

CITY COUNCIL MEETING
AGENDA ITEM IV



CITY OF FRANKLIN COUNCIL AGENDA REPORT

City Council Meeting December 2015

From: Elizabeth Dragon, City Manager

City Council to consider approval of \$3,500 annual Payment in Lieu of Tax agreements (PILOTs) for seven solar projects in the City.

City Manager Recommendation:

1. Councilor moves:

"I move that the Franklin City Council approve the proposed \$3,500 annual Payment in Lieu of Tax agreements for the Franklin Town Solar 1, Franklin Town Solar 2, Ashfill solar, Industrial park drive solar, Lakeshore drive solar, Water street solar, and Commerce Drive solar." "Furthermore All PILOT agreements are contingent upon the project being built and the necessary corresponding agreements for each project being executed".

2. Mayor calls for a second, discussion, and the vote.

Background:

The City Council approved four out of the five solar projects (lease, purchase power agreement, and payment in lieu of tax amounts) In September and August of this year. The Pilot amount is \$3,500 annually. The fifth city solar project lease has not been finalized yet because we are waiting for the transfer of ownership of the property (or other interim agreement) from the Co-op to the City allowing us to enter into the lease. However, the details of that lease and pilot agreement have already been negotiated. All PILOT agreements are contingent upon the project actually being built and the corresponding agreements being executed.

The city solar projects will bring additional revenue to the city through lease payments and Payment in Lieu of tax payments over the next 20 yrs (with two potential 5 year extensions). The project will also bring energy savings to Franklin residential customers by offering 1 penny per KWh of their current rate and there is no long term commitment required.

There are two additional solar projects on private property. One was coordinated through the Franklin Business and Industrial Development Corp (FBIDC) in the Industrial park area and another was privately negotiated on Commerce Drive.

Therefore, there are a total of seven solar projects (5-city 2-private ownership). The Pilot amount for each site was negotiated at \$3,500 per year. See attached summary of all seven projects in the city.

RSA 72:74 Payment in Lieu of Taxes. Requires the governing body of the municipality to hold a public hearing before entering into a voluntary agreement.

Agreements must be renewed every five years. The municipality in which the facility is located may agree to a term exceeding 5 years if such term is necessary for the financing of the project or is otherwise advantageous to both parties and both parties agree to such term.

RSA 72:74

I. The owner of a renewable generation facility and the governing body of the municipality in which the facility is located may, after a duly noticed public hearing, enter into a voluntary agreement to make a payment in lieu of taxes. A lessee of a renewable generation facility which is responsible for the payment of taxes on the facility may also enter into a voluntary agreement with the municipality in which the facility is located to make a payment in lieu of taxes, provided the lessee shall send by certified mail to the lessor written notice which shall state that the property of the lessor may be subject to RSA 80 should the lessee fail to make the payments required by the agreement. A copy of such notice shall be provided to the municipality in which the facility is located.

II. A renewable generation facility subject to a voluntary agreement to make a payment in lieu of taxes under this section shall be subject to the laws governing the utility property tax under RSA 83-F. Payments made pursuant to such agreement shall satisfy any tax liability relative to the renewable generation facility that otherwise exists under RSA 72. The payment in lieu of taxes shall be equalized under RSA 21-J:3, XIII in the same manner as other payments in lieu of taxes. In the absence of a payment in lieu of taxes agreement, the renewable generation facility shall be subject to taxation under RSA 72.

III. If a municipality that contains more than one school district receives a payment in lieu of taxes under this section, the proceeds shall be prorated to the districts in the same manner as local taxes are prorated to the districts, or in the case of a cooperative school district between the city or town and pre-existing school district.

IV. The collection procedures in RSA 80 shall be used to enforce a voluntary agreement to make a payment in lieu of taxes authorized by this section.

V. If a municipality enters into a voluntary payment in lieu of taxes agreement with an owner, or a lessee responsible for payment of taxes, of a renewable generation facility, the municipality, upon the request of the owner, or a lessee responsible for payment of taxes, of any other renewable generation facility located within the municipality, shall offer a comparable agreement to the owner or lessee of such facility.

VI. Except as provided in paragraph VII, no voluntary agreement entered into under this section shall be valid for more than 5 years; however, any such agreement may be renewed or amended and restated for any number of consecutive periods of 5 years or less.

VII. The owner of a renewable generation facility and the governing body of the municipality in which the facility is located may agree to a term exceeding 5 years if such term is necessary for the financing of the project or is otherwise advantageous to both parties and both parties agree to such term.

Alternatives: Do not approve the Pilot agreements and direct the City Manager to continue negotiations.



