

BRIAR HYDRO ASSOCIATES GROUP NET METERING AGREEMENT

This Group Net Metering Agreement (this “Agreement”) is by and between **Briar Hydro Associates**, located at 2 Commercial Street, Boscawen, NH 03303 (Briar”) and the **City of Concord**, located at 41 Green Street, Concord, NH 03301 (“City”), who intends to be a member of a net metering group with Briar, the intended Municipal Host, including meters listed in Schedule A (together referred to as “Parties” and each individually as a “Party” and is effective and binding on the Parties as of the date hereof. The Whole Net Metering Group may include additional members and meters not affiliated with the City.

I. Purpose

The Parties enter into this Agreement to participate in group net metering in accordance with New Hampshire RSA 362-A:9, XIV and House Bill 315 as passed by the Governor and General Court effective August 26, 2021. Under House Bill 315 (August 26, 2021), “Municipal Host” means a customer generator with a total peak generating capacity of greater than one megawatt and less than 5 megawatts used to offset the electricity requirements of a group consisting exclusively of one or more customers who are political subdivisions, provided that all customers are located within the same utility franchise service territory. A Municipal Host shall be located in the same municipality as all group members if the facility began operation after January 1, 2021. A Municipal Host may be owned by either a public or private entity. For this definition, “political subdivision” means any city, town, county, school district, chartered public school, village district, school administrative unit, or any district or entity created for a special purpose administered or funded by any of the above-named governmental units.

Under RSA 362-A:9, XIV, Briar shall elect to become a Municipal Host for the purpose of reducing or otherwise controlling the energy costs for the City and other political subdivisions who are not customer-generators. The group of customers shall be referred to as “members” and shall be located within the service territory of the same electric distribution utility as Briar.

Briar, as the Municipal Host, shall provide a list of the group members to the New Hampshire Department of Energy (“DOE”) and the electric distribution utility (“Unitil Service Corp.”), and shall certify that all group members have executed an agreement with it regarding the utilization of kilowatt hours produced by an eligible facility and that the total historic annual load of the group members together with Briar exceeds the projected annual output of Briar’s facility. The Parties understand that this Agreement is subject to the DOE verifying that these group requirements have been met and Briar’s registration as a Municipal Host. The Parties understand that net metering tariffs under this Agreement shall not be made available to a customer-generator Municipal Host until such Municipal Host is registered by the DOE.

II. Background

- A. Briar has installed and commissioned a net metering facility, Penacook Lower Falls, with a nominal capacity of **4,600 kW**, located in the Village of Penacook, Concord, New Hampshire and the Boscawen, New Hampshire, which is eligible as

a electricity generating equipment pursuant to RSA 362-A:9, XIV and defined under Puc 902.13 (the “Facility”).

- B. Briar elects to become a Municipal Host in accordance with HB 315, RSA 362:A;1-a, II-c and RSA 362-A:9, XIV.
- C. Briar, the City and any additional members of the group under this Agreement shall be customers of the Utility, Until Service Corporation, defined below.
- D. Briar is an “eligible customer-generator” as defined in RSA 362-A:1-a, II-b and Puc 902.05.
- E. The general partners of Briar Hydro Associates are Essex Hydro Associates, L.L.C. and Eagle Creek Oxford, LLC.
- F. The City desires to become a “Member” as defined below and in Puc 902.22.
- G. The Parties have accordingly entered into this Agreement to establish the terms and conditions under which Briar and the City in accordance with the HB 315, RSA chapter 362-A and other applicable law.

N O W, T H E R E F O R E,

In consideration of the mutual covenants and agreements herein set forth, the Parties hereby agree as follows:

III. Definitions

Capitalized terms used herein but not otherwise defined shall have the following meanings:

- A. “Department of Energy” or “DOE” means the New Hampshire Department of Energy
- B. “Effective Date” Shall mean the date in which the City and Briar execute this Agreement.
- C. “Environmental Attribute” means all fuel, emissions, air quality, or other environmental characteristic, credit, benefit, reduction, offset, and allowance, howsoever entitled, named, registered, created, measured, allocated, validated, now or hereafter recognized or deemed of value (or both) by Members, under any applicable Law, or any voluntary program of any governmental authority or other person resulting from the use of generation or the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water attributable to the Facility during the Term or the generation, purchase, sale, or use of energy from or by the Facility during the Term, and all Carbon Offsets and all Environmental Attribute

Reporting Rights, including all evidence (if any) thereof, such as renewable energy credits.

