

AGENDA ITEM FOR ADMINISTRATIVE MEETING () Discussion only
(X) Action

FROM (DEPT/ DIVISION): County Counsel

SUBJECT: Nolin Hills SIP Agreement

<p>Background:</p> <p>Nolin Hills is seeking to apply for the strategic investment program for its wind and solar generation project. The company has negotiated the terms for agreements for the project to receive the tax benefits and additional payments as provided and required by the state law. Two agreements are proposed – one for the wind/solar generation; and the second for the battery storage. The agreements are before the Board for a public hearing and potential approval. If approved the matter would go to the Oregon business development department for review and formal approval.</p>	<p>Requested Action:</p> <p>(1) Public Hearing on the agreements; (2) Adopt Order No. 2023-037; (3) Adopt Order No. 2023-038</p>
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ATTACHMENTS: Draft Orders

*****For Internal Use Only*****

Checkoffs:

- () Dept. Heard (copy)
- () Human Resources (copy)
- () Fiscal
- (X) Legal (copy)
- () (Other - List:)

To be notified of Meeting:

Needed at Meeting:

Scheduled for meeting on: September 6, 2023

Action taken:

Follow-up:

THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

STATE OF OREGON

In the Matter of Requesting)
the Oregon Economic and)
Community Development) Order No. BCC2023-037
Commission to Exempt Nolin)
Hills Wind, LCC Projects)
from Property Taxation Under)
the Strategic Investment Program)
for Wind/Solar Components)

WHEREAS the Oregon Legislature has declared that a significant purpose of the Strategic Investment Program ("SIP") established by ORS 307.123 and ORS 285C.600-285C.620 is to improve employment in areas where eligible projects are to be located, by encouraging business firms that will benefit from an eligible project to hire employees from the region in which the project is to be located whenever practicable; and

WHEREAS the SIP encourages local governments to enter into agreements with key industries to attract and retain long-term investment and employment; and

WHEREAS Nolin Hills Wind, LLC has approached Umatilla County about the SIP; and

WHEREAS Umatilla County and Nolin Hills Wind, LLC negotiated for a proposed SIP Agreement; and

WHEREAS a public hearing was held in Room 130 of the Umatilla County Courthouse in Pendleton, Oregon, at 9:00 a.m. on September 6, 2023, before the Board of Commissioners, to provide public information and to provide for public input regarding a property tax exemption under the SIP for Nolin Hills Wind, LLC energy generating projects; and

WHEREAS notice of the public hearing was published in the East Oregonian on August 26 and 29, 2023 and also posted on the Umatilla County website; and

WHEREAS following the public hearing, Nolin Hills Wind, LLC and Umatilla County entered into an agreement that requires, among other things, that Nolin Hills Wind, LLC pay a Community Service Fee to Umatilla County, and also includes the provisions required

by ORS 285C.609(4). A copy of the agreement is attached to this order.

NOW THEREFORE, the Board of Commissioners orders as follows:

1. Umatilla County requests that the Oregon Economic and Community Development Commission approve the application for the Nolin Hills Wind, LLC wind and solar generating projects located within Umatilla County for the Strategic Investment Program and eligible for the property taxation exemption provided in ORS 307.123; and

2. The Board of Commissioners' Chief Financial Officer is appointed to serve in the capacity of the local administrator for the SIP in Umatilla County; and

3. The SIP administrator is authorized to assist Nolin Hills Wind, LLC in submitting certified copies of this Order and other evidence of Umatilla County's fulfillment of provisions under ORS 285C.609 to the Commission.

DATED this 6th day of September, 2023.

UMATILLA COUNTY BOARD OF COMMISSIONERS

Daniel N. Dorran, Chair

John M. Shafer, Commissioner

Celinda A. Timmons, Commissioner

ATTEST:
OFFICE OF COUNTY RECORDS

Records Officer

OREGON STRATEGIC INVESTMENT PROGRAM AGREEMENT

UMATILLA COUNTY, a political subdivision of the State of Oregon (the “County”) and **NOLIN HILLS WIND, LLC** (the “Company”) hereby enter into this Strategic Investment Program Agreement (the “Agreement”) this ___ day of September, 2023 (the “Effective Date”).