PAYMENT IN LIEU OF TAXES AGREEMENT BETWEEN
THE CITY OF FRANKLIN AND FRANKLIN TOWN SOLAR 1, LLC, LLC

14th December

This Payment in Lieu of Taxes (PILOT) Agreement (hereafter "Agreement") is made this 14th day of December 2015, under New Hampshire Revised Statutes Annotated (NHRSA) § 72:74, between the City of Franklin, New Hampshire ("Town") and Franklin Town Solar 1, LLC, LLC ("FTS 1"), a New Hampshire limited liability company with a business address at 23 Rosemary Lane, Durham, NH 03824

Background

FTS 1 seeks to develop a renewable solar power electric generating facility (the "Facility") to be located at Map 123, Lot 403 in Franklin NH expects the final installed Nameplate Capacity to be approximately 1.226 megawatts (MW). For the purposes of this Agreement, the term "Nameplate Capacity" shall mean the sum of all of the nameplate capacities for the total solar inverters installed and operating at the Facility. Once the project has reached commercial operation, defined below, the parties will sign a letter amendment to this Agreement specifying the actual Nameplate Capacity of the Facility (if applicable).

The Facility will be built on land leased by FTS 1, identified on Town tax maps as tax parcels (insert by town).

Under its lease agreements with landowners, FTS 1 will be responsible for the payment of local ad valorem real estate taxes on Facility structures and other 2 improvements under NHRSA Chapter 72 (but not for taxes on the value of the underlying land, which will continue to be the landowners' responsibility).

The Facility will be a "renewable generation facility", as defined in NHRSA §72:73 and NHRSA 374-F:3, V(f)(3). Under NHRSA §72:74, the owner of a renewable generation facility and the governing body of the municipality in which the facility is located may, enter into a voluntary agreement to make payments in lieu of taxes.

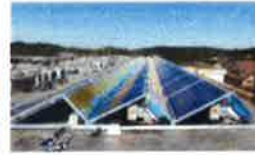
FTS 1 and the Town desire to enter into such a PILOT agreement under NHRSA §72:74.

NOW THEREFORE, the parties hereto agree as follows:

Terms and Conditions

1. Payments in Lieu of Taxes. FTS 1 will make payments in lieu of taxes to the Town for each tax year (April 1 to March 31) during the term of this Agreement, in accordance with Sections 3 and 4 below. These PILOT payments will be in lieu of any and all ad valorem real estate taxes otherwise payable under NHRSA Chapter 72, including all town, county, and local school district taxes.

2. Term. Mindful of RSA 72:74, VI and VII, the parties have determined that a long-term agreement providing predictability of tax revenues and expenses would be advantageous to both the Town and FTS 1. Accordingly, the term of this Agreement shall be 21 (twenty-one) years, beginning with a "transition tax year" described in Section 4 below and continuing thereafter for 20 additional years (the "Operating Term") as described in Section 5 below. If the Facility fails to achieve commercial operation by December 31, 2016, this Agreement shall be deemed void and of no effect. For the purposes of this Agreement, the term "commercial operation" shall be deemed to have 3 occurred once (a) the solar power electric generating facility has been commissioned and accepted by FTS 1 in accordance with applicable commissioning and inspection procedures (b) the Facility has been interconnected to the utility electric grid, and (c) FTS 1 has commenced the sale of energy from the Facility on a commercial (rather than test) basis to one or more purchasers. The date on which FTS 1 commences energy



7. **Non-Payment.** Non-payment of any payment due the Town shall constitute a default. Notice of non-payment or any other default shall be provided to FTS 1 (and to FTS 1's Lender, as further specified in Section 8 below), in the manner and at the address provided for Notices in Section 12 of this Agreement. FTS 1 shall have 30 days to cure the default after receiving such notice. In the event the condition causing the default is not cured within 30 days, the Town may commence an action to collect any non-payment under RSA 80:50, seek specific performance of a non-monetary default or proceed against the real estate under RSA 80:58-80. It shall not be a defense to such a proceeding that FTS 1 is obligated under this Agreement to make payments in lieu of taxes rather than taxes.

8. **Lender's Right to Cure.** The Town shall send a copy of any notice of default sent to FTS 1 to FTS 1's Lender by certified mail at the same time such notice is sent to FTS 1, and no such notice of default to FTS 1 shall be effective unless and until a copy of such notice has been delivered to FTS 1's Lender. FTS 1's Lender shall have the same time and rights to cure any default as FTS 1, and the Town shall accept a cure by FTS 1's Lender as if such cure had been made by FTS 1. FTS 1 shall provide written notice to the Town as to the name and address of FTS 1's Lender for such notices to be sent.

10. **Other Taxes Not Covered.** This Agreement covers only ad valorem real estate taxes payable under NHRSA Chapter 72. It does not include or cover other local, state, or federal taxes which may be payable on account of Facility revenues or activities, including the Land Use Change Tax, Timber Tax, State Utility Property Tax, Business Enterprise Tax, or Federal Income Tax.