- D. “Group” means one or more members who are customers of the same distribution utility who have signed an agreement with a municipal host as required by RSA 362-A:9, XIV.
- E. “Member” means a customer of the same distribution utility as the municipal host, who signs an agreement to be a member of a group under RSA 362-A:9, XIV, who remains a customer of the same distribution utility as the municipal host during its membership in the group, and, except as provided in Puc 902.16, who is not a customer-generator.
- F. “Municipal Host” means a customer generator with a total peak generating capacity of greater than one megawatt and less than 5 megawatts used to offset the electricity requirements of a group consisting exclusively of one or more customers who are political subdivisions, provided that all customers are located within the same utility franchise service territory.
- G. “Generation Meter” (See Article VII, A)
- H. “Group Net Metering Arrangement” means an agreement between one or more electric utility customers, located within the same electric company service territory, to combine electricity meters in order to share and allocate net metering credits generated by a net metering facility.
- I. “Meters” shall have the meaning given in VI, A of this Agreement.
- J. “Net Energy Metering” means “net energy metering” as defined in RSA 362-A:1-a, III-a, namely, “measuring the difference between the electricity supplied over the electric distribution system and the electricity generated by an eligible customer-generator which is fed back into the electric distribution system over a billing period.”
- K. “Net Metering Credits” means the payment received from the Utility for Surplus Generation.
- L. “Notice” shall have the meaning given in XV of this Agreement.
- M. “Surplus Generation” means electricity generated by the Facility in excess of the Host’s electric usage measured and delivered to the distribution Utility.
- N. “The Whole Net Metering Group” means the whole net metering group including all members and their meters currently participating in group net metering with the Facility.

- O. “Utility” means the retail electric company serving Briar and the City. The Utility is currently Unitil Service Corporation, and all of the Meters are currently serviced by the Utility.
- P. “Volumetric Commitment” means the total annual kilowatt-hours committed by the City within Schedule A to the Group Net Metering Agreement.

IV. Application to Register As A Municipal Group Host for Group Net Metering

- A. Briar shall, within five (5) days of being registered as a Municipal Host or being denied of as a Municipal Host, provide Notice to the City of such registration or denial as a Municipal Host.
- B. Briar shall become registered with the DOE within twelve (12) months of the execution of this Agreement, unless such time is extended by the City at the City’s sole discretion.

V. Group Net Metering Agreement

- A. This Agreement governs the Group Net Metering Arrangement as is required by RSA 362-A and any other applicable law.
- B. Briar shall administer a Group Net Metering Arrangement, inclusive of the City, in accordance with this Agreement, and applicable law.

VI. Electricity Meters in Group and Municipal Host

- A. The Parties hereto agree that the electricity meters (the “Meters”) listed in Schedule A to this Agreement shall be included as a part of this Group Net Metering Arrangement, which is inclusive of the City. In accordance with PUC 909.06(b), the City may voluntarily amend Schedule A to add or remove Meters from the Group Net Metering Arrangement. The addition of a Meter shall be effective on the Meter’s first meter read date immediately following the new Meter’s addition. The departure of a Meter shall be effective on the Meter’s last meter read date immediately preceding the Meter’s date of departure.
- B. Upon the occurrence of the City’s Event of Default, the termination of this Agreement, or the expiration of the Term, Briar shall be entitled to add or remove the City and/or its designated Meters from the Group.
- C. Briar shall provide information related to the addition or removal of any Meters in the Annual Report required by Puc 909.07.
- D. Briar may, in accordance with applicable law, with prior written notice to the City, substitute the Facility in this Agreement, with another comparable facility also owned by Briar, located in the Village of Penacook, Concord, NH, and Boscawen NH, specifically either, Penacook Upper Falls or Rolfe Canal.

VII. Allocation of Funds Credited by Utility for Surplus Generation

- A. Allocation of Surplus Generation. If the monthly electricity generated by the Facility exceeds the monthly electric usage by Briar at Briar's Generation Meter and the Utility makes a payment to Briar as is required by Puc 909.08 ("Surplus Generation Payment"), within thirty (30) days of receipt of the Surplus Generation Payment, Briar shall provide a payment to the City according to the allocation method described in Schedule B.
- B. Annual True-Up. The Municipal Host shall be responsible for paying the annual true-up calculation and bill required by Puc 909.08(h).

VIII. Ownership of the Facility

Briar owns the Facility. Nothing in this Agreement shall have the effect of passing any right, title or interest in, or liability related to, the Facility to the Member or any other person.

