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December 29, 2008

Hon. Mayor Mark D. Boughton
Hon. Members of the Common Council
155 Deer Hill Avenue
Danbury, CT 06810

Re: Candlewood Lake Shoreline Management Plan
Regional Zoning and Use Agreement

Dear Mayor and Council:

The attached proposed Agreement sets forth a proposal by which the regional, affected municipalities having frontage or interests in and on Candlewood Lake would jointly and cooperatively manage certain identified land use approvals and uses that would be authorized by federal law or local regulation.

As you may know, since the purchase of the Housatonic River Project, including the Lake by FirstLight Hydro Generating Company ("FirstLight"), the parties have been trying to agree upon a Shoreline Management Plan ("SMP") that the Federal Energy Regulatory Commission ("FERC") could approve. The Mayor has been active in proceeding with the safeguard and protection of Danbury's rights and the prevailing rights of its citizens within the structural processes of the FERC approval system. Thus, the SMP process continues, and work remains before that is finalized.

In the meantime, and with respect to the other part of this process, FirstLight and the municipalities involved (Danbury, New Milford, Brookfield, Sherman, New Fairfield and Newtown) have tentatively agreed upon a plan to cooperatively manage land use approvals for residents with frontage and/or existing rights to the Lake. While an earlier commitment letter had been signed to permit the continued negotiation of the Agreement, consideration and final approval of the Agreement is to be by the Council.

Therefore, and pending additional details to be provided you, kindly consider referral of this issue to committee, in order that prompt consideration may be received for this important matter. As indicated, we will be prepared to give you the full background once the committee meets. Please do not hesitate to contact us if you have any questions.

Very truly yours,

Laszlo L. Pinter
Deputy Corporation Counsel

Attachment

cc: Robert J. Yamin, Deputy Corporation Counsel
First Light
Towns of: New Milford, Brookfield, Sherman, New Fairfield and Newtown
HVCEO

Llp/LakePlan

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AGREEMENT

This Agreement is made as of the ____ day of _____ 2008, by and between FirstLight Hydro Generating Company (“FirstLight”) and [LIST MUNICIPALITIES] (individually referred to as “Municipality” or collectively, “Municipalities”). FirstLight and each Municipality are each referred to herein as a “Party” or collectively, as the “Parties”.

RECITALS

WHEREAS, the Connecticut Supreme Court held that certain land use and building regulations are preempted by the Federal Power Act (“FPA”) within the boundary of the Housatonic River Project (“Project”);

WHEREAS, the Municipalities desire to continue to have their land use, building, and health regulations applied to the use of lands and waters within their boundaries that are also within the Project boundary;

WHEREAS, Article 413 (standard land use article) of the Project license authorizes FirstLight to grant approvals for certain use and occupancy of lands and waters within the Project boundary without prior Federal Energy Regulatory Commission (“FERC”) approval and any use and occupancy not authorized by Article 413 is subject to approval by FERC;

WHEREAS, FirstLight has authority under Article 413 to authorize the following types of use and occupancy of lands and waters within the Project boundary:

- (1) landscape plantings.
- (2) non-commercial piers, landings, boat docks or similar structures that can accommodate no more than 10 water craft at a time and where said facility is intended to serve single family type dwellings.
- (3) embankments, bulkheads, retaining walls or similar structures for erosion control to protect the existing shoreline.
- (4) food plots and other wildlife enhancement.
- (5) easements and rights of way for certain public infrastructure such as replacement or expansion of existing roads and bridges; and,

WHEREAS, if a use and occupancy of Project lands and waters is not authorized under Article 413, FirstLight may, at its discretion, petition FERC to authorize such use and occupancy.

NOW, THEREFORE, in consideration of the premises and mutual agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. PURPOSE OF AGREEMENT

The purpose of this Agreement is to establish a process and standards for the application of local wetland, zoning, building and health permit requirements to lands/waters within the

Housatonic River Project boundary to the extent permitted under the Project license and the FPA.

