

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 a mailing address of Briar Hydro Associates C/O Essex Hydro Associates, 55 Union St Fl 4, Boston, MA 02108-2425, (“BRHA”), enter into a Payment in Lieu of Tax (“PILOT”) Agreement on this \_\_ day of March 2023 (“Agreement”). The City and BRHA, individually, are each referred as a “Party” and are collectively referred to as the “Parties.” This Agreement constitutes the Third 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 have been party to numerous separate PILOT agreements for Rolfe, PUF and PLF between 1985 and March 31, 2018; and

WHEREAS, the City and BRHA had been party to a collective PILOT agreement for Rolfe, PUF and PLF from April 1, 2018 to March 31, 2023; and

WHEREAS, under the terms of this Agreement, the City and BRHA enter into the this Third 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 Third Collective PILOT Agreement.

b. The “Contract Year” shall mean the period beginning on April 1, 2023 and ending on March 31, 2024.

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.

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. PILOT PAYMENT

BRHA shall make a PILOT to the City in the amount of \$225,000 due to the City, on or before March 31, 2024 to the City of Concord, City Treasurer at 41 Green Street, Concord NH

03301. The 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 any portion of the PILOT is not remitted by March 31st, interest shall accrue on the PILOT due at the rate of 6% 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 12% 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.

III. TERM

The term of this Agreement shall be for one year commencing on April 1, 2023 and ending on March 31, 2024.

IV. 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 for the Contract Year under this Agreement.

V. 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 on or before April 1, 2023, this Agreement shall no longer apply to the specific Project as of the date of the change in use.

In the event that, on or before April 1, 2023, any portion of the real estate currently owned by BRHA at the Projects' 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 Projects shall be subject to ad valorem taxation as of the date of the change in use of

the Projects 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.

VI. 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, 4<sup>th</sup> 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:

Jon Rice  
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.

VII. 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

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Andrew Locke  
President

CITY OF CONCORD

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

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Thomas J. Aspell, Jr.  
City Manager