WITNESSETH :

WHEREAS, the Oregon Legislature has established the Strategic Investment Program (hereafter “SIP”) to promote industrial competitiveness and to improve employment in the area where projects are to be located by encouraging businesses engaged in projects to hire local employees. (See ORS 307.123 and ORS 285C.600 – 285C.620.); and

WHEREAS, SIP encourages local governments to enter into agreements with key industries to attract and retain long-term investment and employment; and

WHEREAS, the Company proposes to build and operate in the County an energy generation project, known as the Nolin Hills Wind Power Project (“Nolin Hills”), pursuant to a certificate issued by the Oregon Energy Facility Siting Council (“EFSC”), as that certificate may be amended from time to time (“Site Certificate”), for a facility of approximately 300 megawatts of wind generating capacity and 300 megawatts of solar generating capacity. Nolin Hills will have a capital cost of at least \$25 million. Nolin Hills is expected to create temporary construction jobs and permanent full-time jobs in the County; and

WHEREAS, the Company and County have jointly negotiated this Agreement, and following the mutual execution of this Agreement, the Company will submit its SIP application (the "SIP Application") to the Oregon Business Development Department (“OBDD”). It is the intent of this SIP Agreement to provide the competitive tax structure that is essential for Company to make investments in the County which provide a source of renewable energy in Oregon and to contribute to the State of Oregon’s quality of life; and

WHEREAS, the County and the Company have provided public information and an opportunity for public input regarding the SIP Application specifically, including a formal public hearing on this Agreement held in the County on September __ , 2023 and;

WHEREAS, this Agreement provides the terms and conditions under which the County agrees to recommend to the State of Oregon that the SIP Application be approved and tax abatement be granted for the Project, as defined below, in exchange for performance by the Company of the obligations herein;

NOW, THEREFORE, in consideration of the mutual covenants of the parties, each to the other giving, the parties do hereby agree as follows:

1. **Project Definition and Scope.** The “Project” means all tangible and intangible property (the “Property”) (whether held in fee, leasehold or by contract) which may be installed

or placed in service in phases or stages during the term of this Agreement and having the County as its tax situs, consisting of (a) the wind turbine generators; (b) the solar arrays; and (c) associated property (the “Associated Property”, including without limitation, roads and civil construction work, meteorological monitoring towers, meteorological monitoring units, solar modules, tracker systems, posts, operations and maintenance facilities, grid interconnection facilities, foundations, inverters, transformers, collection and transmission lines (except high voltage overhead and underground lines between Company’s substation and grid), electrical towers and poles, underground and overhead electrical conductors, one or more substations, land, and associated supporting infrastructure and facilities.¹ Unless otherwise determined by Company, as applicable, the Project further includes repairs, replacements, modernization, renovations, and remodeling of such Property and Associated Property made during the term of this Agreement. For purposes of this Agreement, the Project shall first exist when the real market value of the foregoing Property is at least \$25 million. Notwithstanding the foregoing, the Project shall include only Property and Associated Property that are installed or placed in service within the County after receipt by the OBDD of the SIP Application. Subject to the preceding sentence and subject to the Site Certificate for Nolin Hills as that certificate may be amended from time to time and State and local land use laws, Company may add to and subtract from (but not below a total capital cost of \$25 million) the property that constitutes the Project. For purposes of this Agreement, “property” has the meaning assigned to that term in ORS 308.505 through 308.681. In the event that it is desired to repower or expand the Project within the SIP Exemption Period (as defined in section 2 below), the County shall have the right to re-open negotiation for a new “Per-Megawatt-Amount” as defined in section 4.2.3. Repowering or expansion shall not occur until satisfactory negotiation is concluded.