IX. Covenants

- A. Exclusivity. Subject to XI, C of this Agreement, the City shall not otherwise enter into a Group Net Metering Arrangement with any other person or entity for the Meters referenced in this Agreement during the Term. To enter a Meter into such a new Group Net Metering agreement with another person or entity, the City would first have to remove the Meter from this Agreement according to the terms and conditions described in this Agreement.
- B. Utility. Subject to XI, C of this Agreement, Briar and the City shall each remain customers of the Utility in good standing at all times during the Term, and shall not take any action to cause any Meter to be disconnected or removed from the Utility's service without appropriate notice. If the City's Meters are disconnected or removed from the Utility's service, the City shall make best efforts to provide Briar with a replacement Meter of similar annual load. Briar and the City shall each pay its obligations to the Utility as the same become due and payable at all times during the term.
- C. Authorization. Briar is hereby authorized to take all such additional actions, including, without limitation, making any filings and submissions to the Utility, the DOE and any other applicable regulatory bodies, individually or on behalf of Briar or the City, as may be necessary from time to time to carry out the terms of this Agreement. Within five (5) days of taking any such action herein, Briar shall provide notice to the City in accordance with this Agreement.

X. Representations and Warranties.

Each Party hereby represents and warrants as follows:

- A. Right, Power and Authority. It has full right, power and authority to enter into this Agreement, and there is nothing which would prevent it from performing its obligations under the terms and conditions imposed on it by this Agreement.
- B. Binding Obligation. This Agreement has been duly authorized by all necessary action of Briar and the City, and constitutes a valid and binding obligation on Briar and the City, enforceable in accordance with the terms hereof.
- C. True and Accurate. To the best of the Parties' knowledge and belief, the information provided in this Agreement is true and accurate.

XI. Term and Termination.

- A. Term. The Term of this Agreement shall commence on the Effective Date set forth above, and shall remain in effect until the eighteenth (18th) anniversary of the Effective Date or December 31, 2040, which ever date comes first, unless terminated earlier in accordance with this Agreement pursuant to this Section 8 (the "Term"). During the Term, the City may elect to reduce its Volumetric Commitment specified in Schedule A by up to 50%, in response to an action by the City to reduce its electricity consumption through energy efficiency and/or elect to undertake a renewable generation project on City property or property owned by any other person or entity located in the City. The City shall provide at least six (6) months' notice to Briar for any such election to reduce its Volumetric Commitment.
- B. For Cause Termination by Briar. Briar has the right to terminate this Agreement upon the occurrence of any of the following events (a "City Event of Default"):
 - (i) Any breach of this Agreement by the City which is not cured within thirty (30) days of written notice thereof from Briar.
- C. For Cause Termination by the City. The City has the right to terminate this Agreement upon the occurrence of any of the following events (a "Briar Event of Default"):
 - (1) The City fails to receive any Surplus Generation payment as described in Schedule B from the Host, excluding lack of payment due to no generation, subject to Article XVIII.

- (2) Briar fails to generate and provide Net Metering Credits to the Member of a minimum of 70% of the City's annual Volumetric Commitment, as may be reduced in accordance with Section 8(a) above.
 - (3) Any breach of this Agreement by Briar which is not cured within thirty (30) days of Notice thereof from the City;
 - (4) Briar fails to obtain DOE approval of this Agreement within twelve (12) months of the Parties signing this Agreement, unless such time is extended at the City's sole discretion.
- D. All payment obligations of Briar and the City, and all rights and remedies of the Parties hereto, arising prior to the termination of this Agreement shall survive the termination thereof. Upon termination, the Parties shall have no further liabilities towards each other except for those payment obligations, rights, and remedies occurring prior to the termination.

XII. Assignment

The Parties may not assign or transfer this Agreement to any other another person or entity without the other Parties' prior written consent, and any attempted assignment or transfer without such consent shall be void.

XIII. Environmental Attributes

All Environmental Attributes and any and all rebates, tax credits, and other economic benefits in connection with the Facility shall remain property of Briar or its successors or assigns. Briar shall have the exclusive right to sell, transfer, or convey the Environmental Attributes to any other person in Briar's sole discretion.

