

<b>DOCKETED</b>	
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<b>TN #:</b>	252585
<b>Document Title:</b>	FWP Community Benefits DRAFT Fund Agreement
<b>Description:</b>	N/A
<b>Filer:</b>	Caitlin Barns
<b>Organization:</b>	Stantec Consulting Services, Inc.
<b>Submitter Role:</b>	Applicant Consultant
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<b>Docketed Date:</b>	10/12/2023



**CONFIDENTIAL DRAFT**

**FUNDING AGREEMENT  
BETWEEN  
COMMUNITY FOUNDATION OF THE NORTH STATE  
AND  
FOUNTAIN WIND LLC**

**THIS AGREEMENT** (the "Agreement") is made and entered into as of [DATE], 20##, by and between Shasta Regional Community Foundation, Inc. dba Community Foundation of the North State, EIN 68-0242276 (the "Community Foundation"), and Fountain Wind LLC ("Donor").

**Recitals**

**WHEREAS** the Donor desires to establish a fund with the Community Foundation for charitable and similar exempt purposes; and

**WHEREAS**, the Fountain Wind Project is a proposed wind energy generation project located in Shasta County, California ("Project") that has applied to the California Energy Commission ("Commission") under the Commission's opt-in program; and

**WHEREAS**, a requirement of the opt-in program is that an applicant enter into a legally binding and enforceable agreement with one or more community-based organizations or other organizations representing community interests to fund a variety of community benefits, programs and amenities;

**WHEREAS**, the Community Foundation is a community-based organization or an organization representing community interests within the meaning of Public Resources Code section 25545.10, located in Shasta County, California, that awards grants to organizations delivering community-based services and amenities in Shasta County and is also a California nonprofit corporation exempt from federal income taxes under Internal Revenue Code ("Code") section 501(c)(3), a public charity described in Code section 170(b)(1)(A)(vi), and accordingly an appropriate institution within which to establish such a fund; and

**WHEREAS** the Community Foundation is willing and able to hold and administer such a fund which shall serve the community-based charitable purposes of the Community Foundation in Shasta County, subject to the terms and conditions hereof.

**General Provisions**

**NOW THEREFORE**, the parties agree as follows:

**1. GIFT AND FUND DESIGNATION.** Subject to Section 12, below, Donor hereby transfers irrevocably to the Community Foundation the property (cash, publicly traded securities, or other assets) described in the attached Exhibit A to establish a fund to be known as the “Round Mountain, Montgomery Creek, and Burney Community Enhancement Fund” (the “Fund”). Subject to the right of the Community Foundation to reject any particular gift, the Community Foundation may accept additional irrevocable gifts of property from the Donor or from any other source to be added to the Fund, all subject to the provisions hereof. All gifts to this Fund shall be irrevocable once accepted by the Community Foundation.

**2. PURPOSE.** The purpose of the Fund shall be to provide financial support, as recommended herein and as approved by the Board of Directors (the “Board”) of the Community Foundation, for programs or activities that fulfill the purposes of Public Resources Code section 25545.10 in the Round Mountain, Montgomery Creek and Burney areas of Shasta County and for the members of the Pit River Tribe, including charitable or other exempt purposes within the meaning of Code section 170(c)(1) or 170(c)(2)(B) and that are consistent with the mission and purposes of the Community Foundation. Exhibit B, attached hereto and made part of, further describes the competitive grantmaking process and outlines the terms and conditions by which the Fund shall operate. Notwithstanding the foregoing or anything to the contrary in Exhibit B, fifty percent (50%) of the Maximum Contribution to the Fund shall be distributed in grants to and for the benefit of the Pit River Tribe and its members. The remaining grants to be made out of the Fund may include, but not be limited to, programs for workforce development, tourism and economic development, job quality and job training, funding for specific community improvements or amenities, such as park or playground equipment, urban greening, enhanced safety crossings, paving roads and bike paths, wildfire mitigation and fire safety, and annual contributions to community-based organizations delivering services and amenities in Shasta County. The Community Foundation may also award grants on its own to Shasta County community organizations with projects in the Round Mountain, Montgomery Creek and Burney areas through a competitive process without consultation with the Donor as long as the grants are in compliance with the purposes of Public Resources Code section 25545.10 and are for the benefit of residents of Round Mountain, Montgomery Creek and Burney areas.

**3. ACCOUNTING.** The receipts and disbursements of the Fund shall be accounted for separately and apart from those of other gifts to the Community Foundation.