2. **SIP Exemption Period.** The “SIP Exemption Period” shall begin, as defined in ORS 307.123 (2)(c), in and for the Property Tax Year during which the Project commences Commercial Operation and has a real market value equal to, or in excess of, \$25 million, and shall continue thereafter for 15 Property Tax Years as provided by ORS 307.123(2)(c). As used in this Agreement, “Commercial Operation” shall mean that the Project first produces electrical energy (excluding for testing purposes) and that electrical energy is transmitted into the regional transmission grid for delivery to a power purchaser, and “Property Tax Year” means each period of 12 months beginning July 1.

3. **Conditions Precedent.** Except for the obligations set forth in Sections 5.1 and 6.1, the obligations set forth herein are conditioned upon a determination by OBDD or its designee that the Project is eligible for the tax exemption provided in ORS 285C.606, ORS 307.123, and applicable administrative rules.

4. **Exemption, Company Payments and Related Obligations.**

4.1 Each year during the SIP Exemption Period on or before October 25, the County shall submit to the Company an invoice setting forth the amounts of the CSF (as defined below), the Additional Amount (as defined below), if any, and a statement describing its calculations of those amounts. The Company will itemize the amounts due from the Project for the year in accordance with Section 4.

¹ NTD: Subject to Nolin Hills’ local counsel review.

4.2 In consideration of participating in the SIP with respect to the Project, the Company agrees to pay the County the amounts as set forth below:

4.2.1 Ad Valorem Property Taxes on Non-Exempt Amounts. Pursuant to ORS 307.123(2) as existing as of the Effective Date of this Agreement, the Company shall pay property tax with respect to the portion of the Project subject to property taxes pursuant to ORS 307.123(2) during the Exemption Period for the Project. Property taxes on such non-exempt property will be payable at the County's tax rate in accordance with ORS 311.505. The remainder of the real market value of the Project shall be exempt from taxation as provided by ORS 307.123.

4.2.2 Community Service Fee ("CSF"). For each year of the SIP Exemption Period, the Company shall pay to the County a CSF, in an amount equal to twenty-five percent (25%) of the property taxes that would, but for the exemption, be due on the exempt property in each assessment year, but not exceeding an aggregate of \$2,500,000 in any year. The CSF will be calculated pursuant to ORS 285C.609 (4) (b) (B). The Company shall pay the CSF no later than December 1 of each tax year.

4.2.3 Additional Amount. If for any Property Tax Year of the SIP Exemption Period, the Statutory Amount is less than the Minimum Revenue Amount for the property tax year, then Company shall pay to County an amount equal to the excess, if any, of the Minimum Revenue Amount over the Statutory Amount (the "Additional Amount"). Each year, no later than October 25, the County shall provide Company with a statement describing its calculations of the Additional Amount due, if any, for the Property Tax Year ended on the prior June 30, and Company shall pay any Additional Amount to County by December 1 of each year. The Additional Amount shall be payable in addition to any property taxes and CSF for the year. For purposes of this Agreement, the following definitions apply:

"Statutory Amount" means the sum of the ad valorem property taxes due from Nolin Hills for the property tax year as described in Section 4.2.1 and the aggregate CSF amount described in Section 4.2.2.

"Minimum Revenue Amount" means

The sum of:

the product of Nolin Hills' connected wind-generation nameplate capacity and connected solar-generation nameplate capacity (in megawatts AC) as of January 1 preceding the Property Tax Year ended on the prior June 30 multiplied by \$7,500.00 per megawatt.

4.2.4 Local Improvement Payments. In addition the Project Entity agrees to make the following "Local Improvement Payments." These payments may be expended by the County on County priorities at the sole and unfettered discretion of the Governing Body of the County, provided, however, that the aggregate amounts payable to the County shall not be subject to change. These payments are not intended to create any third party beneficiary rights for any entities except as expressly designated in this Agreement. The Local Improvement Payment shall consist of an annual installment payment equal to \$1,500 per megawatt of the Project's total nameplate capacity for each of the first fifteen (15) property tax

years following the commencement of the SIP Exemption Period, without interest, with the first installment due on December 1 of the first property tax year in which the exemption referred to in Sections 2 and 4.2 is effective and on December 1 for each of the following fourteen (14) property tax years.

