

PAYMENT IN LIEU OF TAX AGREEMENT
BETWEEN
THE CITY OF CONCORD
AND BRIAR HYDRO ASSOCIATES

In accordance with RSA 72:74, the City of Concord, New Hampshire (the “City”), and Briar Hydro Associates, a New Hampshire limited partnership with offices at 2 Commercial Street, Boscawen, New Hampshire, (“BRHA”), enter into a Payment in Lieu of Tax (“PILOT”) Agreement on this ___ day of October 2018 (“Agreement”). The City and BRHA, individually, are each referred as a “Party” and are collectively referred to as the “Parties.” This Agreement constitutes the Second Collective PILOT Agreement between the Parties, which includes the following BRHA hydroelectric projects: (1) Rolfe Canal Hydroelectric Project; (2) Penacook Upper Falls Hydroelectric Project; and (3) Penacook Lower Falls Hydroelectric Project.

WHEREAS, BRHA owns and operates the Rolfe Canal Hydroelectric Project, a 4.283 Megawatt hydroelectric generating facility along the Contoocook River (“ROLFE”), 100% of which is within the City; and

WHEREAS, BRHA owns and operates the Penacook Upper Falls Hydroelectric Project, a 3.02 Megawatt hydroelectric generating facility along the Contoocook River (“PUF”), 66.42% of which is within the City; and

WHEREAS, BRHA owns and operates the Penacook Lower Falls Hydroelectric Project, a 4.6 Megawatt hydroelectric generating facility along the Contoocook River (“PLF”), 9.1% of which is within the City; and

WHEREAS, the City and BRHA had been party to numerous separate PILOT agreements for Rolfe, PUF and PLF between 1985 and March 31, 2013; and

WHEREAS, the City and BRHA had been party to a collective PILOT agreement for Rolfe, PUF and PLF from April 1, 2013 to March 31, 2018; and

WHEREAS, under the terms of this Agreement, the City and BRHA enter into the this Second Collective PILOT Agreement;

NOW THEREFORE, in accordance with RSA 72:74, the Parties hereby acknowledged, agree as follows:

I. DEFINITIONS

a. “Agreement” shall mean this Agreement also referred to as the Second Collective PILOT Agreement.

b. The “Contract Year” shall mean the period beginning on April 1 and ending on March 31.

c. “Gross Revenue” shall mean the total revenue of the Project in the preceding calendar year from the sale, trade or auction of electricity, capacity pricing and Renewable Energy Certificates (“RECs”) pursuant to a Power Sales Arrangement, and shall include electricity, capacity pricing and RECs which are sold, traded and/or auctioned during the calendar year even if payment is not received until after March 31.

d. “Payment in Lieu of Tax” (“PILOT”) shall mean all payments made by BRHA to the City under this Agreement in lieu of any and all taxes that would otherwise be assessed by the City against BRHA.

e. “PILOT Rate” shall mean the percentage rate, as set forth in Section IV, by which the PILOT is calculated using the formula more specifically described at Section II below.

f. “Power Sales Arrangement” shall mean any agreement or agreements pursuant to which electricity produced by the Project is sold, including the sale, trade or auction of RECs and capacity payments.

g. “Projects” shall mean the ROLFE, 100% of which is located in the City, the PUF, 66.42% of which is located in the City, and the PLF, 9.1% of which is located in the City. Projects shall also include any and all real and personal property owned by BRHA and used in the production of electric power at the power facilities and said Projects, including the land, all rights, easements and other interests thereto, including transmission lines from such facility, and all dams, buildings, structures and other improvements situated thereon which are necessary or incidental to the production of power at the Projects.

II. PAYMENT FORMULA

The PILOT as set forth in this Agreement shall be calculated by multiplying the PILOT Rate times the Gross Revenue for such year for each project by the rate indicated below:

Project	Rate
ROLFE	100.00 %
PUF	66.42 %
PLF	9.10 %

III. TERM

The term of this Agreement shall be for five years commencing on April 1, 2018 and ending on March 31, 2023. Notwithstanding the end of the term, the final PILOT shall be due and payable on or before June 30, 2023 based on the Gross Revenue from the sale, trade or auction of electricity, capacity pricing and RECs pursuant to all Power Sales Arrangements from January 1, 2022 through December 31, 2022, even if received by BRHA after December 31, 2022.

IV. PILOT RATE

The PILOT Rate for the Contract Year during the term of this Agreement shall be seven and one half percent (7.50%).

V. CERTIFICATION AND PAYMENT

Each year on or before March 31st BRHA shall present to the City a statement containing the information hereinafter set forth together with the payment of the amount of the PILOT due based upon the Gross Revenue for the previous calendar year:

1. Gross Revenue of the calendar year from the sale, trade or auction of electricity, capacity pricing and RECs pursuant to all Power Sales Arrangements.
2. The amount of the PILOT due for the Contract Year.
3. Copies of all invoices issued and paid for all sales, trades and auctions shall accompany the statement for each calendar year pursuant to all Power Sales Arrangements.

If any portion of the current calculated or minimum PILOT is not remitted by March 31st, interest shall accrue on the PILOT due at the rate of 8% per annum beginning on April 1st to the date of payment if before the date of lien; if the unpaid PILOT goes to lien, the interest rate will increase to the statutory 14% in addition to any statutory fees incurred under RSA Chapter 80 if the City is required to exercise any rights or remedies to collect the payment, as if it was a tax, provided by law under RSA Chapter 80.

Notwithstanding the above paragraph, it is understood that not all payments generated by the REC and Capacity calculations during the calendar year are received on or before March 31st of the following year. Therefore, no later than June 30th, BRHA shall make a final accounting of all income received for the calendar year electric sales, RECs and capacity payments

following the Payment Formula as shown in Section II and pay any additional payments not previously remitted by the March 31st payment date on or before June 30th.

