



Deschutes County Board of Commissioners  
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## **AGENDA REQUEST & STAFF REPORT**

### **For Board Business Meeting of August 10, 2016**

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**DATE:** August 4, 2016

**FROM:** Tom Anderson                      Administrative Services                      x6565

**TITLE OF AGENDA ITEM:**

Consideration of Board signature of a Payment In Lieu of Taxes (PILOT) agreement with NorWest Energy 2, LLC

**PUBLIC HEARING ON THIS DATE?** No

**BACKGROUND AND POLICY IMPLICATIONS:**

House Bill 3492 from the 2015 State legislative session established the ability of solar energy developers to apply to the local taxing entity for an agreement that would exempt a property/project owner from property taxes, and in its place pay a set amount based on the capacity for solar energy (megawatt) generation. The County has already established a Rural Renewable Energy Development (RRED) zone locally, although the PILOT framework is a separate program and is not able to be combined with a RRED project. NorWest Energy 2, LLC has requested that the County to approve a PILOT agreement for a new solar energy project at 62435 Erickson Rd, Bend, OR 97701. The proposal has been reviewed by County Legal, Finance, and the Assessor's Office, and found to be in compliance with the HB 3492, as implemented through ORS 307.175. It is expected that the 20 year

**FISCAL IMPLICATIONS:**

It is estimated that the PILOT agreement will result in \$70,000 in additional revenue collection that would otherwise be paid through a RRED designation.

**RECOMMENDATION & ACTION REQUESTED:**

Move approval of Document No. 2016-551, a PILOT agreement with NorWest Energy 2, LLC, for a new solar energy project at 62435 Erickson Rd, Bend, OR 97701.

**ATTENDANCE:** Dave Doyle, Legal Counsel

**DISTRIBUTION OF DOCUMENTS:**

Administration, Assessor and Legal



## PAYMENT IN LIEU OF TAXES AGREEMENT

This PAYMENT IN LIEU OF TAXES AGREEMENT (“**Agreement**”) is effective as of \_\_\_\_\_, 2016, by and between NorWest Energy 2, LLC, an Oregon Limited Liability Company authorized to do business in Oregon (“**Company**”) and DESCHUTES COUNTY, OREGON, a political subdivision of the State of Oregon (“**County**”)(each a “**Party**” and collectively, the “**Parties**”), with respect to the following facts:

A. Company is in the process of developing, and will be constructing, a solar energy generation facility that will be commonly known as Neff Solar, with a rated nameplate capacity of 9.9 megawatts alternating current (MWac) (“**Solar Facilities**”).

B. The Solar Facilities will be located entirely within unincorporated Deschutes County, at site address 21836 Neff Rd, Bend, OR 97701 (western site access); 21906 Neff Rd, Bend, OR 97701 (eastern site access), and Assessor tax identification number 1712250000501 (“**Solar Site**”). A diagram of the Solar Site and Solar Facilities (collectively, the “**Solar Project**”) is attached as Exhibit A. A legal description of the Solar Site is attached as Exhibit B.

C. Company is in possession and control of the Solar Site, and will be in possession and control of the Solar Project upon construction of the Solar Facilities. It is estimated that the Solar Project will be operational in the Fourth Quarter of 2016.

D. Company and County mutually desire to enter into this Agreement for payment of a fee in lieu of property taxes for the Solar Project, pursuant to Oregon House Bill 3492 (2015), codified at 2015 Oregon Laws, Chapter 571.

NOW THEREFORE, for good and valuable consideration including the terms, conditions and covenants of this Agreement, the Parties agree as follows:

1. Exemption. This Agreement shall apply to the tax year from July 1, 2017 to June 30, 2018, and each of the next tax years thereafter, through and including the tax year July 1, 2037 to June 30, 2038 (“**Term**”). Except as otherwise provided in this Agreement, the Solar Project shall be exempt from property tax for the Term of this Agreement. The Term of this Agreement (as measured from the first day of the first tax year to which it applies) shall be equal to 20 years unless terminated earlier in accordance with paragraph 8.

2. Payment in Lieu of Taxes. The fee in lieu of taxes (“**Fee**”) shall be \$7,000 multiplied by the rated nameplate capacity of the Solar Project measured in MWac.

3. Initial Request for Computation. No later than December 31, of the year preceding the first property tax year of the Term of this Agreement, as set out in Section 1, Company shall file with the County Assessor a copy of this Agreement and a request for computation of the fee for the first tax year. The request shall include any information required by the Assessor to compute the fee.