4.2.5 Community Development Contribution (“CDC”): Within 60 days after the Company has commenced construction, the Company shall pay to the County a CDC in the amount of \$2,500,000. The Parties acknowledge that the CDC is intended to assist with costs of capital improvement projects within the County, which may include payment or defeasance of debt service on, or redemption of, outstanding bonded indebtedness issued for such purposes under applicable law. Nothing in this Section shall modify, extend, waive, or otherwise affect the exemption provided under this Agreement, or constitute an obligation of the Company to support the payment of or satisfy any such bonded indebtedness, or compel the Sponsors to use the CDC for this purpose.

4.2.6 County Cost of Preparation of SIP Agreement. In addition to the above, the Company agrees to reimburse the County for its reasonable costs incurred for the preparation of this Agreement, including staff, legal, administrative, and professional fees, in the amount of \$10,000. Payment of these costs shall be made within thirty (30) days after receipt of invoice.

4.2.7 Mac Hoke Road Bridge. In addition to the above, the Company agrees to reimburse the County for a portion of the cost for the replacement of the Mac Hoke Road Bridge in an amount of \$1,000,000. Payment of such costs shall be made within sixty (60) days after the Project has commenced construction.

4.3 SIP Application. The Company shall file a final SIP Application with the OBDD and pay all applicable fees as provided in ORS 285C.612 and applicable administrative rules.

4.4 First-Source Hiring Agreement. The Company shall enter into a first-source hiring agreement with appropriate third parties acceptable to the County in substantially the form required pursuant to OAR 123-070. The County is to be designated a third-party beneficiary of the agreement and is entitled to enforce its terms. The parties may designate a different provider for this service by letter agreement.

4.5 Property Tax Statements and Information. The Company shall notify the County on an annual basis, at the time of the filing with the Oregon Department of Revenue (“DOR”) of the annual statement for property tax purposes covering the Project, and of the connected nameplate capacity for wind and solar generation (in megawatts AC) of the Project as of January 1 of that year.

4.6 Future Bonding.

4.6.1 During each year of the Exemption Period, the Company will contribute an amount to the County (the “Bond Contribution”) to be used solely for the payment or prepayment of debt service on newly-issued general obligation bond indebtedness incurred to finance public utilities, public educational services, fire services, public health

services, or public safety services, and issued pursuant to voter approval of a measure passed on or after the date of this Agreement by any taxing district included in the consolidated tax area in which the Facility is located (a “Qualifying Bond”). The annual Bond Contribution will be equal to 100% of the aggregate amount the Company would have been assessed with respect to such Qualifying Bonds for all property owned by the Company within the taxing district subject to the Qualifying Bond but for the exemption pursuant to this Agreement and any other exemption for property owned by the Company within such taxing district. The Company will not unreasonably object to any local measures for Qualifying Bonds.

4.6.2 Following voter approval of a Qualifying Bond and prior to the issuance date of any such Qualifying Bond, the Company and the County will collaborate to ensure that (a) Bond Contributions are expended solely to prepay or to make debt service payments on Qualifying Bonds, (b) tax levy rates imposed on taxpayers are adjusted to take into account any Bond Contributions, and (c) Bond Contributions do not violate any tax-exemption requirements for Qualifying Bonds. The Parties will enter into additional agreements to implement these provisions.

4.7 Fair Sponsorship. The Company and its contractors are encouraged to participate as a sponsor for the Umatilla County Fair.

4.8 Wind Tower Setback. The Company agrees to site any wind towers for the Project two miles from any rural residence as described in Section 152.616 (HHH)(6)(a)(3) of the Umatilla County Code of Ordinances; *provided, however*, that if Company furnishes a good neighbor agreement or other substantially similar attestation by a property owner that such property owner (a) has no objection to Company siting any wind towers within such setback area or (b) expressly waives compliance with Section 616 (HHH)(6)(a)(3) of the Umatilla County Code of Ordinances (regardless of such property owner’s power and authority to grant such waiver), then Company shall be deemed to satisfy the requirements of this Section 4.8.²

5. County Obligations.

5.1 Within 1 day after the Effective Date, the County shall request that the OBDD approve the SIP Agreement and determine that the real and personal property constituting the Project situated in the County be granted exemption from ad valorem property taxation for the SIP Exemption Period.