XIV. Liability

Each Party agrees to waive any claim or right against the other and its affiliates for consequential damages or punitive damages; and no Party shall be liable to the other or any affiliate of a Party under this paragraph or otherwise for or as a result of any proceeding in which rates are reviewed or established for either Party by the New Hampshire Public Utilities Commission, DOE or other regulatory body having jurisdiction over this Agreement. In no event shall Briar or any officer, member, manager, employee, partner, affiliate or owner thereof be liable to the City under this Agreement or otherwise in the event: (i) the Facility fails to generate electricity at any time, (ii) Briar fails to maintain any necessary license, permit or government approval, or (iii) for any error or omission in any filing or instructions submitted by or on behalf of Briar or the Whole Net Metering Group to the Utility or any governmental entity. Notwithstanding anything to the contrary herein, Briar's maximum liability under and in connection with this Agreement (whether in contract, tort, strict liability or otherwise) shall not exceed the aggregate amount of all

payments owed to the City according to the allocation method described in Schedule B based on actual Surplus Generation payment received by Briar from the Utility.

XV. Notices

All notices, requests, demands, claims and other communications (each, a “Notice”) hereunder shall be in writing, addressed to the intended recipient as set forth below ,or to such other person, address or number as the Party entitled to such Notice shall have specified by notice to the other Party given in accordance with the provisions of this Section. Any such Notice shall be deemed duly given on the earliest of: (i) when delivered personally to the recipient; (ii) one (1) business day after being sent to the recipient by reputable overnight courier services (charges prepaid); (iii) one (1) business day after being sent to the recipient by facsimile transmission; or (iv) four (4) business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid.

Any notice hereunder shall be deemed to have been given if in writing and mailed by registered or certified mail, return receipt requested, to the Parties named above, as well as the following:

Briar Hydro Associates
Madeleine Mineau
c/o Essex Hydro Associates, L.L.C.
2 Commercial Street
Boscawen, NH 03303

City of Concord
Thomas J. Aspell, Jr., City Manager
41 Green Street
Concord, NH 03301

XVI. Fees and Expenses

Each Party will bear its own fees and expenses incurred in the transactions contemplated by this Agreement.

XVII. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of New Hampshire, without giving effect to principles of conflict of laws that would require the application of any other law. In the event of any amendment or repeal of the governing law that alters the fundamental purpose and intent of this Agreement, the Parties shall work in good faith to address any equitable issues that arise and maintain the central purpose of the Agreement. If the Parties are unable to reach an agreement to amend this Agreement in such an event, then either Party may terminate this Agreement upon written notice to the other Party, and upon such notice neither Party shall have any further obligations to the

other Party under this Agreement. Any termination pursuant to this Section shall not affect either Party's payment obligations for generation prior to such termination.

XVIII. Force Majeure

To the extent that Briar is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and Briar gives notice and details of the Force Majeure to the City as soon as practicable (and in any event within five (5) business days after becoming aware of the Force Majeure event or circumstance), then the applicable deadlines in effect at the time of the Force Majeure may be extended up to (30) days or as otherwise determined by the City at its sole discretion. Briar shall use commercially reasonable and diligent efforts to eliminate or avoid the Force Majeure and, thereafter, promptly and diligently resume performing its obligations under this Agreement. As used herein, "Force Majeure" shall mean any event or circumstance that prevents either Party from performing its obligations under this Agreement, which event or circumstance: (i) is not within the reasonable control, and is not the result of the fault or negligence, of the Party claiming Force Majeure, and (ii) by the exercise of reasonable due diligence, the Party is unable to overcome or avoid or cause to be avoided. Force Majeure will not be based on economic or financial hardship. In addition, a delay or inability to perform substantially attributable to a Party's failure to timely take the actions necessary to obtain and maintain all necessary permits, a failure to satisfy contractual conditions or commitments (unless otherwise caused by an event of Force Majeure), or lack of or deficiency in funding or other resources, shall each not constitute a Force Majeure. Force Majeure shall include, without limitation, events such as: fires; floods; lightning strikes; ground sliding; droughts causing low or insufficient river flow and earthquakes. If a Force Majeure_qualifying event occurs for a duration of 9 consecutive months and prevents electricity generation by Briar for that duration, notwithstanding Article XI, C (1), the City may terminate this Agreement and upon termination, neither Party shall have any liability or responsibility to the other Party.

