawn on a local banking institution, made payable to Peter L. Koff, Esq., as attorney for Linda Hiesiger, Ellen Tobiasen, Michael Fedora, and Lillian Fedora.

8. General Releases. The plaintiffs hereby release, acquit, forever discharge, and covenant not to sue the City, MIAA Property and Casualty Group, Inc., or Ameresco, their members, elected or appointed officials, affiliates, directors, officers, insurers, managers, shareholders, contractors, attorneys, agents, employees, successors and assigns from and against or in respect of any claims, charges, complaints, demands, costs, suits, debts, actions, causes of action, damages, and liabilities of any nature whatsoever, in law or in equity, that have arisen or may arise from the beginning of time to the end of time, whether now known, unknown, knowable or unknowable, in any way related to, connected with, or arising out of or in connection with the current operations of the Landfill or the Gas Facility or any expansion, development, tonnage increase or other modification of the Landfill or the Gas Facility, including but not limited to claims asserted or that could have been asserted in the Land Court Action or Superior Court Action. Notwithstanding the foregoing, if after the date of the closing of the purchase and sale of the Fedora property or the Hiesiger/Tobiasen property any subsequent purchaser of either of said properties brings any claim against Michael Fedora, Lillian Fedora, Linda Hiesiger, or Ellen Tobiasen (for purposes of this paragraph, each a "Seller") for bodily injury, real or personal property damages, and/or environmental damages of any kind whatsoever, which claim is in any way related to, connected with, or arising out of the Landfill (a "Landfill claim"), then the provisions of this General Release shall not preclude the Seller from asserting a claim or claims against the City to make the City responsible to pay any damages arising from said Landfill claim that may be asserted against the Seller and, in connection with the assertion of said claim or claims, to seek to hold the Seller harmless from said Landfill claim or claims.

9. No Appeal. The plaintiffs hereby agree not to directly or indirectly appeal any permit or approval for the existing Landfill or the Gas Facility or any future expansion of the Landfill or the Gas Facility or other solid waste facility on the subject parcel or the existing site assigned land, including, without limitation, any board of health site assignment (or modification thereto) from the Northampton Board of Health; site suitability determination or waiver of any siting criterion by the MassDEP; Heavy Special Use Special Permit from the Northampton City Council or other zoning permit or approval from any other City board, commission or official; Site Plan Approval; Solid Waste Management Facility Permit, Authorization to Construct or Authorization to Operate (and any modifications thereto); Order of Conditions under the Wetlands Protection Act; or any other permit whatsoever related to the establishment, construction, maintenance, operation, closure or post closure of a solid waste facility at such location.

10. No Admission of Liability. The Parties acknowledge that no party has admitted liability, and, to the contrary, each party expressly denies any wrongdoing or

liability whatsoever, and agrees that this Agreement is being entered into solely to resolve disputed claims and to avoid the inconvenience and expense of resolving the Land Court Action and the Superior Court Action in the courts. Except to the extent necessary to enforce the terms of this Agreement, any evidence relating to the negotiation, terms or recitals of this Agreement shall be inadmissible in any future action among or involving the Parties.

11. Parties Bound. This Agreement shall be binding upon and inure to the benefit of all Parties and their respective heirs, devisees, administrators, agents, successors, assigns, beneficiaries, grantees and affiliates.

12. Severability. In the event that a court of competent jurisdiction declares any provision of this Agreement to be illegal, void, or unenforceable for any reason, this Agreement shall continue in full force and effect without said provision so long as the remaining provisions remain intelligible and continue to reflect the original intent of the Parties.

13. Complete Agreement. This Agreement constitutes the full and entire agreement and understanding of the Parties regarding the subject matter hereof and supersedes any and all prior agreements, understandings, representations, and statements by or between the Parties. This Agreement may not be amended, modified or waived except by an instrument in writing executed by all Parties.

14. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, and, if necessary after the parties have followed paragraph 21 below, the Parties agree to submit to the jurisdiction of the courts of the Commonwealth with respect to any disputes arising hereunder.

15. Voluntary Execution. The Parties hereby acknowledge that they have read and understand the terms of this Agreement, have been advised concerning their respective rights and obligations hereunder by their respective counsel of their own choice, and agree to be bound hereunto as of the effective date. This Agreement is the result of arms-length negotiations between the Parties, and hence the rule that ambiguities in a document are construed against the drafter thereof shall not apply to this Agreement.

16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute a single Agreement.

17. Authority. The individuals who have executed this Agreement on behalf of the respective Parties each expressly represents that he/she is fully authorized to execute this Agreement on behalf of such entities or persons.

18. Effective Date. The effective date of this Agreement is the date on which the last party signs this document.

19. Payment of Mediation Fee. The Parties hereby acknowledge that any unpaid charges for the services of Lauren S. Rikleen, Esq., as mediator, shall be paid in equal shares by the plaintiffs, the City and Ameresco.

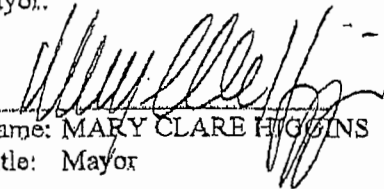
20. Confidentiality. The Parties agree that the terms of this Agreement shall not be disclosed until the Land Court Action and the Superior Court Action are dismissed or otherwise settled and compromised, except that the terms of this Agreement may be disclosed to third parties serving as attorneys, auditors, tax preparers and insurance providers to the Parties (which third parties will be directed to treat such information confidentially), and except to the extent that disclosure is required under federal, state, local and municipal law and City ordinances.