If any portion of the final calculated or minimum PILOT is not remitted by June 30th, interest shall accrue on the PILOT due at the rate of 8% per annum beginning on July 1st to the date of payment if before the date of lien; if the unpaid PILOT goes to lien, the interest rate will increase to the statutory 14% in addition to any statutory fees incurred under RSA Chapter 80 if the City is required to exercise any rights or remedies to collect the payment, as if it was a tax, provided by law under RSA Chapter 80.

VI. AUDIT

Upon giving reasonable advance notice to BRHA, the City shall be entitled to inspect BHA's accounts and records relating to the Project during normal business hours to verify the accuracy of the amount of the PILOT for the Contract Year under this Agreement, or to cause such accounts and records to be examined by independent certified accountants mutually agreed upon by the parties. The cost of any such audit when performed by independent certified accountants shall be borne (i) by BRHA if the PILOT calculated by the accountants exceeds that determined by BRHA, or (ii) 100% by the City if such audit shows that the PILOT as determined by BRHA was correct or overstated. The Parties hereby agree that, if such accountants mutually-agreed-upon determine that a different amount of PILOT was due, BRHA shall within sixty (60) days of receipt of the audit report pay the additional amount due or the City shall refund the excess amount collected, as the case may be. Interest shall accrue on any such additional amount due from BRHA as a PILOT at the rate of 4% over prime per annum, beginning on April 1st (the day following the date upon which the PILOT became due and payable) to the date of payment of the additional amount. The prime rate to be used shall be the prime rate on April 1st, the date upon which the PILOT became due and payable. The failure by

BRHA to pay the additional amount due within sixty days shall result in an increase of the interest rate to 14%.

VII. MINIMUM ANNUAL PILOT

Notwithstanding its actual Gross Revenue and the formula set forth in Section II, BRHA shall make an annual PILOT to the City in the amount of \$180,000 as a minimum payment due to the City, on or before March 31 in the manner described above in Section V. The Minimum Annual PILOT recognizes that the City must develop an annual budget based on reasonably-certain anticipated revenue and that, but for this Agreement, all real estate owned by BRHA would pay ad valorem taxes on an annual basis regardless of BRHA's actual Gross Revenue. If the formula set forth in Section II arrives at a PILOT greater than the Minimum Annual PILOT, only the amount calculated under Section II is due and payable for the applicable Contract Year. To the extent that cash receipts from the Contract Year are received after December 31st and the additional receipts result in a PILOT payment calculation greater than the \$180,000 minimum payment, BRHA shall make the excess payment to the City within thirty (30) days of collecting such revenue or before June 30; whichever date is sooner. If the formula set forth in Section II arrives at a PILOT less than or equal to the Minimum Annual PILOT, the minimum payment due shown in this paragraph shall be due instead.

VIII. CHANGES IN USE OF BRHA PROPERTY

In the event that any of the Projects currently owned by BRHA are no longer used to generate and sell electricity, this Agreement shall no longer apply to the specific Project as of the date of the change in use.

In the event that any portion of the real estate currently owned by BRHA at the Project sites is used or occupied, leased, transferred, or sold to a third party that is not engaged in

generating and selling electricity at the Projects, this Agreement shall no longer apply to that portion of the real estate where a change in use has occurred.

In both cases, said real estate no longer used to generate and sell electricity at the specified Project shall be subject to ad valorem taxation as of the date of the change in use of the Project and taxes shall become due to the City for the remainder of the tax year on a proportional basis, based on the number of months then remaining in the tax year.

IX. MISCELLANEOUS

a. This Agreement and the performance thereof shall be governed by, and construed in accordance with, the laws of the State of New Hampshire.

b. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered in hand to such party or mailed by certified mail, postage prepaid, return receipt requested, addressed:

If to BRHA:

Briar Hydro Associates
2 Commercial Street
Boscawen, NH 03303
Attn: Andrew Locke

With a copy to

Essex Hydro Associates, L.L.C.
55 Union Street, 4th Floor
Boston, MA 02108
Attn: Andrew Locke

If to the City:

City of Concord
Thomas J. Aspell, Jr.
City Manager
(or successor)
41 Green Street
Concord, NH 03301

With a copy to:

Kathryn H. Temchack
(or successor)
Director of Real Estate Assessments
41 Green Street
Concord, NH 03301

c. The Section headings herein are for reference and convenience only and shall not affect the interpretation hereof.

d. This Agreement may be executed in any number of counterparts, each of which when so executed shall be an original, but all of the counterparts together shall constitute one and the same instrument.

e. If any terms of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid, or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

f. The City represents and warrants that it has all the requisite statutory power and authority to enter into this Agreement.

g. The signatories hereto represent and warrant that they have all requisite power and authority to bind the respective Parties to the terms of this Agreement.

h. This Agreement shall be assignable, subject to the City's written consent, which shall not be unreasonably withheld.

i. This Agreement may be extended at the mutual consent of the parties, as permitted by New Hampshire State Law. However, neither party shall be obligated to renew or extend this Agreement upon its termination.

j. This Agreement represents the full and complete agreement between the Parties with respect to the subject matter contained therein and supersedes all prior written or oral agreements between said Parties with respect to said subject matter.

X. EXECUTION

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed as of the day and year first written above.

BRIAR HYDRO ASSOCIATES

By: Essex Hydro Associates, L.L.C.
A General Partner

Andrew Locke
Vice President

CITY OF CONCORD

By: Thomas J. Aspell, Jr.
City Manager as Authorized
By the Concord City Council

Thomas J. Aspell, Jr.
City Manager