

COMMUNITY BENEFITS AGREEMENT STRAUSS WIND ENERGY PROJECT

This COMMUNITY BENEFITS AGREEMENT (this “Agreement”) is made and entered into by and between the CITY OF LOMPOC, a California municipal corporation, (the “City”) and STRAUSS WIND, LLC, a California limited liability company and affiliate of BayWa r.e. Wind, LLC (“Strauss”) as of the date the second of the parties hereto executes and approves the Agreement (the “Effective Date”). (The City and Strauss are sometimes hereinafter referred to individually as the “Party” or collectively as the “Parties”.)

RECITALS

A. Strauss is in the process of developing an approximately 100-megawatt wind energy project to be located on private land southwest of the City (the “Project”), which process includes obtaining various federal, state and local permits, entitlements and other approvals, including but not limited to approval from the County of Santa Barbara, California (the “County”) of a Conditional Use Permit (No. 16CUP-00000-00031) and a variance (No. 18VAR-00000-00002), and approval by the City of Lompoc of ~~an~~ Encroachment ~~Permit~~ and Transportation Permits ~~(together, the “Governmental Agency Approvals”).~~ For purposes of this Agreement, the term “Governmental Agency Approvals” refers to the final permits and approvals as approved by the County, the City, or other governmental agencies, including any conditions of approval adopted by an approving agency for the Project.

B. The Project site is predominantly in the same location as the previously proposed Lompoc Wind Energy Project (the “LWEP”), which was approved by the County in 2009 but never constructed. A Final Environmental Impact Report was prepared for the LWEP and certified by the County in February 2009 (County EIR No. 06EIR-00000-00004). Strauss purchased and proposed ~~minor~~ modifications and improvements to the previously approved LWEP.

C. The County is the lead agency for conducting environmental review of the Project under the California Environmental Quality Act and prepared a supplemental environmental impact report (the “SEIR”) based on the Final Environmental Impact Report prepared for the LWEP. The County Planning Commission certified the SEIR and approved the Project on November 20, 2019. The County Board of Supervisors rejected various appeals, and certified the SEIR and approved the Project *de novo*, on January 28, 2020.

D. ~~The City, through its City Manager, submitted a letter on November 18, 2019 commenting on the adequacy of the draft SEIR. Among other topics, the City’s comment letter discussed the Project’s potential to impact City public infrastructure and emergency services, and identified City permits and approvals that may be required for construction of the Project. The City’s comment letter also supported the alternative transportation route for Project construction, which was ultimately the County approved and adopted by the County, identifying includes an alternative delivery route which utilizes Santa Lucia Canyon Road, Hwy 246/Ocean Avenue, and South I Street as the preferred transportation primary route for transport of equipment.~~

E. ~~The parties acknowledge that construction and operation of the Project would cause impacts to the City in the form of increased demand on City services and streets, and would also bring economic benefits to the City in the form of increased economic activity. The parties intend that the implementation of this Agreement will help mitigate economic or fiscal impacts that construction, transportation and operations of the Strauss Wind Project will have on the City beyond the impacts to City streets, traffic, sidewalks, landscaping, and infrastructure caused by the Project, and the impact on and cost of City employees, attorneys, contractors, and consultants involved in facilitating the Project (“Main Project Impacts”), the Project will also have additional adverse impacts on the City. These additional adverse impacts include, but are not limited to, increasing the demand on City fire and police services as the City will be the first responder to any emergencies on the Project site, the interruption of local business activity along the transportation route, the disruption of daily life for City residents who live or work near the transportation route, the disruption and delay of other City activities and projects affected by the Project, and other related impacts (“Additional Impacts”). The parties intend that the implementation of this Agreement will mitigate these Additional Impacts.~~

NOW, THEREFORE, the Parties agree as follows:

1. Commencement of the Project in Lompoc. For purposes of this Agreement, “Commencement of the Project in Lompoc” is defined as the date any work or transportation begins under any of the Government Agency Approvals issued by the City within or along a route that includes Ocean ~~Ave.~~ Avenue and I Street within the City’s boundaries, including but not limited to any work in the City public right-of-way under the Encroachment Permit or any transportation under the Encroachment Permit or Transportation Permits.

