

DOCKETED

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May 20, 2024

California Energy Commission
Attn: Lon Payne
Docket Unit MS-4, Docket No. 23-OPT-01
715 P Street
Sacramento, CA 95814

Re: Fountain Wind Project, Second Community Benefit Agreement Submittal

Dear Mr. Payne,

On behalf of Fountain Wind, LLC ("Applicant"), I am writing to inform you that the Applicant has executed an additional Community Benefit Agreement ("Agreement"). This Agreement is in addition to the Community Benefit Agreement with the Northeastern California Building & Construction Trades Council docketed December 14, 2023, TN# 253611.

This additional legally binding and enforceable Agreement represents \$2,000,000 direct funding from the Fountain Wind Project ("Project") that will be distributed to, and administered by, a non-profit community-based organization consistent with the requirements of Public Resource Code Sec. 25545.10.

The funds will be used in two categories consistent with PRC Sec. 25545.10. The first is to fund scholarships for Shasta County residents attending Shasta College with a preference for students residing in Burney, Cassel, Fall River, Hat Creek, McArthur, Old Station and eastern Shasta County, which are closest to the Project area. The second use will be for educational and workforce development. Please see Exhibits A and B of the attached agreement for further details.

Together, these two Community Benefit Agreements represent \$2,175,000 in direct funding to community-based organizations with a focus on the project area to meet a broad range of needs identified by local community members.

Respectfully,



Henry Woltag
Director, Development

ATTACHMENT

COMMUNITY BENEFITS AGREEMENT

COMMUNITY BENEFITS AGREEMENT

This Community Benefits Agreement (“Agreement”) is made and entered into as of the latest date of execution hereof (the “Effective Date”) by and between Fountain Wind LLC (“Developer”) and The Shasta College Foundation (“Foundation”). Developer and Foundation are herein referred to each as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Developer intends to develop, construct, and operate and maintain a wind energy project, the Fountain Wind Project (the “Project”), in Shasta County, California, pursuant to the California Energy Commission’s (“Commission”) opt-in program under Assembly Bill 205 (“AB 205”; *see also* Public Resources Code § 25545 *et seq.*);

WHEREAS, under the Commission’s opt-in program, Public Resources Code section 25545.10 requires Developer to enter into one or more legally binding and enforceable agreements with, or that benefit, a coalition of one or more community-based organizations, such as workforce development and training organizations, labor unions, social justice advocates, local governmental entities, California Native American tribes, or other organizations that represent community interests, where there is mutual benefit to the parties to the agreement;

WHEREAS, the Foundation is a community-based organization within the meaning of Public Resources Code section 25545.10, as the Foundation is the non-profit 501c3 auxiliary organization of the Shasta-Trinity-Tehama Joint Community College District (“Shasta College”), an accredited public California community college. Shasta College has three campuses in Shasta County (Main Campus, Downtown Redding Campus, and the Community Leadership Center). The Foundation’s office is located in the Community Leadership Center in downtown Redding. The mailing address for the Foundation is the Shasta College’s main campus located in Shasta County at 11555 Old Oregon Trail, Redding, CA 96049-6006. The Foundation supports and promotes educational excellence and community support of Shasta College by receiving donations, raising capital, managing investments, and distributing funds for Shasta College programs, buildings, equipment, and other outlays, including but not limited to scholarships, loans, and grants to students;

WHEREAS, the Parties desire to enter into this Agreement to provide significant funding to the Foundation for purposes consistent with its mission and Public Resources Code section 25545.10, including supporting Shasta College educational and workforce development programs, student activities, pathways to employment, educational and cultural events, and scholarship opportunities;

WHEREAS, there is mutual benefit to the Parties to this Agreement, as the Foundation receives significant funding to further its support of Shasta College, the students of Shasta College, and higher education in Shasta County, and Developer satisfies the requirements of Public Resources Code section 25545.10 in furtherance of developing the Project in accordance with the State of California’s renewable energy goals under Assembly Bill 32, Senate Bill 100, and other related legislation and Executive Orders.