II. TERM

- (a) This Agreement shall become effective on the date on which this Agreement has been duly executed and delivered by the Parties and reviewed and approved by FERC as described in Section X of this Agreement (“Effective Date”).
- (b) The term of this Agreement shall be for five (5) years from the Effective Date. Thereafter, the Agreement shall continue in force from year to year until terminated in accordance with the terms of this Agreement.
- (c) The Agreement may be terminated by any Municipality (but only with respect to such Municipality) upon 120 days prior notice to the other Parties to this Agreement; provided, however, the Agreement shall remain in full force and effect as it relates to any remaining non-terminating Parties.
- (d) FirstLight may terminate this Agreement with respect to all Parties upon 120 days prior notice to the Municipalities.

III. PROCESS PROTOCOL FOR NON PROJECT USE AND OCCUPANCY THAT MAY BE AUTHORIZED BY LICENSEE UNDER ARTICLE 413

The following process shall be used to address any request for non-Project use of lands or waters within the Project boundary where FirstLight has authority under Article 413 of the Project license to grant approval to issue a license without FERC approval:

- (a) Upon contact from applicant, FirstLight shall provide an application packet and schedule a site visit if necessary.
- (b) Following receipt of an application, FirstLight shall review to determine whether the proposed use may be permitted under Article 413 of the Project license and whether adequate information is provided.
- (c) If adequate information is provided and a preliminary determination has been made that the proposed use is permissible under Article 413, FirstLight shall issue a letter of filing consent to the applicant, authorizing the applicant to seek applicable wetland, zoning, health and building permits.
- (d) If adequate information is not provided and/or the proposed use is not permissible under Article 413, the application shall be denied by FirstLight.
- (e) Following receipt of a letter of filing consent, the applicant shall apply for all required permits, including wetland, zoning, building and health permits.

- (f) If required permits are denied, FirstLight shall not approve the application.
- (g) If required permits are granted, following final review, FirstLight shall approve the application, provided it is consistent with the requirements of its FERC license and the FPA.
- (h) FirstLight shall promptly notify the applicant and applicable Municipality's chief elected official or designee(s) when the application has been approved or denied.
- (i) Following completion of any authorized improvements, the applicable local authority shall inspect the improvements for conformity with the terms of the local permit(s) and the license and shall notify the applicant and FirstLight in writing regarding compliance.
- (j) Following affirmative notification from the local authority, FirstLight will conduct a follow up site inspection and affix a metal license tag to the structure.
- (k) If the applicant has not complied with the terms of their license, including the local permit(s), FirstLight shall contact them and order compliance.

IV. PROCESS PROTOCOL FOR NON PROJECT USE AND OCCUPANCY THAT MUST BE AUTHORIZED BY FERC

- (a) If a proposed use or occupancy is not permissible under Article 413 and therefore must be authorized by FERC in response to a request from FirstLight, the relevant Municipality and FirstLight shall consult with each other regarding the acceptability of such use or occupancy.
- (b) If FirstLight and the relevant Municipality make a preliminary determination that the proposed use or occupancy is potentially acceptable, FirstLight shall inform the prospective applicant for such use what information and other materials must be provided in order for FirstLight to further evaluate the proposed use or occupancy. FirstLight reserves its discretion to make the final decision whether to apply for FERC authorization of the proposed use or occupancy.
- (c) If adequate information is provided and FirstLight continues to support a positive preliminary determination regarding the proposed use or occupancy, FirstLight shall issue a letter of filing consent to the applicant, authorizing the applicant to seek required wetland, zoning, health and building permits.
- (d) If required permits are denied, FirstLight shall not petition FERC to authorize such proposed use and occupancy.

