



BOARD OF COMMISSIONERS
Agenda Item Summary

Agenda Category: Prior Approved Agreement

Item No:

Meeting Date: 06/30/2020

Originating Department: BOCC

Issue: In the matter of approving agreement with Swan Lake North Hydro LLC Pumped Hydro Project regarding the Strategic Investment Program.

Background: Enacted by the 1993 Legislature, the Strategic Investment Program (SIP) allows local governments to negotiate agreements for up to 15 years of property tax relief for key industry companies to attract and retain long term investment and employment. Swan Lake North Hydro LLC proposes to build a pumped hydro energy storage project in Klamath County. Attached agreement is intended to satisfy the requirements described in ORS 285C.609(4) and the project will qualify for the property tax incentives described in ORS 307.123.

Fiscal Impact: Company shall pay each year a **Community Service Fee:** each tax year during exemption period equal to 25% of the property taxes that would, but for the exemption pursuant to ORS 307.123(c), be due not to exceed \$2,500,000 for any tax year; AND an **Annual Fee:** each year ranging from \$1,096,181 in year one to \$1,658,072 in year 15.

Recommended Motion: Agreement was approved and executed in a public meeting on June 17, 2020

OREGON STRATEGIC INVESTMENT PROGRAM AGREEMENT

Klamath County, a political subdivision of the State of Oregon (the "County"), and Swan Lake North Hydro, LLC (the "Company") hereby enter into this agreement (the "Agreement") effective as of the date of the last signature below.

RECITALS

A. The Company or an affiliate of the Company proposes to build and operate within the County a pumped hydro energy storage project that is expected to have an installed capacity of approximately 400 megawatts and a capital cost of at least \$500 million.

B. The Oregon Legislature has established the Strategic Investment Program to promote industrial competitiveness and to improve employment in the areas where projects are to be located by encouraging businesses engaged in projects to hire local employees. The Strategic Investment Program encourages local governments to enter into agreements with companies in key industries to attract and retain long-term investment and employment.

C. The County and the Company intend that this Agreement will satisfy the requirements described in ORS 285C.609(4) and that the Project will qualify for the property tax incentives described in ORS 307.123.

D. The County and the Company have provided public information and an opportunity for public input regarding the Project and the Agreement at a formal public hearing on this Agreement held on June 17, 2020.

E. The Company has entered into or will enter into a First Source Hiring Agreement consistent with the Strategic Investment Program application requirements described in OAR 123-623-1500.

AGREEMENT

The County and the Company hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms have the following meanings:

"Agreement" has the meaning set forth in the Preamble.

"Company" has the meaning set forth in the Preamble.

"County" has the meaning set forth in the Preamble.

"Exemption Period" means, subject to ORS 307.123, the fifteen consecutive Tax Years beginning immediately after the first January 1 after the Project (i) has a real market value of at

least \$25 million and (ii) the Project has produced electricity, transmitted the electricity into the regional transmission grid, and sold the electricity.

“Exempt Property” means the property in the Project described in ORS 307.123(2)(c).

“Non-Exempt Property” means the property in the Project described in ORS 307.123(2)(b).

“Payment Date” means, for any Tax Year, December 1 of that Tax Year.

“Project” means all property comprising the pumped hydro energy storage facility located in Klamath County during the term of this Agreement, except as otherwise specified by the Company pursuant to Section 3.1, including without limitation upper and lower reservoirs, high-pressure penstock, powerhouse with generating/pumping facilities, low-pressure penstocks, dams, overflow spillways, inlet/outlet structures, drop shaft, headrace and tailrace tunnels, surge shaft, transformer gallery, power transformers, switches and switchyard, variable speed reversible pump-turbine units, access roads and tunnels and civil construction work, underground and overhead electrical lines and pole structures, high-voltage transmission lines, towers and pole structures, meteorological monitoring towers, an operations and maintenance facility, grid interconnection facilities, one or more substations, land, and associated supporting infrastructure and facilities. Unless otherwise specified by the Company pursuant to Section 4.1, the Project shall include repairs, replacements, repowering, modernization, renovations and remodeling of such property made during the term of this Agreement.

“Tax Year” means the property tax year beginning July 1 and ending June 30.

ARTICLE 2 EXEMPTION

2.1 Exemption. Pursuant to ORS 307.123(2)(c), and subject to Section 5.1, the Exempt Property shall be exempt from property tax during the Exemption Period.

ARTICLE 3 PAYMENTS

3.1 Property Tax. Pursuant to ORS 307.123(2)(a), the Company shall pay property tax with respect to the Non-Exempt Property during the Exemption Period.