5.2 The County shall establish a separate tax account for the Project investments in accordance with OAR 150-307.0100(1).

5.3 The CSF and the Additional Amounts, if any, may be expended by the County on County priorities at the sole and unfettered discretion of the Governing Body of the County, provided, however, that the aggregate amounts payable to the County shall not be subject to change. These payments are not intended to create any third-party beneficiary rights for any entities except as expressly designated in this Agreement.

5.4 The County is solely responsible for determining how to allocate the CSF

² NTD: Subject to Nolin Hills’ local counsel review.

and any Additional Amounts and for the disposition of the CSF and the Additional Amounts, including paying any portions, if any, that are due or payable any other jurisdictions. In no event shall the Company have any liability in connection with any disagreement, error, or conflict related to the division, allocation, or distribution of such amounts by the County. In no event shall the Company have any liability or obligation to any other person with respect to the CSFs and Additional Amounts after the Company has discharged its duty to pay as set forth in Section 4 above, and the County shall hold the Company harmless with respect to any claims to the contrary to the extent allowed by law.

6. **Joint Obligations.** In addition to the other obligations set forth in this Agreement, the parties shall:

6.1 Cooperate with the OBDD and the DOR to secure approval of the SIP Application and take such steps as may, from time to time, be reasonably necessary to maintain the tax exemption.

6.2 Provide such information and resources to each other as may be reasonably necessary to ensure proper calculation of the amounts due under this Agreement.

7. **Ad Valorem Property Taxes.**

7.1 Nothing herein shall govern the assessment, payment, or collection of ad valorem property taxes on the portion of the Project that is taxable as described in Section 4.2.1 of this Agreement or on property outside the Project.

7.2 Without limiting any other remedy under law, nothing herein 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 ad valorem property taxes. If, for any property tax year, the amount of such property tax or the value of any property is redetermined after the tax, CSF, or Additional Amounts have been paid, then the County shall promptly recalculate the amounts described in Section 4.2 for that property tax year, without regard to any interest, and shall provide the Company with a statement describing its calculations. Within 60 days after delivery of the statement, the Company shall pay any underpayment, or the County shall refund any overpayment, as the case may be, based on such recalculations. If either party receives interest attributable to the redetermination, the party receiving such interest shall pay to the other party an amount equal to such interest, to the extent that such redetermination caused the underpayment or overpayment for the property tax year.

8. Confidentiality.

The parties acknowledge that this Agreement is a public record subject to Oregon's public records laws. If any person or entity requests any data, documents, or notes about the Company or its business practices (other than this Agreement) that are related to this Agreement or its tax exemption, whether by court order, subpoena, Oregon Public Records Request, or other reason, the County and City shall not release any such information until all of the following steps are completed:

- (a) County shall notify Company within three (3) business days of the receipt of such request;
- (b) if Company elects to challenge or appeal the release of such information, the Company shall notify the City or County within nine (9) business days of receipt of the request, and the Company shall assume all responsibilities, costs, and expenses for such defense;
- (c) if Company does not notify the City or County within nine (9) business days of receipt of such request, the City or County shall be authorized to release the requested information to the requestor and the City or the County shall have no liability to Company for such release of such Confidential Information.

Notwithstanding the above, County agrees to cooperate with the Company in any challenge or appeal to a court order, subpoena, public records request, or other applicable law requiring the release of Confidential Information. Company shall indemnify and hold County harmless for all costs and expenses incurred in the challenge or appeal to the release of such information, including court and appeal costs and County's attorney's fees and expenses. Nothing in this section requires the parties to refuse to disclose such information after a final order, including any appeal, by a competent judicial authority. If Oregon law is amended to require responses to public records requests be made less than twelve (12) business days from the request, the number of business days the Company has to respond pursuant to Paragraphs (a) and (b) above shall be reduced to the number of business days to respond to a public records request as mandated by Oregon law, less two business days.