11. **Notices.** Any notice to be provided under this Agreement shall be in writing and shall be deemed to have been given when delivered personally or by certified mail at the following addresses:

For the Town: City of Franklin, 316 Central St, Franklin, NH 03235

For Franklin Town Solar 1, LLC, 23 Rosemary Lane, Durham, NH 03824

For FTS 1's Lender: (to be provided by FTS 1)

with a copy to: Orr and Reno, P.A. One Eagle Square Concord, NH 03302

In the event of a change in the address of any party listed above, the responsible signatory (FTS 1 in the case of itself, its Lender and/or its counsel) shall give the other party prompt written notice of such change of address, which shall be effective upon receipt.

12. **Miscellaneous.**

(a) This Agreement shall be construed and interpreted in accordance with the laws of the State of New Hampshire. In the event any term of this Agreement or the application of any such term shall be held invalid by any court having jurisdiction, the other terms of this Agreement and their application shall not be affected thereby and shall remain in full force and effect, provided that the remaining terms continue to preserve the essential economic terms of this Agreement.

(b) The terms and provisions contained in this Agreement constitute the final Agreement between the parties with respect to this Agreement and supersede all previous communications, representations or agreements, either verbal or written. No modification or amendment to this Agreement shall be valid unless it is in writing and signed by both parties hereto.

(Summary) All 7 projects in Franklin

From: Andrew Kellar [andrew@nhsolargarden.com]
Sent: Tuesday, August 11, 2015 4:50 PM
To: Elizabeth Dragon
Cc: Barrett Bilotta
Subject: Re:

Here you go...Is this helpful?
Any feedback on our response to the PPA from last week?

Andrew

Franklin Town Solar 1, LLC

- City Hayfield location next to WWTP
- 1.3 MWs
- Power dedicated to City
- \$17,000 land lease (open land with min. site work)
- \$3500 PILOT payment per year

✓ Approved 8-24-15 (P15-004)
canal mtg
a). Escalator

Franklin Town Solar 2, LLC

- City Hayfield location next to WWTP
- 1.3 MWs
- Power dedicated directly to WWTP or City
- \$17,000 land lease
- \$3500 PILOT payment per year

✓ Approved 8-24-15 canal mtg
Hold - Need to transfer ownership (P15-006)

Ashfill Solar, LLC

- Land about to be donated to City by COOP
- 1.3 MWs
- Power dedicated to NHSG's off-takers in PSNH territory
- \$13,000 land lease (wooded lot with some site work)
- \$3500 PILOT payment per year

FB&DC Project (P15-010)

Industrial Park Drive Solar, LLC

- Land that City has ability to get an option on with current landowner
- 1.3 MWs
- Power dedicated to NHSG's off-takers in PSNH territory
- \$13,000 land lease (wooded lot with some site work)
- \$3500 PILOT payment per year

Approved Sept 2015
P15-007

Lakeshore Drive Solar, LLC

- City owned land on Hill road (old gravel pit)
- 1.3 MWs
- Power dedicated to NHSG's off-takers in NH COOP territory
- \$13,000 land lease (some site work)
- \$3500 PILOT payment per year

Approved Sept 2015
P15-008
a). Escalator

Water Street Solar, LLC

- City owned contaminated site
- 1.3 MWs
- Power dedicated to NHSG's off-takers in PSNH territory or City
- \$13,000 land lease (additional permitting at the State level & more expensive construction costs)
- \$3500 PILOT payment per year

PIUS 21.
Escalator

Commerce Drive Solar, LLC

- Privately owned landfill
- 1.3 MWs
- Power dedicated to NHSG's off-takers in PSNH territory
- \$3500 PILOT payment per year

Private
P15-009

Industrial Park Drive Solar, LLC

- Privately owned landfill
- 1.3 MWs
- Power dedicated to NHSG's off-takers in PSNH territory
- \$3500 PILOT payment per year

LISTED
on previous
page
FBZDC

On Tue, Aug 11, 2015 at 4:13 PM, Elizabeth Dragon <citymgr@franklinnh.org> wrote:

Can you update the summary of all 7 solar sites-listings as the city/private, MW's , lease value, pilot value, where power is dedicated etc..it was originally with the LOI's I think back in March.

I believe judie gave you the specific email date.

Its easier for me to answer questions from the media with that summary.

I have attached some of the email from the old version that I am referring too

Elizabeth A. Dragon

City Manager

City of Franklin

(P) 934-3900

(F) 934-7413

**CITY OF FRANKLIN
NOTICE OF PUBLIC HEARING & MEETING**

In accordance with the provision of Chapter 31, Division 2 of the Franklin Municipal Code, notice is hereby given that the City of Franklin will hold a Public Hearing on Monday, December 14, 2015 at 6:07 p.m. in the Council Chambers, Franklin City Hall regarding Payment in Lieu of Tax (PILOT) agreements for seven solar projects being developed by NH Solar Garden throughout the City on both private and public property. RSA 72:74 requires before the agreements can be signed by the City a public hearing must be held which gives the public an opportunity for input.

Provisions for persons with special needs can be made by contacting the City Manager's Office, via telephone or mail at least five days prior to the public hearing.

**City of Franklin
316 Central Street
Franklin, NH 03235
(603) 934-3900**