**4. INVESTMENT OF FUND ASSETS.** The Community Foundation shall have all powers necessary, or in its judgment desirable, to carry out the purposes of the Fund including, but not limited to, the power to retain, invest, and reinvest the assets of the Fund and the power to commingle the assets of the Fund for investment purposes with those of other funds or the Community Foundation’s general assets. Funds may be invested in uninsured securities and are subject to investment risks that may result in loss of value. However, the Community Foundation is not required to invest the assets in the Fund in securities or other long-term investments.

**5. COSTS OF THE FUND.** It is understood and agreed that the Fund shall share a fair portion of the total investment and administrative costs and expenses of the Community Foundation. Those costs and expenses charged against the Fund shall be determined in accordance with the then-current fee schedule identified by the Community Foundation as applicable to funds of this type, as such schedule may be amended by the Community Foundation from time to time. Any costs and expenses incurred by the Community Foundation in accepting, transferring, or managing property donated to the Community Foundation for the Fund, including without limitation the Community Foundation’s costs and expenses (including reasonable attorney’s fees) of any claim or proceeding with respect to the Fund also shall be paid from the Fund.

**6. GRANTS.** Distributions may be made from the entire Fund balance, including both income and principal, and the Fund may be spent down in its entirety and retired. The ordinary income, capital appreciation (realized and unrealized), and principal (both historic dollar value and any principal contributions, accumulations, additions, or reinvestments) allocable to the Fund, net of the fees and expenses set forth in this Agreement, may be committed, granted, or expended pursuant to the distribution (or spending) policy of the Community Foundation. The Board may appoint a committee of volunteers to advise recommendations on grants from the Fund.

The distribution (or spending) policy may be amended from time to time by the Community Foundation, solely for purposes described in this Agreement (i) to pay expenditures of charitable or other exempt programs and activities conducted or sponsored by the Community Foundation itself, (ii) to other organizations described in Code section 170(b)(1)(A), or (iii) to other exempt organizations that are not public charities (such as organizations described in Code sections 501(c)(4) or 501(c)(6)), provided that the Community Foundation exercises due diligence similar to that required by private foundations exercising expenditure responsibility, to ensure such distributions are used for exclusively charitable purposes to provide community-based services and amenities.

No grant shall be made from the Fund that may, in the judgment of the Community Foundation, jeopardize or be inconsistent with Public Resources Code section 25545.10, the Community Foundation's Code section 501(c)(3) status or result in the imposition of any excise tax, penalty, or other tax, fine, or assessment under the Code (e.g., taxes on Code section 4966 taxable distributions to "disqualified supporting organizations"). No grant from the Fund shall provide more than an incidental benefit to the Donor(s) and/or designated representative(s) in violation of Code section 4967 and no grant from the Fund shall be made to an individual in violation of Code section 4966. Pledges may be satisfied from the Fund as permitted by IRS Notice 2017-73.

**7. RECOMMENDATIONS FOR GRANTS.** Subject to the Community Foundation's policies and procedures for advised funds, the commitments, grants, or expenditures from the Fund contemplated in this Agreement shall be made at such time or times and in such amount or amounts as may be determined by the Community Foundation and outlined in Exhibit B; provided, however, that the Donor's designated representative(s) may submit to the Community Foundation recommendations regarding appropriate expenditures or the names of specified organizations described in Code section 170(b)(1)(A) to which it is recommended that distributions be made.

All recommendations from the Donor's designated representative(s) shall be solely advisory, and the Community Foundation may accept or reject them, applying reasonable standards and guidelines with regard thereto (including policies and procedures implemented to comply with applicable law). In the event that Donor ceases to exist, the assets of the Fund may be added to, and maintained, expended, or distributed as part of the Fund for the Community Foundation.

The Community Foundation agrees to contact Donor in the event that no grants are made from the Fund for a period of two (2) years, commencing on the date of the Initial Payment, and if during such time the Donor, or its designated representative(s), do not reply to the Community Foundation's attempts to contact them, the assets of the Fund shall be added to, and maintained, expended, or distributed as part of the fund for the Community Foundation. In this event, the funds shall continue to be used for purposes consistent with Public Resources Code section 25545.10 and shall continue to be for community benefits in the Round Mountain, Montgomery Creek and Burney areas of Shasta County and the Pit River Tribe, as set forth herein.