4. Subsequent Requests for Computation. On or before December 31, preceding each tax year during the Term of this Agreement, Company shall file with the County Assessor a request for computation of the Fee for the upcoming tax year. If the owner of the Solar Project, the person or entity in possession or control of the Solar Project, and/or the nameplate capacity of the Solar Project measured in MWac has changed since the filing of the last request for computation, the request shall include the new information.

5. Late Fee. Any request for computation filed after December 31 for the upcoming tax year shall include payment of a late fee of \$200.

6. Computation and Payment of Fee. No later than the February 1 next following the filing of each request for computation of the fee, the County Assessor shall notify Company in writing of the amount of the Fee for the upcoming tax year. Company shall pay the Fee on the next following March 1 or thirty days after the County Assessor's notice was sent, whichever is later.

7. Failure to Pay Fee. If Company does not timely pay the Fee as required by Section 6, then the Solar Project shall not be exempt from property taxes for the upcoming tax year and shall be assessed and taxed as other similar property in the County is assessed and taxed; provided, however, that if Company subsequently pays the Fee within one year after the date payment became delinquent, plus interest at the rate prescribed in ORS 311.505(2), then the Solar Project's property tax exemption for the upcoming tax year shall be restored.

8. Termination. If Company fails to pay any Fee within one year after payment of such Fee became delinquent, then: (a) the Solar Project shall be disqualified from the exemption provided for herein and this Agreement shall terminate; (b) the Solar Project shall be assessed and taxed as other similar property is assessed and taxed for the tax year to which the unpaid Fee applied, and thereafter; and (c) Company shall pay County, as an additional assessment against the Solar Project, an amount equal to the unpaid Fee for the year prior to such termination.. The notice shall apply to the tax year following the year in which the notice has been given and shall have no impact on any tax year prior to the notice. The Parties may terminate this Agreement at any time by mutual written agreement.

9. Eligibility. Property constituting a solar project that has received an exemption under ORS 285C.350 to 285C.370 or 307.123 for any tax year is not eligible for participation in this Agreement.

10. Notices. All notices required or permitted hereunder shall be in writing and shall be given by overnight delivery certified mail, postage prepaid, addressed to each Party as follows, or at such other addresses as either Party may hereafter designate in writing:

To Company:

NorWest Energy 2, LLC  
3250 Ocean Park Blvd, Ste 355  
Santa Monica, CA 90404

To County:

County Administrator  
1300 NW Wall Street  
Bend, OR 97703

To County Assessor:

Assessor  
1300 NW Wall Street  
Bend, OR 97703

11. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of each of the Parties, their respective heirs, executors, administrators, legal representatives, successors and assigns.

12. Assignment. The Company may assign, transfer or pledge its rights under this Agreement only upon prior written consent by County; provided, however, such consent shall not be required for the granting of a security interest in, collateral assignment of, or other encumbrance of any or all of the Company's interest in this Agreement in connection with the financing of this Solar Facilities..

13. Integration. This Agreement contains the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, oral or written.

14. Governing Law. This Agreement shall be subject to, and governed by, the laws of the State of Oregon, and venue for any dispute hereunder shall lie in the Circuit Court for Deschutes County, Oregon.

15. Interpretation. This Agreement implements Oregon House Bill 3492 (2015) and shall whenever possible be interpreted in a manner consistent with such law.

16. Counterparts. This Agreement may be executed in counterparts, and an electronic or facsimile copy of a signature shall be deemed an original for all purposes.

[SEPARATE SIGNATURE PAGE ATTACHED]

WHEREFORE, Company and County have executed this Agreement as of the date first set forth above.

COMPANY:

COUNTY:

Deschutes County, Oregon

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Commissioner Chair

By: \_\_\_\_\_  
Commissioner Vice Chair

By: \_\_\_\_\_  
Commissioner



**EXHIBIT A**



**EXHIBIT B**

**RECORD LEGAL DESCRIPTION**

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE1/4 SE1/4) OF SECTION 25, TOWNSHIP 17 SOUTH, RANGE 12 EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, AND THE WEST HALF OF THE SOUTHEAST QUARTER (W1/2 SE1/4) OF SECTION 25, TOWNSHIP 17 SOUTH, RANGE 12 EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON.

EXCEPT THAT PORTION LYING WITHIN PUBLIC RIGHT-OF-WAY.

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