XIX. Dispute Resolution

The Parties shall attempt in good faith to resolve all disputes arising under or with respect to this Agreement promptly by negotiation, as follows. A Party may give the other Parties written notice of any dispute not resolved in the normal course of business. Representatives of the Parties shall meet at a mutually acceptable time and place within fifteen (15) business days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and attempt to resolve the dispute. If the Parties cannot resolve the dispute in this manner, they shall refer the dispute to a mediator. If the designated representatives and mediation fail to resolve the dispute within sixty (60) days after the delivery of notice of dispute, then either Party may initiate arbitration as provided below. Arbitration shall take place at a place of the Parties' choosing in accordance with the Commercial Arbitration Rules or equivalent of the American Arbitration Association, and judgment entered upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Notice of a demand for arbitration must be delivered to the other Parties to this Agreement within one hundred twenty (120) days after the delivery of the notice of dispute. Notwithstanding the above, arbitration shall not

be initiated if, on the date of the demand for arbitration, the institution of legal or equitable proceedings based on the controversy is barred by the applicable statute of limitations.

XX. Waiver

Failure of either Party to complain of any act or omission on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver by said Party of any of its rights hereunder. No waiver by either Party at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision. If any action by either Party shall require the consent or approval of the other Party, the other Party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on any subsequent occasion.

XXI. Severability

If any term or provision of this Agreement or the application thereof to any Party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to Parties 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 be enforced to the fullest extent permitted by law.

XXII. Binding Effect

This Agreement and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the Parties hereto, together with their respective successors and permitted assigns.

XXIII. Entire Agreement

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.

XXIV. Further Assurances

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms and intent hereof. Neither Party shall unreasonably withhold its compliance with any reasonable request made pursuant to this Section.

XXV. Member Authorization.

The Concord, New Hampshire City Council authorized the City to enter in to this Agreement at its December 13, 2021 City Council meeting.

[Signature Page Follows on Separate Page]

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IN WITNESS WHEREOF the Parties do hereby execute this Agreement as of the _____
day of _____, 2021.

Briar Hydro Associates

By: Essex Hydro Associates
General Partner

Name: Andrew Locke
Title: President
Date: _____

By: Eagle Creek Oxford
General Partner

Name:
Title:
Date: _____

City of Concord:

By: _____
Name: Thomas J. Aspell, Jr.
Title: City Manager
Date: _____

Schedule A

The Parties hereto agree that Briar and the City, and the Meters shall be included as a part of this Group Net Metering Arrangement:

- (1) The City's Volumetric Commitment: 9,000,000 kilowatt-hours per year
- (2) Briar's generation meter, account number _____, meter number _____, at service address **Briar Hydro Associates, 2 Commercial Street Boscawen, NH 03303** for electricity produced by the Facility;
- (3) The City's Meters to be included in the Group Net Metering Arrangement are provided in Schedule A-1. Each of the City Meters receive electricity supply from a competitive electricity provider and delivery services from Unitil Corporation.

Schedule A-1 - Member Meters

Please refer to the MS Excel Workbook entitled: Schedule A-1 – City of Concord Meters attached hereto by reference.

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Schedule B

Briar shall allocate the Surplus Generation Payment as follows:

- (i) On a monthly basis, Briar will allocate to the City a portion of the total monthly net metering payment set forth in the Agreement under VII, A, received from the Utility for Surplus Generation. Briar shall pay to the City within (30) days of receiving such payment from the Utility, fifteen (15) percent of the allocated portion attributable to the City's Meters. The allocated portion shall be calculated as the City's Volumetric Commitment for City's Meters in relation to the total annual load of The Whole Net Metering Group. The payment to the City shall be consolidated for all Meters listed in Schedule A-1 and paid in a monthly lump sum payment to the City. Payment may be made by check or by electronic fund transfer as agreed upon by the Parties.

Payments by Check must be remitted as follows:

Payable to the City of Concord
Attention: Treasurer
41 Green Street
Concord, NH 03301

- (ii) For the purposes of this Agreement the City's total annual load shall be the total amount of kilowatt hours purchased by the City and billed from the Utility in the prior calendar year for the City Meters included in Schedule A-1. The sum of the total load of all Members in The Whole Net Metering Group shall be the total annual load for The Whole Net Metering Group.
- (iii) The Utility shall perform an annual true-up by June 1st of each year to compare the Surplus Generation and the Whole Net Metering Group annual usage for the prior twelve (12) month period. If the Facility's Surplus Generation for the previous year exceeded The Whole Net Metering Group's total electric usage for that same year, Briar shall be responsible for calculating the reimbursement due from Briar to the Utility.
- (iv) The City shall provide, in a timely manner, monthly invoices from Utility to confirm usage information for the City Meters listed in Schedule A-1 or otherwise provide actual monthly electricity usage information to Briar in a manner agreed upon by Briar.