**8. ADMINISTRATIVE PROVISIONS.** Notwithstanding anything herein to the contrary, the Community Foundation shall hold and administer the Fund, and all contributions and assets allocable to the Fund, subject to the provisions of applicable law and the Community Foundation's Articles of Incorporation and Bylaws, as amended from time to time. The Donor and charitable beneficiaries of the Fund shall agree to comply with all policies and procedures, requests for reports, and other requirements imposed by the Community Foundation pursuant to this Agreement.

**9. AMENDMENTS.** The Board shall have all powers of modification, amendment and removal specified in United States Treasury Regulation section 1.170A-9(f)(11)(v)(B) or corresponding provisions of any subsequent federal tax laws, subject to the procedural and other requirements of the Uniform Prudent Management of Institutional Funds Act (UPMIFA) of California in California Probate Code section 18503, et. seq. and provisions of any subsequent state law.

If any gift to the Community Foundation for the Fund is accepted subject to conditions or restrictions as to the use of the gift or income therefrom, such conditions or restrictions will be honored, subject, however, to the authority of the Board to amend or vary the terms of any gift if continued adherence to any condition or restriction is in the judgment of the Board illegal, unnecessary, incapable of fulfillment, or inconsistent Public Resources Code section 25545.10, with the charitable or other exempt purposes of the Community Foundation or the needs of the community served by the Community Foundation.

The Fund shall continue so long as assets are available in the Fund and the purposes of the Fund can be served by its continuation. If the Fund is terminated or amended as defined above, the Community Foundation shall use any remaining assets in the Fund exclusively for charitable or other exempt purposes that: (a.) are within the scope of the charitable and other exempt purposes of the Community Foundation; and (b.) most nearly approximate, in the good faith opinion of the Board, the original purpose of the Fund.

**10. GOVERNING LAW.** This Agreement and all related proceedings shall be governed by and interpreted under the laws of the State of California. Any action with respect to this Agreement shall be brought in or venued to a court of competent jurisdiction in California.

**11. NOT A SEPARATE TRUST.** The Fund shall be a component part of the Community Foundation. All money and property in the Fund shall be held as general assets of the Community Foundation and not segregated as trust property of a separate trust.

**12. PREREQUISITES TO TRANSFER OF FUNDS AND EFFECTIVENESS OF AGREEMENT.** The transfer of the property set forth in Exhibit A, pursuant to Section 1, is contingent upon and subject to both: (a.) the Final and Unappealable approval of the Commission in its opt-in program Project (the "Approval") and (b.) commencement of excavation work for the installation of a foundation for a wind turbine included in the Project or excavation work for roads included in the Project begins ("Project Construction Commencement"). If the Approval is not obtained or if Commencement of Construction of the Project does not occur, this Agreement shall immediately terminate and be of no further effect, and neither party shall have any further obligations hereunder (including without limitation that Donor shall not be obligated to transfer any property to the Foundation). "Final and Unappealable" means that the approval is final for all purposes and not subject to further legal or administrative challenge or appeal.

[SIGNATURES ON FOLLOWING PAGES]

**Execution**

**IN WITNESS WHEREOF**, Donor(s) and the Community Foundation, by a duly authorized officer, have executed this Agreement.