21. Dispute Resolution. If any dispute arises under this Agreement, the parties will use reasonable efforts to resolve it promptly and amicably before commencing litigation, including by non-binding mediation with Lauren S. Rikleen, Esq.

IN WITNESS THEREOF, the Parties have duly executed this Agreement.

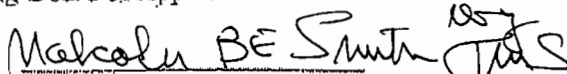
Defendants:

The City of Northampton  
By its Mayor:

  
Name: MARY CLARE HIGGINS  
Title: Mayor

Date: 5/29/09

Zoning Board of Appeals

  
Name: MALCOLM B. E. SMITH  
Title: Chairman

Date: 5/29/09

  
Name: DAVID BLOOMBERG  
Title: Member

Date: 5/29/09

  
Name: SARA NORTHRUP  
Title: Member

Date: 5/29/09

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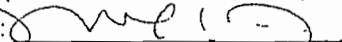
Settlement Agreement

Ameresco Northampton, LLC.

DJC By: Ameresco LIEG Holdings III LLC,  
DJC Name: its sole member

Date: \_\_\_\_\_

DJC Title: Member  
DJC Ref: Ameresco, Inc., its sole member

By: 

Date: \_\_\_\_\_

DJC Name: David J. Cornish

DJC Title: Member Executive Vice President

Plaintiffs

Name: Linda Hiesiger  
981 Park Hill Road  
Northampton, MA 01062

Date: \_\_\_\_\_

Name: Ellen Tobiassen  
981 Park Hill Road  
Northampton, MA 01062

Date: \_\_\_\_\_

Name: Michael S. Fedora  
238 Glendale Road  
Northampton, MA 01062

Date: \_\_\_\_\_

Name: Lillian B. Fedora  
238 Glendale Road  
Northampton, MA 01062

Date: \_\_\_\_\_

Name: Erica Hiesiger  
981 Park Hill Road  
Northampton, MA 01062

Date: \_\_\_\_\_

Name: Sheda Townsend  
45 Glendale Road  
Northampton, MA 01062

Date: \_\_\_\_\_

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Ameresco Northampton, LLC.

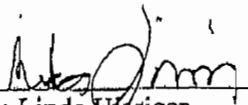
By: \_\_\_\_\_  
Name:  
Title: Member

Date: \_\_\_\_\_

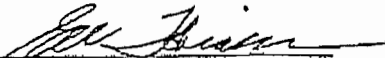
By: \_\_\_\_\_  
Name:  
Title: Member

Date: \_\_\_\_\_

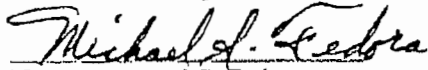
Plaintiffs

  
Name: Linda Hiesiger  
981 Park Hill Road  
Northampton, MA 01062

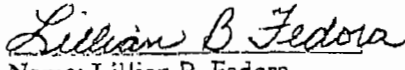
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Name: Ellen Tobiassen  
981 Park Hill Road  
Northampton, MA 01062

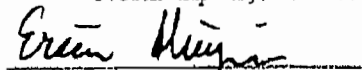
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Name: Michael S. Fedora  
238 Glendale Road  
Northampton, MA 01062

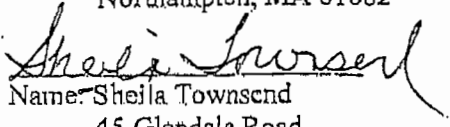
Date: 5/17/09

  
Name: Lillian B. Fedora  
238 Glendale Road  
Northampton, MA 01062

Date: 5-17-09

  
Name: Erica Hiesiger  
981 Park Hill Road  
Northampton, MA 01062

Date: 5/17/09

  
Name: Sheila Townsend  
45 Glendale Road  
Northampton, MA 01062

Date: 5-15-09



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Douglas Townsend  
Name: Douglas Townsend  
45 Glendale Road  
Northampton, MA 01062

Joanne Bushey  
Name: Joanne Bushey  
984 Park Hill Road  
Northampton, MA 01062

\_\_\_\_\_  
Name: Robert Aronson  
71 Sylvester Road  
Northampton, MA 01062

Roger Benoit  
Name: Roger Benoit  
942 Park Hill Road  
Northampton, MA 01062

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Date: 5/15/09

Date: 5/15/09

Date: \_\_\_\_\_

Date: 5/16/09

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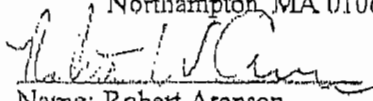
Settlement Agreement

\_\_\_\_\_  
Name: Douglas Townsend  
45 Glendale Road  
Northampton, MA 01062

Date: \_\_\_\_\_

\_\_\_\_\_  
Name: Joanne Bushey  
984 Park Hill Road  
Northampton, MA 01062

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Name: Robert Aronson  
71 Sylvester Road  
Northampton, MA 01062

Date: 5/15/09

\_\_\_\_\_  
Name: Roger Benoit  
942 Park Hill Road  
Northampton, MA 01062

Date: \_\_\_\_\_

\* Excepted from ~~the~~ my agreement To the general releases  
in paragraph 8 are any future claims for personal injury caused  
by the landfill.