COMMUNITY BENEFITS AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertakings set forth herein, and other consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties agree to the following terms and conditions:

AGREEMENT

1) Developer and Foundation Obligations

A. Educational Activities Funding

- i. Developer shall pay to the Foundation the funds outlined in Exhibit A (the “Funding Obligation”) for supporting college educational and workforce development programs, student activities, pathways to employment, educational and cultural events, and scholarship opportunities, as further described in Exhibit B (individually and collectively, the “Permitted Purposes”).
- ii. The Foundation shall have discretion in using the funds to further its mission; provided, however, that the Foundation shall use the funds solely to provide services for the Permitted Purposes to support Shasta College students or for Shasta College-sponsored activities benefitting residents of Shasta County, and provided further that the Foundation shall use a portion of the funds to provide scholarships to Shasta College students residing in Shasta County.
- iii. On or before December 31, 2024, and each calendar year thereafter in which a Funding Obligation paid by Developer to Foundation is used, in whole or in part, by the Foundation, the Foundation shall provide a written report to Developer, summarizing the events, training opportunities, or other educational activities which were funded, in whole or part, by the Funding Obligations during such calendar year.

B. Funding Conditioned on Project Approval

Developer’s Funding Obligation under this Agreement is subject to its receipt of the Final and Unappealable certification to construct and operate the Project by the Commission and Final and Unappealable resource agency permits necessary for Project construction, including but not limited to applicable permits from the Regional Water Quality Control Board and U.S. Army Corps of Engineers (collectively, the “Project Approvals”) and issuance of full notice to proceed to the primary engineering, procurement, and construction contractor under the relevant engineering, procurement, and construction agreement for the Project (“FNTF Issuance”). If the Project Approvals are not obtained or if FNTF Issuance does not occur, this Agreement shall terminate and be null and void and of no further force or effect, and Developer shall have no further obligations under this Agreement, including without limitation the Funding Obligation. “Final and Unappealable” means final for all purposes and not subject to further legal or administrative challenge or appeal or, if a legal or administrative challenge is filed, a final judgment or resolution upholding the Project Approvals.

COMMUNITY BENEFITS AGREEMENT

2) General Provisions

A. Meet and Confer.

In the event any dispute arises between the Parties with respect to this Agreement or the Project, the Parties shall, before taking any other judicial or administrative action concerning that dispute, provide written notice of the dispute to the other Party and meet and confer in a good-faith effort to resolve the dispute within fifteen (15) days, unless otherwise mutually agreed. If the dispute is not resolved within fifteen (15) days after such meeting, either Party may commence formal dispute resolution proceedings, pursuant to section 2(B) below.

B. Mandatory Arbitration and Choice of Law.

All disputes, or claims arising between the Parties not resolved informally shall be subject to mandatory binding arbitration. Resolution by arbitration shall be the sole method of, and result in full and final resolution of the particular claim or dispute. Arbitration shall be conducted through the American Arbitration Association (AAA), pursuant to the rules thereof (as may be modified by mutual agreement of the Parties) at its Sacramento offices, unless otherwise agreed between the Parties. The Parties agree and shall mutually instruct AAA and the neutral(s) that any and all determination(s) and award(s) shall be based on and conform with California law. The Parties shall each pay an even share of the cost of AAA services in accordance with AAA procedures, absent any award of costs and expenses expressly to the contrary by the neutral(s).

C. Specific Performance.

In response to any action to enforce this Agreement, the neutral(s) may order any equitable or injunctive relief, or issue an order of specific performance, it being the Parties' intent that all of the promises in this Agreement shall be carried out in full. Neither Party shall be entitled to, and each Party hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, at law, in equity, or otherwise, in connection with this Agreement, provided, the foregoing shall not limit Developer's right to seek return of the amount set forth in section (1)(A)(i) above.

D. Cooperation.

The Parties agree to cooperate reasonably to draft and execute any documents, or to enter into any further agreements or plans, necessary or convenient to effectuate the intent of this Agreement.

E. Publicity.

Excepting written or oral statements (i) required by applicable law or governmental agency or (ii) regarding the covenants or terms and conditions of this Agreement that are made by or on behalf of Developer, its affiliates, or any of its or their officers, directors, managers, equity holders, employees, consultants or representatives in connection with the permitting (including any ongoing or compliance obligations), development, construction, interconnection,

COMMUNITY BENEFITS AGREEMENT

commissioning, operation, maintenance, financing, or ownership of the Project, neither Party shall make any representation, written or oral, in any format or medium, expressly or by implication, related in any way to the other Party or this Agreement, without express prior written notice to the other Party, which shall be given as early as reasonably practicable. For avoidance of doubt, the Parties agree that Developer may docket or otherwise publish this Agreement in connection with any permitting or similar processes or proceedings related to the Project. Further, in no event shall either Party (“Representing Party”) represent that the other Party (“Opining Party”) holds any opinion with respect to Project without express prior written consent of the Opining Party, which shall not be unreasonably withheld, conditioned, or delayed.

