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STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
DIVISION OF PARKS AND RECREATION
Bureau of Historic Sites

172 Pembroke Road Concord, New Hampshire 03301
Phone: 603-271-3556 www.nhstateparks.org

February 24, 2016

The Honorable Neal M. Kurk, Chairman
Fiscal Committee of the General Court
and
Her Excellency, Governor Margaret Wood Hassan
and the Honorable Executive Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Pursuant to RSA 14:30-a, VI, authorize the Department of Resources and Economic Development, Division of Parks and Recreation, Bureau of Historic Sites to accept and expend funds from a Settlement Agreement between Groton Wind, LLC and Counsel to the Public, approved by the New Hampshire Site Evaluation Committee in Docket No. 2010-01 the amount of \$150,000 upon Fiscal Committee and Governor and Executive Council approval through June 30, 2016. **100% Agency Income**

Funding to be budgeted as follows:

03-35-35-351510-52040000 Groton Wind Settlement Fund		2016 Requested Budget
009-407079	Agency Income	(\$150,000)
103-502664	Contracts for Operational Services	\$150,000
<i>Total:</i>		\$150,000

EXPLANATION

In accordance with the Settlement Agreement between Groton Wind, LLC and Counsel to the Public, approved by the New Hampshire Site Evaluation Committee (SEC) in Docket No. 2010-01, the New Hampshire Department of Justice (NHDOJ) accepted payment on behalf of the State in the amount of \$160,000. A portion of the funding (\$10,000) is to be retained by the NHDOJ to defray its expenses associated with SEC Docket No. 2010-01. The remaining funds (\$150,000) are to be provided to the Bureau of Historic Sites to support improvements at Livermore Falls.

The following appropriation is being requested for Fiscal Year 2016:

Class 103 Contracts for Operational Services - \$150,000, amount budgeted to cover contracts for interpretive signs, infrastructure repairs, safety access, and parking area improvements.

Concurred,

Jeffrey J. Rose
Commissioner

State of New Hampshire
Department of Resources and Economic Development
Division of Economic Development

FISCAL SITUATION

03-35-35-351510-52040000 Groton Wind Settlement Fund

Fiscal Year 2016 Appropriation Request

\$150,000
Total Request: \$150,000

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made as of this 9th day of July, 2014, ("Effective Date"), by and between, Groton Wind, LLC, an Oregon limited liability company ("Groton Wind") and Peter C.L. Roth, in his capacity as Counsel to the Public ("Counsel for the Public") in New Hampshire Site Evaluation Committee ("SEC") Docket No. 2010-01. Groton Wind and Counsel for the Public are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

- A. Groton Wind is the owner of an electric generating wind power project ("Wind Project") in Groton, New Hampshire.
- B. Counsel for the Public is a party to SEC Docket No. 2010-01 and has asserted, among other things, that: Groton Wind constructed its Wind Project not in accordance with its SEC certificate in violation of RSA 162-H:5, I; the SEC should order Groton Wind to terminate the violation and move the Wind Project's operations and maintenance ("O&M") building to its originally certificated location; and Groton Wind's Environmental, Health and Safety Plan (filed October 11, 2013) is deficient (the "Enforcement Claims").
- C. Groton Wind and Counsel for the Public recognize that claims and concerns of certain owners of property in close proximity to the O&M building (i.e. Mario Rampino, Mary Ann Peabody; and Greg Saulnier) have been addressed and settled as to these property owners.
- D. Groton Wind and Counsel for the Public recognize that Groton Wind and the Office of the State Fire Marshal have executed a Compliance Agreement to satisfy the State Fire Marshal's issues pending in SEC Docket No. 2010-01, (the "Compliance Agreement"), and have substantially performed the responsibilities required thereby, and that Groton Wind has filed, and the State Fire Marshal has accepted, the Groton Wind Plant "Emergency Plan", filed with the SEC on June 20, 2014 (the "Emergency Plan").
- E. Groton Wind and Counsel for the Public are entering into this Agreement to compromise, settle and resolve Counsel for the Public's Enforcement Claims presently pending before the SEC, for Counsel for the Public to permanently withdraw said claims, and for Groton Wind to make a payment in the amount of \$160,000 for the public benefit (the "Payment") and to take additional steps described below in paragraph 2.

AGREEMENT

NOW THEREFORE in consideration of the promises, terms and conditions set forth herein the Parties mutually agree as follows:

1. Withdrawal of Enforcement Claims. Within five (5) days after full execution of this Agreement, Counsel for the Public shall: (a) cause all of his claims, protests and objections currently pending before the SEC against Groton Wind and/or the Wind Project related to the Enforcement Claims to be withdrawn by filing a notice of withdrawal with the SEC. Such withdrawal shall become permanent upon receipt by Counsel for the Public of the Payment. Notwithstanding the foregoing, Counsel for the Public reserves the right to participate, in accordance with his powers under RSA 162-H:9, in an adjudicative proceeding with respect to Groton Wind's requests to amend its certificate of site and facility, but agrees that he will not demand that the Wind Project's O&M building be removed or relocated, nor will he seek or assist others with seeking a determination that Groton Wind has violated the terms of its certificate of site and facility, or any provision of law.
2. Payments and Actions by Groton Wind. Groton Wind shall make the Payment to the New Hampshire Department of Justice ("NHDOJ") on or before May 1, 2015. Up to \$10,000 of said Payment funds may be retained by NHDOJ to defray its expenses associated with SEC Docket No. 2010-01; these funds shall be used at the discretion of the Attorney General. The remaining funds shall be used by NHDOJ for the public purpose of supporting the "Livermore Falls Project" in Grafton County by the New Hampshire Department of Resources and Economic Development for park management and park infrastructure at Livermore Falls. Groton Wind shall also continue to comply with all of the terms and conditions of the Compliance Agreement and shall maintain in effect an emergency plan satisfactory to the State Fire Marshal, substantially similar to the Emergency Plan.
3. Release. Upon the delivery of the Payment by Groton Wind to Counsel for the Public, Counsel for the Public, on his own behalf, and on behalf of his representatives, employees, contractors, attorneys, agents, successors, and assigns, and any other person or entity claiming by or through any of them, will release, acquit and discharge Groton Wind from the Enforcement Claims. This release expresses a full and complete settlement of the Enforcement Claims, regardless of the adequacy of the above consideration.
4. Warranties and Representations. In addition to the representations and warranties contained elsewhere in this Agreement, the Parties warrant and represent to each other as follows:
 - a. By signing below, each signatory represents and warrants that he/she is authorized to sign this Agreement on the Party's behalf and to thereby bind such Party to the terms of the Agreement.
 - b. Each Party represents and warrants to all other Parties that neither the execution of this Agreement nor the performance of any obligations

