



City Council Agenda Item

City Council Meeting Date: September 15, 2020

TO: Honorable Mayor and City Councilmembers

FROM: Jim Throop, City Manager
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Jeff Malawy, City Attorney
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SUBJECT: Consideration of Community Benefit Agreement Proposed by Strauss Wind, LLC in Connection with a 100-Megawatt Wind Energy Project to be Located on Private Land Southwest of the City

Recommendation:

Staff recommends the City Council:

- 1) Consider revisions proposed by Strauss Wind, LLC, to the Community Benefit Agreement (Attachment 1); and
- 2) Provide direction to staff regarding the agreement terms for further negotiation with Strauss Wind or authorize the Mayor to execute the Agreement.

Background:

On June 2, 2020, the City Council considered a Community Benefit Agreement proposed by Strauss Wind, LLC, related to the development of an approximately 100-megawatt wind energy project to be located on private land southwest of the City (the Project).

The Project requires various approvals by multiple federal, state, and local government agencies, including but not limited to approval by the City of an Encroachment Permit, Transportation Permits (Oversize Vehicle Permits), and an agreement for roadway repair, for the transport of Strauss's large wind turbines through the City to the Project site.

The June 2 staff report contains a more detailed explanation of the Project background. (Attachment 2.)

Under the Community Benefit Agreement proposed by Strauss on June 2, Strauss would pay the City \$150,000, at the end of the project, in exchange for the City's agreement not to oppose or file a lawsuit to challenge the approvals Strauss seeks or receives from other

government agencies. The City would retain all discretion to approve, condition, or deny the City approvals. The \$150,000 payment would be in addition to any costs Strauss is required to cover as conditions of its Lompoc permit approvals, including the cost of all impacts of the Project on City infrastructure, damage and wear and tear on City streets, staff time, and City Attorney time.

However, the June 2 Community Benefit Agreement stated the \$150,000 would only be paid if construction commences in all areas of the Project by June 15, 2020, and only if the Project is fully constructed and able to sell electricity by December 31, 2021. The payment would be made when the Project is fully constructed and able to sell electricity.

On June 16, 2020, the City Council considered the Community Benefit Agreement again, and staff proposed four changes:

1. The community benefit payment will be made when any work begins in the City public right-of-way or any transportation begins on City streets along the Ocean Avenue / I Street route, whichever is earlier. There is no cut-off date after which the payment will not be made.
2. The City will reserve the right to oppose or file a lawsuit to challenge any future modifications to the Project's permits from other government agencies.
3. Mandatory binding arbitration is removed. The parties shall be able to enforce the Community Benefit Agreement in a court of law, and the prevailing party shall be entitled to recover its attorney fees.
4. The amount of the community benefit payment is increased to \$1,000,000.

The City Council directed staff to further negotiate with Strauss.

Discussion:

Since June 16, staff has further negotiated with Strauss, and Strauss has agreed to certain changes to the Community Benefit Agreement as follows:

1. Strauss shall pay \$100,000 to the City five business days after the Community Benefit Agreement is executed. Strauss shall pay an additional \$100,000 to the City five business days after the first transportation of wind turbine components over a City street. And Strauss shall pay an additional \$50,000 to the City five business days after the date all testing and commissioning of the Project has been completed and Strauss can start producing electricity for sale. These three payments total \$250,000.
2. The City will reserve the right to oppose or file a lawsuit to challenge any future modifications to the Project's permits from other government agencies, if the modification would cause material adverse effects within the City's boundaries of a type or degree that could not have been known with the exercise of reasonable diligence at the time the permits were approved.

3. Mandatory binding arbitration is removed. The parties shall be able to enforce the Community Benefit Agreement in a court of law, and the prevailing party shall be entitled to recover its attorney fees.
4. Conditions the City imposes on the encroachment and transportation permit approvals eventually to be issued by the City will be limited to mitigating impacts to City streets, traffic, sidewalks, landscaping, and infrastructure caused by the Project, and to compensating the City for the costs of City employees, attorneys, contractors, and consultants involved in facilitating the Project. Any other impacts of the Project on the City (such as the cost of first responder services during the life of the Project and any disruption to local businesses along the transport route) shall be deemed mitigated by the \$250,000 payment under the Community Benefit Agreement.

Staff does not see an issue with items 2, 3, and 4. Staff seeks direction from the City Council on whether or not item 1 is acceptable.

Attachment 1 is a “marked up” copy of the Community Benefit Agreement, showing these proposed changes.

Fiscal Impact:

The Community Benefit Agreement would provide the amount of the agreed-upon community benefit payment to the City’s General Fund.

Conclusion:

Staff requests the City Council review the proposed changes to the Community Benefit Agreement and provide direction to staff regarding the agreement terms for further negotiation with Strauss Wind, or authorize the Mayor to execute the agreement.

Respectfully submitted,

Jim Throop, City Manager



Jeff Malawy, City Attorney

- Attachments: 1) Redline of Community Benefit Agreement
2) June 2, 2020 City Council Staff Report and attachment