F. Interpretation and Representation of Counsel.

This Agreement shall not be construed for or against either Party by reason of that Party or its counsel having drafted all or part of the Agreement. All Parties mutually warrant and represent that they are and have been represented by counsel of their own choosing in the negotiation and drafting of this Agreement and that they understand fully and voluntarily consent to all provisions herein.

G. Assignments.

Developer, in its sole discretion, assign any or all of its rights, benefits, and obligations under this Agreement to any successor(s) in interest to all or any part(s) of the Project. Any such assignment shall be by a written instrument. In the event of any such assignment(s), Developer shall ensure that the assignee(s) shall be contractually obligated to comply with all of Developer’s obligations under this Agreement pertaining to the assignment(s) in question unless Developer expressly retains one or more of such obligations itself. The Foundation shall not assign any or all of its rights, benefits and obligations under this Agreement without the prior written consent from Developer. This Agreement shall be binding on any and all of the Foundation’s successors and assigns. For avoidance of doubt, a direct or indirect change of control of Developer is not and shall not be deemed an assignment.

H. Sole Agreement and Amendments.

This Agreement is the sole agreement among the Parties concerning the matters specifically addressed herein. This Agreement supersedes any written or oral agreement(s) or representation(s) that preceded or may have preceded execution of this Agreement. No Party has relied upon any oral representation(s) in deciding whether to enter into this Agreement. No amendment or modification to this Agreement shall be effective unless it is in writing and signed by the Party or Parties to be bound thereto.

I. Counterparts, Electronically Delivered Signatures, and Authorization.

This Agreement may be executed in counterparts and may be executed by electronically delivered signatures. If so executed, any copy of this Agreement bearing original or electronically delivered signatures may be used to establish the contents and valid execution of this Agreement. Each person signing this Agreement represents and warrants that he or she

COMMUNITY BENEFITS AGREEMENT

is fully authorized to execute this Agreement on behalf of the Party for which he or she is signing, and by so executing to bind such Party to the terms herein.

J. Force Majeure.

The Parties shall not be responsible or liable for any failure or delay in the performance of its obligations pursuant to this Agreement arising out of or caused by, directly or indirectly, forces beyond the reasonable control of the Parties, including, without limitation, fire, explosion, flood, acts of war or terrorism, strikes, and riots, provided that the Parties use commercially reasonable efforts to avoid or remove such causes of non-performance and promptly continue performance under this Agreement whenever such causes are removed.

K. Severability.

Each material term of this Agreement was an inducement to the Parties to agree to other material terms. Accordingly, if any material term of this Agreement as applied to either Party or to any circumstance is adjudged to be void or unenforceable, that may deprive the other Party of a benefit without which that other Party might not have agreed to this Agreement that Party may seek equitable action to alter or terminate that Party's obligations hereunder but only to the degree that the neutral(s) determine in its or their equitable discretion is necessary to restore that Party as closely as reasonably possible to the position it would have been in had the material term in question not been adjudged to be void or unenforceable.

L. Captions and Headings.

Captions and paragraph headings used in this Agreement are for convenience and shall not be used to govern, construe, or interpret this Agreement.

M. Incorporation of Recitals.

The recitals contained herein are hereby incorporated by this reference and are binding upon the Parties hereto.

N. No Third-Party Beneficiaries.

The rights contained in this Agreement belong solely to the Parties and to any assignee pursuant to section (2)(G) above. No other person or entity shall have any rights under this Agreement.


O. Parties' Designees to Receive Notices.

Any notice required under this Agreement to be given to any Party shall be given to the relevant Party's designee(s) listed, who are the signatories to this Agreement, at the address below such signatory's name, to be sent overnight mail by a reputable carrier. Any Party may update its person(s) so designated by given written notice to all other Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the Effective Date.