3.2 Community Service Fee. Pursuant to ORS 285C.609(4)(b) and (c), and subject to Section 5.2, on or before the Payment Date for each Tax Year during the Exemption Period, the Company shall pay to the County Treasurer an amount equal to twenty-five percent (25%) of the property taxes that would, but for the exemption pursuant to ORS 307.123(c), be due with respect to the Project for the Tax Year, except that such amount shall not exceed \$2,500,000 for any Tax Year (the “Community Service Fee”).

3.3 Annual Fee. Subject to Section 5.2, on or before the Payment Date for each Tax Year during the Exemption Period, the Company shall pay to the County Treasurer an amount equal to the amount shown for that Tax Year in the list below (the “Annual Fee”):

Year 1: \$1,096,181
Year 2: \$1,129,067
Year 3: \$1,162,939
Year 4: \$1,197,827
Year 5: \$1,233,762
Year 6: \$1,270,774
Year 7: \$1,308,898
Year 8: \$1,348,165
Year 9: \$1,388,609
Year 10: \$1,430,268
Year 11: \$1,473,176
Year 12: \$1,517,371
Year 13: \$1,562,892
Year 14: \$1,609,779
Year 15: \$1,658,072

3.4 Underpayments. If the Company fails to pay any portion of the Community Service Fee or the Annual Fee for a Tax Year by the Payment Date for that Tax Year, interest shall accrue on the unpaid amounts at the rate prescribed in ORS 311.505(2).

3.5 Overpayments. If the Company pays an amount in excess of amounts owed under this Agreement for any Tax Year, the County shall either refund the excess or return the incorrect payment and request that the Company reissue payment in the correct amount. Notwithstanding the previous sentence, if the Company successfully challenges the real market value, maximum assessed value, or other value of the Project for any Tax Year, and such challenge results in a reduction in value that in turn results in a reduction in the amount of the Community Service Fee owed for the Tax Year, the County may credit the reduced Community Service Fee against future amounts owed by the Company under this Agreement before refunding any excess to the Company.

3.6 Disposition of Payments. As between the County and the Company, the County shall be solely responsible for the disposition of the Community Service Fees and the Annual Fees. The Company shall have no liability or obligation to any person other than the County with respect to the Community Service Fee or the Annual Fee.

ARTICLE 4 NOTICES

4.1 Company Notices. During the Exemption Period, (i) the Company shall file with the Oregon Department of Revenue such information and reports as are required by law and shall promptly provide copies of such information to the County and (ii) at least 60 days before the Payment Date for each Tax Year, the Company shall provide the County a description of the Exempt Property and Non-Exempt Property in the Project as of January 1 of that Tax Year.

4.2 County Notices. At least 60 days before the Payment Date for each Tax Year in the Exemption Period, the County shall provide the Company with a notice of payment that

specifies the Community Service Fee and Annual Fee due, if any, for the Tax Year and that describes the calculations of such amounts due.

4.3 Termination Notice. If the Project has not achieved commercial operation by January 1, 2029, the Company may terminate this agreement by providing written notice to the County to that effect.

ARTICLE 5 FAILURES TO MAKE PAYMENTS

5.1 Loss of Exemption. If the Company does not timely pay the Community Service Fee or the Annual Fee for any Tax Year, and does not pay the Community Service Fee or the Annual Fee and any applicable interest pursuant to Section 3.4 by the Payment Date for the next Tax Year, the Exempt Property (i) shall not be exempt for the next Tax Year and any subsequent Tax Year in which the Company has not paid the Community Service Fee or the Annual Fee and any applicable interest pursuant to Section 3.4 by the Payment Date for that Tax Year and (ii) shall be assessed and taxed as other similar property is assessed and taxed.

5.2 Payments Upon Lost Exemption. Notwithstanding Section 3.2 and Section 3.3, if the Exempt Property is not exempt under Section 5.1 for any Tax Year during the Exemption Period, the Company shall not be required to pay the Community Service Fee or the Annual Fee for that Tax Year.

ARTICLE 6 ASSIGNMENTS

6.1 Assignments. The Company may sell, transfer, assign, pledge, mortgage, hypothecate, or otherwise dispose of and encumber all or any of its rights, title, and interests in, to, and under this Agreement to any lender (or other financing party) as security for the performance of its obligations under any loan agreement with such lender (or financing agreement with such financing party), to any affiliate or other entity formed for the purpose of developing, constructing, owning, or operating the Project, and to any purchaser or lessee of the Project, without the consent of the County, as long as such successor owner assumes and agrees to be bound by this Agreement. In such event, the Company or the Company's assignee, as the case may be, will provide written notice to the other party of such assignment or pledge as promptly as practicable, but not later than 20 days thereafter. The County shall execute and deliver and furnish such consents, documents, certificates, opinions of counsel, and other instruments and information which any lender or financing party may reasonably request as a condition to the financing or refinancing of the Project. Except as set forth in this Article 6, neither this Agreement nor any rights under this Agreement, in whole or in part, shall be assignable or otherwise transferable by any party without the express written consent of the other party, and any attempt by any party to assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party, shall be null and void.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Company. The Company represents and warrants to the County as follows:

7.1.1 Organization. The Company is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of Delaware.

7.1.2 Authority. The Company has full limited liability company power and authority to execute and deliver this Agreement and to perform all of its obligations under this Agreement.