~~2. Community Benefit Payment to the City by Strauss. Within five (5) business days after “Commencement of the Project in Lompoc”, Strauss shall pay to the City One Million Dollars (\$1,000,000) (the “Community Benefit Payment”).~~

2. Community Benefit Payments to the City by Strauss. Within five (5) business days of the Effective Date, Strauss shall pay to the City One Hundred Thousand Dollars (\$100,000). Within five (5) business days of the first transportation of wind turbine components over a City street, Strauss shall pay to the City a second payment of One Hundred Thousand Dollars (\$100,000). Within five (5) business days of the Project’s Commercial Operation Date (COD), defined as the date after which all testing and commissioning of the Project has been completed, and the date on which Strauss can start producing electricity for sale, Strauss shall pay its third and final payment to the City, of Fifty Thousand Dollars (\$50,000). These three payments, totaling Two Hundred Fifty Thousand Dollars (\$250,000) together constitute a Community Benefit Payment to be used by the City in its discretion to support City public services such as fire, police, parks and recreation (the “Community Benefit Payment”).

3. Agreement Not to File, Join or Support Judicial Challenges. The City shall not, directly or indirectly, oppose, protest, challenge, or seek other conditions or forms of mitigation in connection with, any Governmental Agency Approvals that are not issued by or proposed to be issued by the City itself, or any other permit or approval required for the Project that is not issued by or proposed to be issued by the City itself. Further, unless the City terminates this Agreement pursuant to the provisions of Paragraph ~~7~~8 below, the City shall not file, join or

support any action or proceeding in any court of law that challenges the legality or legal adequacy of, or otherwise seeks to oppose, rescind or modify any of the Governmental Agency Approvals. However, notwithstanding the above, City reserves the right to directly or indirectly oppose, protest, challenge, or seek other conditions or forms of mitigation in connection with, any modification or proposed modification of any of the Government Agency Approvals after any such original approval has become final; and further City, if and only if such modification would cause material adverse effects within the City's boundaries of a type or degree that was not known, and could not have been known with the exercise of reasonable diligence, at the time of Government Agency Approvals were issued in their original form. The City further reserves the right to file, join, or support any actions or proceeding in any court of law that challenges the legality or legal adequacy of, or otherwise seeks to oppose, rescind or modify, any modification or proposed modification of any of the Government Agency Approvals after any such original approval has become final, if and only if such modification would cause material adverse effects within the City's boundaries of a type or degree that was not known, and could not have been known with the exercise of reasonable diligence, at the time of Government Agency Approvals were issued in their original form.

4. Reservation of Discretion by the City. The Parties understand, acknowledge and agree, notwithstanding the terms and conditions of this Agreement, that actions related to matters described in this Agreement (including, without limitation, the grant by the City, individually or in conjunction with another governmental agency, of Governmental Agency Approvals with respect to the Project) may require the exercise of discretion by one or more decision-making bodies or officials of the City and such discretionary actions cannot lawfully be committed to by contract pursuant to the constitution and laws of the State of California. Nothing in this Agreement is intended or shall be interpreted to limit the City's exercise of discretion with respect to any actions needed from the City as a governmental agency nor shall anything in this Agreement be construed to (a) grant or commit the City to grant, Strauss, or any other person, any Governmental Agency Approvals with respect to the Project, or (b) limit or restrict the City's discretion with respect to (i) the approval, conditional approval or denial of any development approvals or entitlements that may be required from the City for the Project as a governmental agency, (ii) exercise of any other authority with respect to the Project possessed by the City under the police power, or (iii) any environmental approvals that may be required under federal or state environmental laws or regulations in conjunction with any development approval required for the Project (all such decisions or actions, collectively, "Discretionary Actions"). In the event the City takes or fails to take one or more of the Discretionary Actions, any such action or inaction shall not constitute a breach of the City's obligations under this Agreement or of any express or implied covenant herein.