**AUTHORIZED REPRESENTATIVE ON BEHALF OF FOUNTAIN WIND LLC:**

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

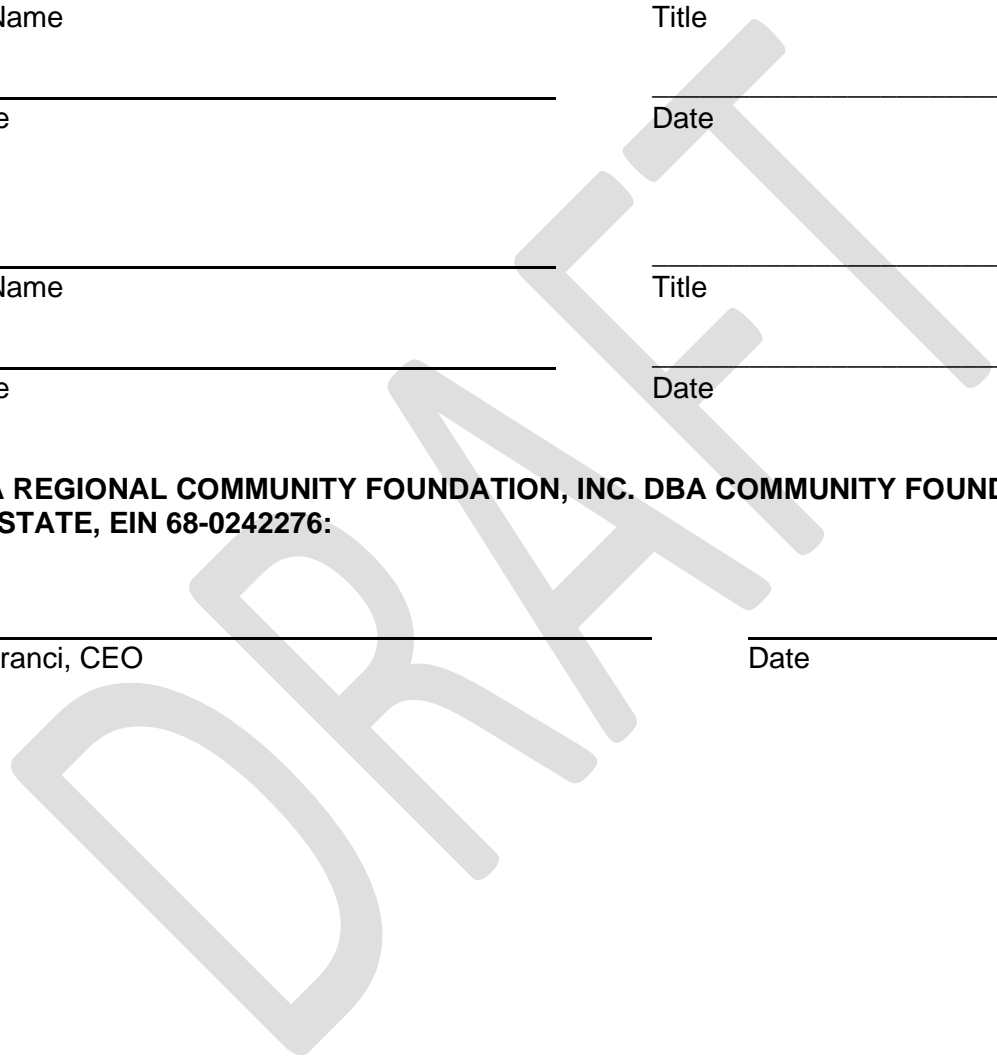
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**SHASTA REGIONAL COMMUNITY FOUNDATION, INC. DBA COMMUNITY FOUNDATION OF THE NORTH STATE, EIN 68-0242276:**

\_\_\_\_\_  
Kerry Caranci, CEO

\_\_\_\_\_  
Date





**DETAILS STILL UNDER DISCUSSION  
EXHIBIT A**

**SCHEDULE OF DONATIONS TO FUND**

- 1. Initial Funding Commitment.** Within thirty (30) days after the date of Project Construction Commencement, Donor shall pay to the Community Foundation a one-time payment equal to One Million Dollars (\$1,000,000.00) (the "Initial Payment").
- 2. Ongoing Funding Commitment.** Within thirty (30) days of the Operations Date (as defined herein), and for seventeen (17) years thereafter, on the anniversary of the Operations Date, Donor shall pay the Community Foundation annual payments, each in the amount of One Hundred Thousand Dollars (\$100,000.00) ("Annual Payment"). "Operations Date" means the date Donor begins selling electricity in commercial quantities (excluding test energy) from the Project to a power purchaser, off-taker, merchant buyer, spot market buyer, or other third-party purchaser.
- 3. Potential for Advancement of Funding.** Donor and Community Foundation acknowledge that the Donor has committed a maximum aggregate contribution and funding of Two Million Eight Hundred Thousand Dollars (\$2,800,000.00), set forth in paragraphs 1 and 2, above, and subject to Section 12 of the Agreement (collectively, the "Maximum Contribution"), as part of the Project's community benefits funding as set forth in the Agreement. Donor and Community Foundation acknowledge that there may be grant recommendations that would exceed the Maximum Contribution or any Annual Payment. In the event that such grant recommendation is presented, the Community Foundation will notify Donor of the recommendation and, in the Donor's sole and exclusive discretion, Donor may elect to pay, prior to its due date, one or more Annual Payments. Donor and Community Foundation agree that any such advancement payment(s) would reduce the number of years of Annual Payments accordingly. For avoidance of doubt, in no event shall Donor's obligations exceed the Maximum Contribution.