hereunder will violate, or constitute a default under or breach of, any other agreement to which any Party is bound.

5. Settlement and Compromise. It is understood and agreed that this Agreement is a settlement and compromise of disputed claims described herein. The Parties agree to the following Iberdrola Renewables statement:

Iberdrola Renewables is a company that prides itself on transparency and clear communication. Iberdrola Renewables acknowledges that certain communications and decisions surrounding its construction of the operations and maintenance building of the Groton Wind Project did not meet the expectations of state officials and some members of the local community and was not explicitly authorized by the certificate. While we believe that we acted appropriately, we regret that this situation has resulted in misunderstandings and a lack of trust with those impacted. Iberdrola Renewables is working diligently to reestablish its reputation as a good corporate citizen within the State of New Hampshire, as it does at all of its nearly 60 renewable projects throughout the United States and has taken a number of important steps to rectify the situation with respect to the operations and maintenance facility.

Iberdrola Renewables also acknowledges that a lack of close coordination with the State Fire Marshal's office ahead of construction has led to further misunderstanding and a lack of trust when it comes to fire safety issues. Safety is the number one concern for Iberdrola Renewables, both for the communities it serves and its own employees and contractors. With all of this in mind, we have reached an agreement with the State Fire Marshall's office on an action plan which addresses all concerns.

6. SEC Approval. The Parties agree that within 10 days of its full execution, they will develop a Joint Motion for Approval of Settlement Agreement and provide the Motion and Settlement Agreement to the parties in SEC Docket No. 2010-01 for concurrence, at which time the terms of this Agreement shall be public. The Parties agree to cooperate in advocating that this Agreement be approved by the SEC in its entirety and without modification. This Agreement is expressly conditioned upon the SEC's acceptance and approval of all of its provisions without change or condition. If the SEC does not accept this Agreement in its entirety in full satisfaction of all of the pending claims against Groton Wind and/or the Wind Project, or if the SEC makes changes to this Agreement, or issues conditions or findings that go beyond the scope of this Agreement, the Settling Parties shall negotiate reasonable modifications to this Agreement if necessary and possible. Such modifications shall take into account the SEC's determinations, and to the extent possible, maintain the original language and intent of this Agreement.
7. Entire Agreement. This Agreement sets forth the entirety of the agreement between the Parties hereto and supersedes all prior negotiations, agreements, representations, and understandings between the Parties with respect to the subject matter hereof, and any reliance upon any prior negotiations, agreements, representations, and understandings between the Parties is expressly waived and disclaimed.

8. Confidentiality of Settlement Negotiations. This Agreement is the product of confidential settlement negotiations. The content of these negotiations, including any documents prepared during such negotiations for the purpose of reaching settlement, shall be privileged and all offers of settlement shall be confidential and without prejudice to the position of any party presenting such offer.
9. Counterparts. This Agreement may be signed in counterparts and facsimile signatures will be accepted in lieu of original signatures.
10. Successors. The terms of this Agreement shall be binding upon the heirs, representatives, successors and assigns of each Party hereto.
11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Hampshire.
12. Negotiated Agreement. This Agreement shall not be construed as if it were prepared by one of the Parties, and shall be deemed to have been negotiated by and between the Parties, who are separately represented by counsel. All provisions of this Agreement have been negotiated at arm's length, and this Agreement shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provision hereof.
13. Survival. All representations and warranties set forth in, and all provisions of, this Agreement shall survive the consummation of the transactions contemplated by this Agreement, and the delivery of any instruments required to be delivered hereunder and be fully enforceable thereafter.
14. Performance of Additional Acts. Each Party agrees that it shall execute and deliver any and all documents and perform any and all acts required on its part or those which may be reasonably necessary to effectuate and complete and facilitate the provisions of this Agreement.
15. Modification of Agreement. Any modification of this Agreement shall be in writing and signed by the Parties.
16. Breach and Remedies. Each Party shall retain its rights to pursue legal and/or equitable actions to remedy breach(es) of this Agreement by the other Party.
17. Third Party Beneficiaries. The Parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Saura Maynard
Witness

Peter C.L. Roth
Peter C.L. Roth
Counsel for the Public

Joan Agny
Witness

GROTON WIND, LLC,
an Oregon Limited Liability
Company

By: [Signature]
Name: Kevin Devlin
Authorized Representative

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Its: _____

Joan Agny
Witness

By: [Signature]
Name: Scott Jacobson
Authorized Representative

Its: _____