COMMUNITY BENEFITS AGREEMENT

Fountain Wind LLC

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DocuSigned by:
By: Sara Parsons
7E3636F16E82493...

Print Name: Sara Parson

Title: Authorized Representative

Date: 5/16/2024

DocuSigned by:
By: Stephanie LaPier
A3BA5DD8C98A4FD...

Print Name: Stephanie LaPier

Title: Authorized Representative

Date: 5/17/2024

Address:

2701 NW Vaughn St., Suite 300
Portland, OR 97210

Shasta College Foundation

By: 

Print Name: Joe Gibson

Title: Board President

Date: 5/15/24

Address:

Shasta College Foundation
PO Box 496006
Redding, CA 96049

530-395-8512
foundation@shastacollege.edu

EXHIBIT A

FUNDING OBLIGATION OVERVIEW

1. SCHEDULE OF FUNDING OBLIGATION

- a. Initial Funding Commitment:** Within thirty (30) days after the date of FNTF Issuance, Developer shall pay to the Foundation a one-time payment equal to One Million Dollars (\$1,000,000.00) (the “Initial Payment”).
- b. Ongoing Funding Commitment:** On (i) the date that is thirty (30) days immediately following the Operations Date (as defined herein), and (ii) on each anniversary of the Operations Date, commencing on the first anniversary of the Operations Date and ending on the ninth anniversary of the Operations Date, Developer shall pay the Foundation a payment in the amount of One Hundred Thousand Dollars (\$100,000.00) (each, an “Annual Payment”). The maximum aggregate amount of Annual Payments shall not exceed One Million Dollars (\$1,000,000.00). “Operations Date” means the date Developer 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.
- c. Potential for Advancement of Funding:** Developer and Foundation acknowledge that the Developer has committed a maximum aggregate contribution and funding of Two Million Dollars (\$2,000,000.00), as set forth in paragraphs a (the Initial Payment) and b (the aggregate amount of Annual Payments), above, and subject to section 1 of the Agreement (collectively, the “Maximum Contribution”). Developer and Foundation acknowledge that there may be funding opportunities that would exceed the amount of an individual Annual Payment. In the event that such funding opportunity is presented, the Foundation will notify Developer and, in the Developer’s sole, absolute, and exclusive discretion, Developer may elect to pay, prior to its or their due dates, one or more Annual Payments; provided, that, any such advancement payments would be credited against and reduce future Annual Payment obligations dollar for dollar. For avoidance of doubt, in no event shall Developer’s aggregate obligations, inclusive of the Initial Payment and all Annual Payments, exceed the Maximum Contribution.

COMMUNITY BENEFITS AGREEMENT

EXHIBIT B

PERMITTED PURPOSES

1. FUNDING FOCUS AREAS

- a. The funds received from this agreement shall be used to further the Foundation's support of Shasta College, by increasing access to education and workforce development programs for the students of Shasta College and residents of Shasta County, solely in accordance with Public Resources Code section 25545.10.

2. ENDOWED FUND (PERMANENTLY RESTRICTED FUNDS)

- a. **Endowed Fund Amount:** Sixty percent (60%) of the Initial Funding Commitment will be used to establish an Endowed Fund.
- b. **Endowed Fund Use:** The Endowed Fund shall be used to provide scholarships for Shasta College students residing in Shasta County as follows and in accordance with Foundation's policies and procedures and Public Resources Code section 25545.10.
 - i. The Foundation will be responsible for defining the scholarship criteria to facilitate the distribution of the scholarships to students consistent with Shasta College's eligibility criteria for financial aid and scholarships.
 - ii. The Scholarship Opportunities shall provide a preference to students residing in Burney, Cassel, Fall River Mills, Hat Creek, McArthur, Old Station and eastern Shasta County.
- c. **Endowed Fund Management:**
 - i. The assets of the Endowed Fund shall be managed in a separate investment account and will be entered on the books and records of the Foundation as the SHASTA COUNTY ENDOWED OPPORTUNITY FOR SCHOLARSHIPS and managed and invested in accordance with the Foundation's policies and procedures currently in effect and Public Resources Code section 25545.10.
 - ii. The calculation for distributions for the upcoming fiscal year (which commences on July 1st and ends on June 30th of each calendar year) will be based on the Endowed Fund's Fair Market Value as of June 30th. The Fair Market Value is calculated by taking the average of the Net Portfolio Value at the end of each quarter during the previous fiscal year. If the Endowed Fund has been in existence for fewer than a full fiscal year, the Fair Market Value as of June 30th will be calculated by taking the average of the Net Portfolio Value at the end of each quarter the Endowed Fund has been in existence. "Net Portfolio Value" is the amount of funds in the Endowed Fund at the end of each quarter, i.e., September 30th, December 31st, March 31st, and June 30th, as applicable, during the fiscal year.