- (e) If required permits are granted, FirstLight shall petition FERC for authorization and the relevant Municipality shall file with FERC a letter in support of such authorization.
- (f) If FERC denies the petition for authorization, FirstLight and/or the relevant Municipality may, at its discretion, request rehearing and judicial review.
- (g) If FERC issues an order granting the petition for authorization, the approved use may proceed in accordance with the terms of the FERC order.
- (h) Following completion of any authorized improvements, the applicable local authority shall inspect the improvements for conformity with the terms of the local permit(s) and the license and notify the applicant and FirstLight in writing regarding compliance.
- (i) Following affirmative notification from the local authority, FirstLight will conduct a follow up site inspection and affix a metal license tag to the structure.
- (j) If the applicant has not complied with the terms of their local permit(s) and the license, FirstLight shall contact them and order compliance.

V. APPLICATION OF LOCAL WETLAND, ZONING, BUILDING AND HEALTH PERMIT REQUIREMENTS

- (a) If an applicant does not obtain the required wetland, zoning, building and health permits for use and occupancy, FirstLight shall not approve such use or occupancy, provided that such use or occupancy is not necessary to comply with the terms of the Project license and the FPA.
- (b) Local setback requirements shall be waived within the Project boundary due to the limited dimensions of Project lands.
- (c) If the necessary permits for such use and occupancy are obtained and FirstLight has authority under Article 413 to authorize such use, FirstLight shall approve such use to the extent consistent with its obligations under the Project license and the FPA.
- (d) As a condition of any application granted, the applicant is required to submit to inspections by local authorities.

VI. DOCKS WITHIN PROJECT BOUNDARY

- (a) A "Preexisting Dock" is defined as:
 - i. A non-commercial dock owned by an abutting property owner, including community associations, tax districts or municipalities, that was

constructed within, or partially within, the Project boundary prior to July 1, 2008; or

- ii. A non-commercial dock owned by an individual or entity who possesses an easement, or other legal right, allowing the construction and maintenance of a dock that was constructed within the Project boundary prior to July 1, 2008.
 - iii. A non-commercial dock owned by an individual that possesses an easement or other legal right of access to the Project that was constructed within the Project boundary prior to December 31, 2000.
- (b) Preexisting Docks that do not impede navigation, present a threat to safety and health, interfere with Project operations or unduly interfere with the ability of others to properly exercise their granted rights shall be allowed to remain and can be replaced by new docks of the same location, size and configuration provided that all necessary approvals are obtained from FirstLight and the relevant local authorities.
- (c) For Preexisting Docks, any non-encapsulated foam must be replaced by April 1, 2018, or sooner if the license is transferred or the dock is replaced or modified.

VII. EXISTING STRUCTURES WITHIN PROJECT BOUNDARY

- (a) Preexisting non-commercial structures within the Project boundary existing as of July 1, 2008 shall be grandfathered unless such structures:
- i. Present a threat to safety or health.
 - ii. Interfere with Project operations.
 - iii. Unduly interfere with the ability of others to properly exercise their granted rights.
 - iv. Are required to be removed by FERC.
- (b) For the purposes of this Agreement, a Preexisting Structure is a:
- i. A structure owned by abutting property owner(s), including community associations, tax districts and municipalities, that was constructed within the Project boundary prior to July 1, 2008.
 - ii. A structure owned by individual(s) who possess an easement or other legal right allowing the construction and maintenance of such structure on lands within the Project boundary and that was constructed within the Project boundary prior to July 1, 2008.
- (c) New septic systems shall not be permitted on Project lands. Existing septic systems may remain in place provided they receive all necessary permits in accordance with

applicable health codes and there is no discharge of effluent into Project or other waters.

- (d) Existing septic systems on lands within the Project boundary may be replaced only in accordance with applicable health codes and only if FirstLight, based on documentation provided by the septic system owner, determines that it is not practicable to relocate the system outside the Project boundary.