**DETAILS STILL UNDER DISCUSSION**  
**EXHIBIT B**  
**COMPETITIVE DONOR ADVISED FUND (NON-ENDOWED)**  
**OPTIONS, TERMS, AND CONDITIONS**

1. **Grant Cycle:** (specific dates/time period to be mutually agreed upon)
  - a. Community Foundation will promote the grant opportunity to encourage applications.
  - b. Once applications close, Community Foundation will conduct due diligence and prepare applications for review, ranking and award selection.
  - c. Award selections must be submitted for approval by the Board.
  - d. Grantees must sign a grant agreement accepting the terms of the award before funds are released.
2. **Minimum Available to Award through Competitive Process:** \$25,000
  - a. If the minimum is not available to award, donor(s) may elect to recommend non-competitive grant(s) according to standard donor advised fund grantmaking guidelines.
3. **Minimum Competitive Grant Award:** \$2,500
4. **Maximum Competitive Grant Award** (i.e., 50% of #2 or \$12,500 whichever is less): TBD
5. **Focus Area(s):** (i.e., region; field of interest; ex: Tehama County literacy programs)
  - a. Focus Areas include: programs for workforce development, tourism and economic development, job quality and job training, funding for specific community improvements or amenities, such as park or playground equipment, urban greening, enhanced safety crossings, paving roads and bike paths, wildfire mitigation and fire safety, and annual contributions to community-based organizations delivering services and amenities in the Round Mountain, Montgomery Creek and Burney areas of Shasta County, or for the members of the Pit River Tribe
6. **Applicant Qualifications:**
  - a. Eligible organizations include: Nonprofits with a public tax-exempt status under Section 501(c)(3) of the IRS Code; public entities (ex: counties, special districts, federally-recognized tribes); or projects/programs fiscally sponsored by a nonprofit or public entity.
  - b. Organizations with grant reports past-due to the Community Foundation are not eligible.
7. **Grant Review Panel:**
  - a. Donor may choose one of the following options (see the Grant Cycle Options and Services table below for more details):
    - i. Donor and/or Donor's designated representative(s) complete application review and make award selections (no grant panel)
    - ii. Staff completes application review and makes recommendations to the Donor (no grant panel)



- iii. Grant Review Panel (Donor-selected panelists and/or Community Foundation-selected community volunteers) completes application review and makes recommendations to the Donor (grant panel utilized)
- b. If the Donor opt to use a Grant Review Panel, the Donor and/or Donor's designated representative(s) may choose whether or not to serve on the panel.
- c. Donor, Donor's designated representative(s), and/or panelists will receive training on grantmaking and the grants portal.
- d. Grant Review Panel recommendations will be presented to the Donor and/or Donor's designated representative(s), from which they may make award selections to be submitted to the Board for review and approval.
  - i. If Donor prefers, the Grant Review Panel or Community Foundation staff will make the award selections to be submitted to the Board for review and approval.

**Grant Cycle Options and Services**

Minimum Amount Granted per Cycle	Grant Review Panel Options	Customized application questions	Applicant site visits	Grantee site visits	Impact Reports
\$25,000-\$49,999	<ul style="list-style-type: none"> <li>• Donor</li> <li>• Donor's designated representative</li> <li>• Staff</li> </ul>	No	No	No	Viewable in online portal
\$50,000 - \$99,999	<ul style="list-style-type: none"> <li>• Donor</li> <li>• Donor's designated representative</li> <li>• Staff</li> <li>• Donor-selected panel</li> </ul>	Yes	No	No	Viewable in online portal
\$100,000+	<ul style="list-style-type: none"> <li>• Donor</li> <li>• Donor's designated representative</li> <li>• Staff</li> <li>• Donor-selected panelists</li> <li>• Community volunteers</li> </ul>	Yes	Yes	Yes	Customized reporting

**8. Grant Reporting:**

- a. Grant reports are due from the grantees approximately twelve (12) months after the award payment is made.
- b. Reports will be available to the Donor and/or Donor's designated representative(s) via the online fundholder portal.

**9. Fee Structure**

- a. In addition to standard annual fees for donor-advised funds, the following fees for administering a competitive grant cycle apply:
  - i. With Grant Review Panel - 10% of amount to be awarded
  - ii. Without Grant Review Panel - 7-9% of amount to be awarded depending on scope of services requested from chart above
  - iii. Fee assessed at the start of each grant cycle
- b. If no grant cycle is opened in a given year, standard donor-advised fund fees will apply based on the current fee schedule.

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