COMMUNITY BENEFITS AGREEMENT

- iii. The Foundation's policies have established an annual spend rate of no more than five percent (5.0%) of the calculated Fair Market Value of the Endowed Fund in the immediately preceding fiscal year ("Distribution Amount"). Such Distribution Amount will be comprised of a maximum of three (3%) of the Fair Market Value in the immediately preceding fiscal year for scholarships and a maximum of two (2%) of the Fair Market Value in the immediately preceding fiscal year for a Stewardship fee ("Stewardship Fee").

3. NON-ENDOWED FUNDS (TEMPORARILY RESTRICTED FUNDS)

- a. **Non-Endowed Funds Amount:** Forty percent (40%) of the Initial Funding Commitment and the entirety of the Ongoing Funding Commitment shall be considered Non-Endowed Funds.
- b. **Non-Endowed Funds Use:**
 - i. The Non-Endowed Funds shall be used solely to support Shasta College educational and workforce development programs in accordance with Public Resources Code section 25545.10. Program support may include, but is not limited to:
 - 1. Purchasing of equipment/materials: Purchasing of equipment to be used in the Shasta College programs such as Agriculture & Farming, Automotive Technology, Computer Information Systems, Culinary Arts, Diesel Technology, Early Childhood Education, Emergency Medical Technician (EMT), Fire Academy, Fire Technology, Wildland Fire, Geographic Information Systems, Health Sciences, Heavy Equipment Program, Horticulture, Industrial Technology, Natural Resources, Public Safety, Water Treatment Technology, and Welding Technology.
 - 2. Pathways to Employment: Providing funding for programs and personnel costs that increase pathways to employment such as Apprenticeships (Heavy Equipment Logging Operations (HELO), Accounting Services Employment Training (A\$ET), California Registered Apprenticeship Forest Training (CRAFT), Customer Service Certificate, Natural Resources), Accelerated College Education (ACE), Bachelor's Online Degrees (BOLD), Competency-Based Education, Degrees When Due (DWD), Career Café, Internships, and worksite learning opportunities. The Foundation shall prioritize access to these opportunities to students residing in Burney, Cassel, Fall River Mills, Hat Creek, McArthur, Old Station and eastern Shasta County.
 - 3. Educational and Cultural Events: Collaborating with community organizations such as the Shasta County American Indian Advisory, Shasta County Office of Education, Reach Higher Shasta, North State Together, and Shasta College Attainment and Innovation Lab for Equity to sponsor educational conferences, workshops, seminars, student activities, and cultural events.
 - ii. Non-Endowed Funds may also be used to support additional scholarship opportunities for the students residing in Shasta County, in accordance with Section 2, above.

COMMUNITY BENEFITS AGREEMENT

c. Non-Endowed Funds Management:

- i. The Foundation reserves the right to allocate any of the Non-Endowed Funds to be Endowed Funds with the purposes set forth above.
- ii. An annual administrative fee in an amount equal to five percent (5.0%) of the total annual expenditures of Non-Endowed Funds in the immediately preceding fiscal year shall be paid at the end of the fiscal year; provided, that, any funds reallocated to be Endowed Funds, pursuant to Section c.1, above, shall not be included in the total annual expenditures of Non-Endowed Funds.
- iii. The assets of the Non-Endowed Fund shall be held by the Foundation in a separate interest-bearing account. The interest earned will be considered temporarily restricted and will be expended as Non-Endowed Funds. The Non-Endowed Funds will be entered in the books and records of the Foundation as the NON-ENDOWED OPPORTUNITY FOR WORKFORCE DEVELOPMENT AND EDUCATIONAL ACCESS and managed in accordance with the Foundation's policies and procedures currently in effect and Public Resources Code section 25545.10.