5. Accordingly, Strauss understands the Community Benefit Payment is not intended to be mitigation-Full Mitigation of any impacts of construction and operation of the Project on the City.Additional Impacts. By entering into this Agreement and complying with its terms, Strauss shall not be deemed to have fulfilled or mitigated any obligation by Strauss to assist all Additional Impacts, as defined in the mitigation of such Recital E, and shall not be responsible to mitigate any other impacts related to the Project (as between City and Strauss) except for (a) the Main Project Impacts and (b) those impacts ~~to be mitigated by mitigation measures in the SEIR.~~ This Agreement has no effect on Strauss's separate obligation to comply with the City's

Master Fee Schedule and any provisions, conditions, requirements, or agreements that City may lawfully require of Strauss to mitigate the Main Project upon the City Impacts.

6. Dispute Resolution.

a. Intent. The Parties desire and intend to resolve any dispute, claim or controversy arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation or validity thereof, through reasonable business-like dispute resolution procedures. Accordingly, any disputes regarding the matters addressed by this Agreement which arise between the parties shall be resolved in accordance with this Paragraph 56 (and its sub-paragraphs).

b. Opportunity to Cure. As a first step, if either Party to this Agreement determines that the other Party has failed to perform or breached one or more terms of this Agreement (“Violation”), such Party shall provide written notice to the other Party describing such apparent violation or breach (the “Violation Notice”), which shall include reasonably detailed written or documentary evidence of the apparent violation. In the event a Party receives a Violation Notice from the other Party, the receiving Party shall have the following periods of time, as applicable, to cure the violation specified in the Violation Notice:

1) Cure Period. The receiving Party shall have thirty (30) days after the date of receipt of the Violation Notice (the “Cure Period”) to cure the violation specified in the Violation Notice.

c. Mediation. If the dispute has not been resolved within the applicable Cure Period, then either Party may, at its option, initiate mediation by delivering written notice to the other Party (“Mediation Notice”). The Parties shall attend and participate in the mediation, which shall be non-binding and without prejudice to any other rights or remedies which any Party may have. Unless the Parties agree otherwise, within 30 days after the Mediation Notice is received, the mediation proceeding shall be conducted by JAMS, in accordance with its procedures, at the offices of JAMS in Los Angeles, California or a mutually-agreed upon location. The costs of the first day of mediation shall be borne by the Party claiming a violation of this Agreement has occurred; thereafter if both Parties elect to continue with mediation the costs shall be borne in the manner agreed upon by the Parties. Any voluntary settlement reached as a result of the mediation proceeding shall be reduced to writing. All proceedings under subsections b and c of this Paragraph 56 shall be subject to California Evidence Code Sections 1115 *et seq.*

d. Litigation. If mediation is pursued, pursuant to Subparagraph c. above, and the dispute is not resolved within thirty (30) days after conclusion of the mediation proceeding, then either Party may, at its option, initiate litigation in the County of Santa Barbara Superior Court.

7. Attorneys’ Fees and Costs. Each party shall bear its own attorneys’ fees and costs incurred prior to the mutual execution of this Agreement. Each party shall bear its own attorneys’ fees and costs incurred in connection with the notice and cure process described in Paragraph 56 of this Agreement (and its sub-paragraphs), with the exception of the costs

associated with retention of a mediator or associated with litigation as described in Paragraph 56, subsections c and d, above. The prevailing party in any litigation initiated to enforce the terms of this Agreement shall be entitled to recover its reasonable attorney fees and costs incurred in the litigation from the non-prevailing party.