9. Miscellaneous Provisions.

9.1 The laws of the State of Oregon shall govern this Agreement. Venue is in the Circuit Court of the State of Oregon for the County of Umatilla. The parties agree that in case of any disputes that arise under this Agreement they shall first attempt to resolve such disputes through good-faith negotiations between authorized representatives for both parties for a period of thirty (30) days before filing any litigation.

9.2 Unless defined herein, the terms herein shall be given their normal and customary meaning, except that terms relating to the payment of property taxes and fees included in this Agreement shall be construed consistently with the tax laws and rules of the State of Oregon. No provision shall be construed against a party simply because that party drafted the provision.

9.3 Nothing in this Agreement is intended to give or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

9.4 Failure to make payment in full of the CSFs or any Additional Amounts by the due date shall result in interest being charged on the past due balance in the same amount as is provided by law for late payment of ad valorem property taxes.

9.5 Default by the Company by its failure to comply with any requirement of this Agreement can constitute default of the entire agreement and the County may enforce the terms of this Agreement at its sole discretion. All amounts due by the Company to the County under this Agreement shall be considered as taxes due and unpaid and as such shall become a tax lien on the project property covered by the SIP in the event of default and subject to summary collections under ORS 311.405. Said tax lien shall not be voided or impaired. The County shall have the right to enforce payment of any and all amounts due to it by the Company and/or any Permitted Assignee (as defined below) (including interest, as provided in Section 9.4), through an appropriate action to collect such amounts. In case suit or action is instituted to enforce compliance with any of the terms, covenants or conditions of this Agreement, or to collect the CSF or any Additional Amount due hereunder or any portion thereof, the party found to be in default of this Agreement agrees to pay, in addition to the costs and disbursements provided by statute, such additional sums as the court may adjudge reasonable for attorneys' fees, and provided the County is the prevailing party, the County's consulting fees, and other out-of-pocket County expenses to be allowed plaintiff in said suit or action. The Company and/or any Permitted Assignee (as defined below) also agrees to pay and discharge all reasonable costs and expenses actually incurred, including the County's reasonable attorneys' fees, reasonable consulting fees, and other reasonable out-of-pocket County expenses that shall arise from enforcing any provisions of this Agreement in the event of any default by the Company and/or any Permitted Assignee (as defined below) even though no suit or action is instituted. Nothing in this Section 9.5. is intended to limit any remedies otherwise available to the County to enforce any of the provisions of this Agreement, including payment of any and all amounts due to the County by the Company and/or any Permitted Assignee (as defined below).

9.6 The County and the Company hereby agree to this Agreement in its entirety. The parties understand and agree that the County will only get the full benefit of the bargain if it receives all payments contemplated in this Agreement. The "Default Amount" for the Company shall mean the amount equal to the Project's "Minimum Revenue Amount" for the property tax year in which the Default occurred, multiplied by the number of property tax years remaining in the SIP Exemption Period. "Default" shall mean the material breach of this Agreement by the Company if it fails to cure said default within thirty (30) days after the Company receives notice from the County that the breach has occurred.

9.6.1 In the event that the Company fails to pay the amounts due pursuant to Sections 4.2.2 and 4.2.3 for two (2) consecutive property tax years, then in addition to any other remedies allowed at law or in equity, the following shall apply:

9.6.1.1. This Agreement and the SIP exemption for the

Project may be terminated at the County's election.

9.6.1.2. The Company shall be obligated to pay to the County liquidated damages. The County shall submit to the Company and/or any Permitted Assignee (as defined below) an invoice for the amount of liquidated damages sought, together with a statement setting forth its calculations. Any liquidated damages shall be limited by Section 10 herein.

The Company and/or any Permitted Assignee (as defined below) shall pay such invoiced amounts on or before sixty (60) days after its receipt of the invoice; provided, however, in the event the Company and/or any Permitted Assignee (as defined below) does not agree with the calculations, the Company and/or any Permitted Assignee (as defined below) and the County shall attempt to resolve such disputes through good faith negotiations between authorized representatives for both parties during such sixty (60) day period.