VIII. REGISTRATION OF PREEXISTING STRUCTURES AND PREEXISTING DOCKS WITHIN PROJECT BOUNDARY

- (a) Preexisting Structures and Preexisting Docks must be registered with FirstLight and receive a license for continued use and occupancy. Preexisting Structures and Preexisting Docks will be registered by FirstLight and licenses will be issued by FirstLight without the need for the applicant to obtain the required local land use, building, wetlands and health permits for the particular Preexisting Structure or Preexisting Dock.
- (b) FirstLight shall not impose a fee for the registration of Preexisting Structures or Preexisting Dock and for the issuance of a license pursuant to this Section VIII provided that the owner of the Preexisting Structure or Preexisting Dock must register the Preexisting Structures or Preexisting Dock on or before twelve (12) months following the date of FERC's approval of those portions of the Agreement subject to its jurisdiction ("Registration Deadline").
- (c) If an individual or entity fails to register its Preexisting Structure or Preexisting Dock prior to the Registration Deadline, FirstLight will consider the Preexisting Structure or Preexisting Dock as an unregistered use that is subject to the license application process for a non-Project use of lands or waters within the Project boundary as described above in Sections III or IV, however, such failure to timely register shall not alter applicable state law pertaining to the legal status of non-conforming structures with respect to such Preexisting Structures or Preexisting Docks.
- (d) If a Preexisting Structure or Preexisting Dock is being replaced or modified with regards to size, location or configuration, a new license shall be required along with all of the necessary local land use, building, wetland and health permits.

IX. ENFORCEMENT

- (a) FirstLight is responsible for enforcement of the terms of this Agreement and FERC requirements as they apply to the use and occupancy of lands and waters within the Project boundary.
- (b) Local land use, building, and health officials shall have permission to conduct inspections of authorized and unauthorized structures within the Project Boundary.

If an alleged violation is discovered, the local official shall report it to FirstLight. If the material violation pertains to the failure to comply with the terms of the local permit(s) or license, or pertains to an unlicensed or non-preexisting activity or structure or dock, FirstLight shall undertake action to enforce and to secure compliance. The Municipalities, their agents, employees and representatives hereby release and discharge FirstLight, its respective directors, officers, members, and FirstLight affiliates and related entities' respective directors, officers, members, and employees from all liability, claims, demands, losses or damages related in any way or arising out of the activities of the local land use, building, and health officials as set forth herein. The Municipalities shall indemnify, save and hold harmless FirstLight from any litigation, expenses, attorney fees, loss, liability, damage, or costs which it may incur as the result of any and all claims of bodily damage or injury raised by the local land use or building officials.

- (c) Local land use, building, and health officials shall conduct land use, building, and health code inspections of improvements authorized by FirstLight.
- (d) Enforcement remedies available to FirstLight include trespass actions (where FirstLight owns the relevant land in fee) or the exercise of its federal right of eminent domain under Section 21 of the FPA.
- (e) To the extent practicable, FirstLight shall consult with the relevant Municipality regarding enforcement issues regarding opportunities for coordinated enforcement actions.

X. DISPUTE RESOLUTION

- (a) If any dispute should arise regarding this Agreement the Municipalities and FirstLight agree to utilize a non-binding dispute resolution process prior to filing a complaint at FERC or taking any other legal action such as litigation in state or federal court; provided that such requirement shall not be construed to limit any Party from timely filing and pursuing any administrative or judicial appeal.
- (b) This Agreement may be amended upon mutual agreement of the Parties and subject to approval by FERC, if necessary.

XI. REVIEW AND APPROVAL BY FERC

- (a) This Agreement shall be submitted by FirstLight to FERC for review.
- (b) FirstLight's compliance with the Agreement is contingent upon FERC approval of matters committed to FERC's discretion under the FPA such as the grandfathering of Preexisting Structures and Preexisting Docks within the Project boundary.
- (c) If FERC issues orders inconsistent with the terms of this Agreement, a Party may immediately withdraw from the Agreement upon written notice to other Parties,

notwithstanding the termination notice requirements set forth in Section I of this Agreement.

XII. MISCELLANEOUS

- (a) This Agreement shall be binding upon the Parties and upon their respective successors and assigns.
- (b) This Agreement and the rights and duties of the parties hereunder shall be governed and construed, enforced and performed in accordance with the laws of the State of Connecticut.
- (c) This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the Parties, intending to be legally bound by the provisions of this Agreement, has caused its duly authorized representatives to execute this Agreement.

[SIGNATURES]