

**AGREEMENT**

This Agreement is made this 24<sup>th</sup> day of June, 2024, by and between Eagle Hill Foundation of Massachusetts, Inc., a Massachusetts non-profit corporation duly established under the law, having a principal place of business at 242 Old Petersham Road, Hardwick, Massachusetts (“Eagle Hill”), acting by and through its Board of Trustees, and the Town of Hardwick, a Massachusetts Municipality having a principal place of business at 307 Main Street, Gilbertville, Massachusetts, (the “Town”), acting by and through its Board of Selectmen. Hereinafter, Eagle Hill and the Town are together the “Parties”.

**RECITALS**

WHEREAS, Eagle Hill is a non-profit tax-exempt educational institution that owns property located off Old Petersham Road, Hardwick, Massachusetts (the “Property”);

WHEREAS, the Town is the owner and operator of a public sanitary sewer system and wastewater treatment facility located in the Gilbertville section of the Town (the “Sewer System” or the “System”);

WHEREAS, the Property is connected to and benefits from the Sewer System;

WHEREAS, the Town has entered into an Agreement with the United States Department of Agriculture to upgrade the Sewer System through a combination of grants and loans, which will require the Town to borrow the sum of five million six hundred and eight-one thousand dollars (\$5,681,000), payable over a term of forty (40) years (the “Project”);

WHEREAS, the Project will result in substantial benefits to the users of the Town’s Sewer System, including Eagle Hill, which is the largest user of the system; without the Project, continued use of the System by the System’s users would be in jeopardy;

WHEREAS, the Town has determined that it is in the best interests of the community to repay the loan by including principal and interest payments, i.e. debt service, in the calculation of the Town's annual property tax levy;

WHEREAS, by raising funds for the repayment of the loan through the assessment of real property taxes, Eagle Hill will not be required to pay its proportional share of the cost of the Project as a result of its tax-exempt status as a non-profit educational institution;

WHEREAS, Eagle Hill acknowledges that it will realize a significant benefit from the Project and the Town's choice not to recover Project costs through the assessment of betterments; and

WHEREAS, the parties recognize that there are mutual benefits to Eagle Hill making payments-in-lieu of taxation to cover a portion of the Project costs subject to the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### **AGREEMENT**

1. The Town hereby declares that it intends to include the costs associated with the Project within the real property tax levy of the Town for the entirety of the forty-year loan term.
2. Beginning on July 1, 2024, Eagle Hill will make annual payments-in-lieu of taxes on July 1 of each calendar in the amount of seven thousand six hundred thirty-four dollars and four cents (\$7,634.04), for forty (40) consecutive calendar years, or until Eagle Hill has paid the total sum of three hundred and five thousand three hundred and sixty-one dollars and sixty cents (\$305,361.60).

3. Eagle Hill shall continue to make annual installments as set forth in Paragraph 2 hereof until the total sum of \$305,361.60 is paid in full and the Town will accept said sum as payment in full of Eagle Hill's contribution to the Project costs.
4. Notwithstanding the foregoing, Eagle Hill will have the option to terminate this Agreement and Eagle Hill will not be required to continue making payments if Eagle Hill becomes liable for a portion of the Project costs through other means, including but not limited to: if the \$5,681,000 debt or any portion of the \$5,681,000 debt is funded through the assessment of betterments payable by Eagle Hill, if Eagle Hill loses its tax-exempt status and becomes liable for payment of real property taxes, if the debt is forgiven, if this Agreement is declared illegal or unenforceable by a court of competent jurisdiction or an agency of the United States or Commonwealth of Massachusetts.
5. If this Agreement is terminated in accordance with Paragraph 4 hereof, Eagle Hill will not be entitled to any refund of amounts paid prior to termination of this Agreement and Eagle Hill may be required to pay a portion of the Project costs, less any amounts previously paid under this Agreement.
6. During the term of this Agreement, Eagle Hill will be responsible for paying sewer user fees and other assessments not associated with the Project on the same terms and conditions as any other residential user of the Sewer System and, during the term of this Agreement, the Town will not adjust sewer rates, or any type of sewer fees, that adversely impact Eagle Hill in a manner different than the impact on other residential users. This includes but is not limited to loading factors, base charges that are different than a normal residential user, meter charges that are different than a normal residential

user/meter, or tiered rates of any kind that result in Eagle Hill's average per gallon rate being higher than a normal residential user.

7. During the term of this Agreement, the Eagle Hill will be permitted to continue using the Sewer System subject to payment of applicable sewer user fees and assessments and compliance with the rules and regulations of the Town's Sewer Department and Eagle Hill will be subject to collection and enforcement actions to the same extent as any other sewer user.
8. The term of this Agreement shall begin on the date first written above and shall continue until the amount set forth in Paragraph 2 is paid in full or until this Agreement is terminated in accordance with Paragraph 4.
9. If Eagle Hill fails to make any payment due under this Agreement within thirty (30) days of its due date, in addition to any other remedies available at law or in equity, the Town shall have the right to charge interest on the outstanding amounts in accordance with the Massachusetts General Laws.
10. The Parties understand and acknowledge that this Agreement contains the entire agreement between them, and the terms of this Agreement are contractual and not a mere recital.
11. The Parties acknowledge that this Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and any prior agreements, negotiations, and understandings are canceled and superseded by this Agreement.
12. The Parties agree that each has contributed to the drafting of this Agreement and no Party shall have any part of this Agreement interpreted against that Party's interests on the basis that the Party drafted the language to be interpreted.

13. The Parties further state that they have carefully read the foregoing Agreement and fully understand the contents thereof, and that the signatories hereto are duly authorized to sign this Agreement on behalf of the respective Parties and that each sign and executes this Agreement as their free act and deed.
14. The Parties hereby acknowledge that no promise or inducement which is not herein expressed has been made and in executing this Agreement, the Parties do not rely upon any statement or representation made by any person, firm, or entity hereby released other than those set forth in this Agreement.
15. This Agreement may not be varied in its terms by an oral agreement or representation or otherwise, and none of the terms hereof may be waived, except by an instrument in writing of subsequent date hereof executed by all of the Parties.
16. The Parties agree that this Agreement may be executed in one or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same Agreement.
17. Notwithstanding anything to the contrary herein, there are no third-party beneficiaries to this Agreement.
18. Each provision of this Agreement shall be considered separate and if, for any reason, any provision herein is determined to be invalid or contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid, except that if all or any part of the release of claims provided by a Party is deemed invalid, the Agreement shall be deemed invalid.
19. This Agreement shall be binding upon and inure to the benefit of each of the Parties hereto and the respective heirs, legal representatives, successors and assigns of each.

20. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. Any litigation arising hereunder shall be brought solely in the courts of the Commonwealth of Massachusetts.

21. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. The facsimile signature or signature sent electronically by .pdf or otherwise of any party to any counterpart shall constitute the signature of such party for all purposes.

IN WITNESS WHEREOF, the Parties, being duly authorized so to do, have executed this Agreement as of the date first set forth above.


THE TOWN OF HARDWICK

EAGLE HILL FOUNDATION  
OF MASSACHUSETTS, INC.,

By its Board of Selectmen,

By its Head of School

  
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Kelly Kemp

  
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Erin Wynne