9.7 In accordance with Oregon law, in the event of an overpayment of the CSF or Additional Amounts, the County shall either issue an overpayment refund check or return the incorrect payment and request that the Company reissue payment in the correct amount. In the event of return payment the County Assessor shall establish a reasonable schedule for payment.

9.8 If the Company fails to pay the CSF or any Additional Amount by the date on which it is due, and no cure is made within 30 days after the Company receives notice from the County of such failure, the tax exemption for the Project shall be suspended, and the property of the Project shall be fully taxable for the following property tax year and for each subsequent property tax year for which the CSFs and any Additional Amounts remain unpaid. If the unpaid amounts are paid after the exemption is suspended, the Project property shall again be eligible for the exemption, beginning with the tax year after the payment is made. Reinstatement of the exemption shall not extend the 15-year SIP exemption period.

9.9 Unless terminated earlier pursuant to its terms, this Agreement shall be effective as of Effective Date and remain in effect until the end of the SIP Exemption Period, during which the Company is last eligible for tax exemption pursuant to its terms, after which this Agreement and the obligations of all parties hereto shall terminate. The Company has the right to terminate this Agreement for any reason or no reason by delivering notice to the County at least five (5) business days prior to the desired termination date.

9.10 All notices and other communications required or permitted under this Agreement shall be in writing and shall be either hand delivered in person, sent by facsimile, sent by certified or registered first-class mail, postage pre-paid, or sent by nationally recognized express courier service. Such notices and other communications shall be effective upon receipt if hand delivered or sent by facsimile, three (3) days after mailing if sent by mail, and one (1) business day after dispatch if sent by express courier, to the following addresses, or such other addresses as any party may notify the other parties in accordance with this Section 9.9:

If to Umatilla County:

Umatilla County Board of Commissioners

216 SE 4th Street, Pendleton Oregon, 97801
Attention: Chair, Board of Commissioners

If to the Company:

Nolin Hills Wind, LLC
c/o Capital Power
125 Federal St., Suite 1200
Boston, MA 02110

With copies to:
Capital Power Corporation
EPCOR Tower
1200-10423 101 St. NW
Edmonton, Alberta, Canada, T6H 0E9
Canada

10. **Limitation of Liability.** Notwithstanding anything to the contrary in this Agreement, neither the Company, nor any of its affiliates, shall be liable for: (a) any indirect, reliance, exemplary, incidental, speculative, punitive, special, consequential or similar damages that may arise in connection with this Agreement, (b) any lost or foregone tax revenues, or (c) any damages, liabilities, fees, costs, expenses, penalties, diminishments in value, losses or payments (including any lost or foregone tax revenues) that exceed, in the aggregate, the lesser of (i) the financial benefit realized by the Company under this Agreement and (ii) \$3,000,000.

11. **Effect of Force Majeure Event.** A party will not be deemed to be in breach, material breach, default or otherwise in violation of any term of this Agreement to the extent such party's action, inaction or omission is the result of Force Majeure Event. The Company and the County agree to use commercially reasonable efforts to promptly resolve any Force Majeure Event that adversely and materially impacts their performance under this Agreement. A force majeure event pauses a party's performance obligation for the duration of the event but does not excuse it. "Force Majeure Event" means any event or occurrence that is not within the control of such party or its Affiliates and prevents a party from performing its obligations under this Agreement, including without limitation, any act of God; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of either party); civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the party hereto, over the Project or over a party's operations.

12. **Merger.** This Agreement constitutes the complete and exclusive agreement between the parties with respect to the relationship of the SIP to the Project, and supersedes all prior agreements and proposals, oral or written and any other communication between the parties on this matter. No waiver, modification, amendment or other change will be binding on either

party, except as a written addendum, signed by authorized agents for both parties.