8. Term of Agreement.

a. Termination of Obligations and Restrictions. This Agreement shall be terminable: (1) by mutual written consent of the Parties; ~~or~~ (2) unilaterally by any Party following an uncured Violation by the other party, subject to the cure procedures set forth in Paragraph 56 (and its subparagraphs); ~~or (3) unilaterally by Strauss in the event litigation is commenced seeking to rescind any of the Governmental Agency Approvals and such litigation results in the rescission of any of the Governmental Agency Approvals prior to the Commencement of the Project in Lompoc.~~ For the avoidance of doubt, the parties agree and acknowledge that Paragraph 56 of this Agreement shall survive any termination of this Agreement pursuant to the preceding clauses (1) through (3).

b. Expiration of Term. If this Agreement is not terminated pursuant to Paragraph 78(a) above, all obligations and restrictions arising from this Agreement shall remain in effect ~~until the City's receipt of the Community Benefit Payment, as described in Paragraph 2 of this Agreement. Following the City's receipt of the Community Benefit Payment, during Project operations and through Project decommissioning, at which point~~ this Agreement shall automatically expire and shall have no further effect.

9. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties in relation to the matters addressed by this Agreement and the Dispute. There are no oral understandings, terms, or conditions, and neither party has relied upon any representations, express or implied, not contained in this Agreement. All prior versions and ~~draft~~drafts of this Agreement and all negotiations or previous agreements, understandings, terms or conditions between the Parties with respect to the subject matter hereof are deemed merged into this Agreement and its exhibits.

10. Amendments. This Agreement cannot be changed or supplemented orally, and may be modified or superseded only by written instrument executed by both Parties.

11. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any action filed in court by either Party regarding this Agreement shall be the County of Santa Barbara Superior Court.

12. Voluntary Agreement. The Parties represent that they or their representatives have read this Agreement in full and understand and voluntarily agree to all provisions hereof. The Parties further declare that prior to signing this Agreement they apprised themselves of relevant data, through sources of their own selection, including review by their own respective counsel, in deciding whether to execute this Agreement.

13. Binding Effect. This Agreement is for the benefit of and shall be binding on the Parties and their respective successors in interest by way of merger, acquisition, or otherwise, and on their respective assigns.

14. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. Signatures transmitted electronically shall be deemed original signatures.

15. Interpretation. The language and all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either Party. Both Parties have participated in the negotiation of this Agreement, and any rule of construction in favor of one Party or another Party shall not apply to interpretation of this Agreement.

16. Notices. All notices pursuant to this Agreement shall be in writing and sent either by overnight delivery or personal delivery, properly addressed to the addresses set forth below, in which case all such notices shall be deemed effective upon receipt:

For the City of Lompoc:

City of Lompoc
Attn: City Manager
100 Civic Center Plaza
Lompoc, CA 93436

with a copy to:

Jeff Malawy
Aleshire & Wynder, LLP
18881 Von Karman Ave., Suite 1700
Irvine, CA 92612

For Strauss Wind, LLC:

{TBD}

Daniel Duke
Its authorized Signor
5901 Priestly Drive, Suite 300
Carlsbad, CA 92008

with a copy to:

{TBD}

Laura Zagar
Perkins Coie LLP
505 Howard Street, Suite 1000
San Francisco, CA 94105-3204

17. Approval Authority. Each signatory to this Agreement attests that he or she has received the necessary authority to execute this Agreement from its governing board.

Dated: _____
Jenelle Osborne, Mayor
City of Lompoc

Approved as to Form:

Dated: _____
Jeff Malawy, City Attorney
City of Lompoc

Attest:

Dated: _____
Stacey Haddon, City Clerk
City of Lompoc

Dated: _____
{TBD}
Daniel Duke
Authorized Signor
Strauss Wind, LLC

Approved as to Form:

Dated: _____
{TBD}
Laura Zagar
Perkins Coie LLP
Counsel for Strauss Wind, LLC