7.1.3 Binding Obligation. This Agreement is the legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws of general application or by general principles of equity.

7.1.4 No Conflicts. The execution and delivery of this Agreement by the Company and the performance by the Company of all of its obligations under this Agreement will not:

- (a) conflict with the Company's organizational documents;
- (b) breach any agreement to which the Company is a party, or give any person the right to accelerate any obligation of the Company;
- (c) violate any law, judgment, or order to which the Company is subject; or
- (d) require the consent, authorization, or approval of any person, including, but not limited to, any governmental body.

7.2 Representations and Warranties of the County. The County represents and warrants to the Company as follows:

7.2.1 Organization. The County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon.

7.2.2 Authority. The County has full power and authority to execute and deliver this Agreement and to perform all of its obligations under this Agreement.

7.2.3 Binding Obligation. This Agreement is the legal, valid, and binding obligation of the County, enforceable against the County in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws of general application or by general principles of equity.

7.2.4 No Conflicts. The execution and delivery of this Agreement by the County and the performance by the County of all of its obligations under this Agreement will not:

- (a) conflict with the County's charter or any other organizational documents;
- (b) breach any agreement to which the County is a party, or give any person the right to accelerate any obligation of the County;
- (c) violate any law, judgment, or order to which the County is subject; or
- (d) require the consent, authorization, or approval of any person, including, but not limited to, any governmental body (other than the County).

**ARTICLE 8
MISCELLANEOUS**

8.1 Notices. Each notice or other communication provided under this Agreement (i) must be in writing, (ii) must be delivered to the recipient in person, by courier or certified mail, return receipt requested, or by facsimile or other electronic transmission at the addresses set forth below, and (iii) is effective upon receipt by the party receiving it.

If to the County, to:

Klamath County Circuit Court
316 Main Street
Klamath Falls, OR 97601
Facsimile No.: (541) 882-6109
Telephone No.: (541) 883-5503
Attention: Klamath County Chairperson

If to the Company, to:

Swan Lake North Hydro, LLC
Attn: Erik Steimle
220 NW 8th Ave.
Portland, OR 97209
Telephone (503) 998-0230

With a copy to:

Swan Lake North Hydro, LLC
Attn: Nathan Sandvig
404 Wyman Street
Waltham, MA 02451
Telephone (503) 602-0998

8.2 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

8.3 Entire Agreement. This Agreement is the entire agreement between the County and the Company with respect to the subject matter of this Agreement. There is no other oral or

written agreement between the County and the Company with respect to the subject matter of this Agreement. There are no representations or warranties made by either the County or the Company, implied or express, other than those contained in this Agreement.

8.4 Severability. If any clause, sentence, or other portion of this Agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

8.5 Amendments. This Agreement may not be amended unless such amendment is in writing and executed by the County and the Company.

8.6 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

8.7 Further Assurances. At any time from and after the date of this Agreement, at any party's request and without further consideration, the other party shall take all such further actions, and shall execute and deliver all such further instruments or documents, as a party may reasonably request to carry out and fulfill the transactions contemplated by this Agreement. Without limiting the foregoing, within two weeks after the date of this Agreement, the County shall request that the Oregon Business Development Commission determine that the real and personal property in the Project shall receive the tax exemption in ORS 307.123.

8.8 Right to Contest Assessments. Nothing in this Agreement shall limit or restrict the Company from challenging the real market value or assessed value of any property, or the amount that is or would, but for the exemption, be due for property taxes.

[Signature page follows.]

The Company and the County have executed this Agreement effective as of the date of the last signature set forth below.

KLAMATH COUNTY



County Commissioner _____
Date: 6-17-20



County Commissioner _____
Date: 6-17-2020



County Commissioner _____
Date: 6/17/20

SWAN LAKE NORTH HYDRO, LLC.



By: _____
Name: Erik Steimle
Title: Authorized Individual
Date: June 16, 2020



By: _____
Name: Nate Sandvig
Title: Authorized Individual
Date: June 17, 2020