13. **Counterparts.** This Agreement may be executed by the signing of counterparts. The execution of this instrument by each of the parties signing a counterpart hereof shall constitute a valid execution, and this instrument and all of its counterparts so executed shall be deemed for all purposes to be a single instrument. Signatures transmitted by telecopy or electronic mail shall be binding as originals.

14. **Further Assurances.** Promptly upon the written request of the other party, each party shall do such further acts and shall execute, have acknowledged, and deliver to the other party any and all further documents or instruments reasonably requested in order to carry out the intent and purpose of this Agreement.

15. **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. It is the intent of the parties that, in the event a clause or provision is stricken, that there be added as part of this Agreement a clause or provision as similar in terms as may be possible, legal, and enforceable so as to provide a comparable property tax exemption and comparable payments to the County as provided for in this Agreement.

16. **Assignment.**

16.1. The Company may assign and delegate all or a portion of its rights and benefits under this SIP Agreement and obligations corresponding thereto to (i) an affiliate of the Company or the Company's parent company, provided that the Company has provided written notice to the County of such assignment and delegation or (ii) an entity or individual to which the County has consented in writing, such consent not to be unreasonably withheld (in each case, a "Permitted Assignee"). To the extent set forth below, any Permitted Assignee will be bound by the terms and conditions set forth in this SIP Agreement, and any assignment permitted hereunder shall, to the extent set forth in Section 16.2 or 16.3 below, as applicable, release the Company from any and all obligations that are so assumed by the Permitted Assignee.

16.2. If the Company transfers all of the property constituting the Project to a single Permitted Assignee, the Company may assign this SIP Agreement to such Permitted Assignee provided such Permitted Assignee assumes and agrees to perform the Company's obligations hereunder, in which event such Permitted Assignee will be bound by the terms and conditions set forth in this SIP Agreement. Any such assignment described in this Section 16.2 shall automatically operate to release the Company from any and all obligations set forth in this SIP Agreement accruing after the date of such assignment.

16.3. If the Company transfers property constituting less than all of the Project to a Permitted Assignee (each such transfer, a "Partial Transfer"), the Company may assign a portion of the rights, and the Permitted Assignee shall assume a portion of the obligations (each such assignment and assumption, a "Partial Assignment"), under this SIP Agreement to such Permitted Assignee as set forth in this Section 16.3, provided such Permitted Assignee assumes and agrees to perform the appropriate portion of the Company's obligations hereunder, in which event such Permitted Assignee will be bound by the terms and conditions set forth in this SIP

Agreement. The Company will identify to the County the property that is the subject of a Partial Transfer by reference to any modified or amended legal site description, tax parcel, or by another reasonable method. Pursuant to a Partial Assignment, (i) the property in the Project subject to tax and the property in the Project exempt from tax pursuant to ORS 307.123 before the Partial Transfer shall remain subject to tax or exempt from tax, as the case may be, after the Partial Transfer; (ii) the Company and the Permitted Assignee will be obligated to pay their pro rata shares of the CSF and Amounts, determined by the Company and the Permitted Assignee using a reasonable methodology (e.g., the relative duration of ownership of portions of the Project owned by each as of the date of the Partial Transfer); (iii) the Company shall be released from any obligation to pay the property taxes payable by the Permitted Assignee or to pay the Permitted Assignee's pro rata share of the Community Service Fee and the Additional Amount; (iv) the Permitted Assignee shall be under no obligation to pay the property taxes payable by the Company or to pay the Company's pro rata share of the Community Service Fee or Additional Amounts; and (v) neither the Company nor the Permitted Assignee shall have liability for any amounts payable by (or other obligations of) the other, the County hereby agreeing that the liability of the Company and the Permitted Assignee in such circumstance will be several, and not joint. The Company and the County intend that a Partial Assignment shall not extend the SIP Exemption Period and shall not change the total amounts payable to the County by owners of portions of the Project.

[Signatures follow]

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate effective the ___ day of September, 2023.

UMATILLA COUNTY

Daniel N. Dorran, Chair

John M. Shafer, Commissioner

Celinda A. Timmons, Commissioner

NOLIN HILLS WIND, LLC

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____