

FUNDING AGREEMENT

THIS FUNDING AGREEMENT (this "Agreement") is made as of April __, 2020 (the "Effective Date") by Strauss Wind, LLC, a California limited liability company ("Project Company") and the County of Santa Barbara, a political subdivision of the State of California ("County"), with reference to the following facts:

RECITALS

A. Project Company intends to develop, construct and operate the Strauss Wind Energy Project (the "Project") on certain real property located in the County of Santa Barbara, State of California, designated as Assessor's Parcel Number 083-080-004, 083-090-001, 083-090-002, 083-090-003, 083-090-004, 083-100-004, 083-100-007, 083-100-008, 083-250-011, 083-250-16 and 080-250-019 (collectively, the "Property").

B. County has approved a County Conditional Use Permit No. 16CUP-00000-00031 and County Variance No. 18VAR-00000-00002 for the Project (the "County Permits" or "County CUP"), subject to several Conditions of Approval. Project Company has received the following state and federal permits for the Project: California Endangered Species Act Incidental Take Permit No. 2081-2018-065-05 dated April 13, 2020 from the California Department of Fish and Wildlife (the "ITP"), and the Biological Opinion (File No. SPL-2018-00819-CLH) dated April 2, 2020, issued by the United States Fish and Wildlife Service (the "Biological Opinion"). The County Permits, ITP and Biological Opinion are collectively referred to in this Agreement as the "Permits".

C. County CUP Condition of Approval #11 and Condition of Approval #13 require Project Company to record conservation easements prior to the issuance of Zoning Clearance, and Condition of Approval #13 specifies that the required conservation easement must "protect[] the proposed conservation area in perpetuity" and be "controlled by a qualified conservation organization" approved by the County. U.S. Code Title 26, Section 170(h) defines "qualified organization" for purposes of receiving a "qualified conservation contribution."

D. Project Company has delivered two conservation easement Grant Deeds benefitting the County, one encumbering APN 083-080-004 and the other encumbering APN 083-090-001 and 080-090-002 (collectively, the "Scolari Conservation Easements"). Project Company desires to voluntarily grant to the County, instead of a third-party qualified conservation organization, the Scolari Conservation Easements as those conservation easements required by the County CUP Conditions of Approval.

E. The parties agree that the County is qualified to hold the Scolari Conservation Easements. County desires to accept Project Company's voluntary grant of the Scolari Conservation Easements on the condition that County funds are not required to be expended for the costs incurred by the County in monitoring, maintaining, and enforcing the terms of the Scolari Conservation Easements or any costs that will be incurred in transferring the Scolari Conservation Easements to a third-party qualified conservation organization in the future.

F. County CUP Condition of Approval #16 requires Project Company to obtain the ITP and Biological Opinion for the Project. Section 9 of the ITP issued for the Project requires Project Company to record a conservation easement consistent with the requirements of the ITP within six months of the effective date of the ITP. Project Company intends to record a comprehensive

conservation easement package that would encumber a portion of the Property, including the three parcels covered by the Scolari Conservation Easements, and satisfy both the County CUP Conditions of Approval and the ITP issued for the Project with respect to the conservation easements required under the Project Permits (the "Comprehensive Conservation Easements"), as referenced in Section 21 of the Scolari Conservation Easements Grant Deeds.

G. As consideration, in part, for County's acceptance of the Scolari Conservation Easements, Project Company herein agrees to reimburse the County for costs related to holding, managing, enforcing, and maintaining the Scolari Conservation Easements in perpetuity, as well as for costs related to the potential future transfer of the Scolari Conservation Easements to a third-party qualified conservation organization, with such reimbursement obligation to be secured by a performance security approved by the County, pursuant to the terms and conditions of this Agreement.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Project Company Payment Obligation. Following County acceptance and recordation of the Scolari Conservation Easements, Project Company shall reimburse the County for its actual, documented costs and expenses (including but not limited to internal staff time) related to management of the Scolari Conservation Easements, including but not limited to monitoring and enforcing the Scolari Conservation Easements (the "Ongoing Management Costs"). Ongoing Management Costs may include, but are not limited to: periodic inspections of the property to assess compliance with the terms of the easement including documentation of compliance through written reports; administrative costs associated with scheduling and coordinating with the landowners, arranging access, coordination of resource monitoring and research activities; and repair and maintenance of infrastructure (signage, fencing) necessary for resource protection.

Additionally, Project Company shall reimburse the County for its actual, documented costs and expenses (including those amounts the County reimburses to a potential Transferee) related to transferring the Scolari Conservation Easements to a third-party qualified conservation organization (the "Transfer Costs").

The Project Company's obligation to reimburse the County for its Ongoing Management Costs and Transfer Costs are collectively referred to herein as the Project Company's "Payment Obligation".

The County shall submit monthly invoices to Project Company, along with an itemized account of all costs and expenses incurred by the County associated with Ongoing Management Costs and/or Transfer Costs. The County shall invoice Project Company for such costs and expenses incurred within 60 days of incurring them. Project Company shall remit payment to the County within 30 days of receipt of the County's invoice.

Project Company's Payment Obligation shall terminate only upon the occurrence of either of the following events: 1) the County vacates and abandons its interest in the Scolari Conservation Easements; or 2) the County transfers the Scolari Conservation Easements to a third-party qualified conservation organization ("Transferee") and the parties mutually agree to terminate the Project Company's Payment Obligation.

2. Project Company Performance Security Obligation. The Project Company's Payment Obligation shall be secured by a Performance Security in the amount of \$4,750,000. The Performance Security shall be either a cash deposit in an escrow account in a form approved by the County, a Letter of Credit in a form approved by the County, or a Corporate Surety Faithful Performance Bond in a form approved by the County. The approved Performance Security is attached hereto as **Exhibit A**. The County shall have the right to draw on the principal sum if the County, in its sole discretion, determines that the Project Company has failed to perform its Payment Obligation.

The Project Company's obligation to maintain the Performance Security shall terminate only upon the termination of its Payment Obligation, as set forth in Section 1, above.

3. Recordation of the Comprehensive Conservation Easements. The County acknowledges that Project Company is working with the property owners of the Property and various governmental agencies, including the County, to finalize the Comprehensive Conservation Easements, as set forth in Section 21 of the Scolari Conservation Easements Grant Deeds.

In the event that the Project Company records the Comprehensive Conservation Easements, and the County determines that the Comprehensive Conservation Easements fully satisfy the purposes of the Scolari Conservation Easements and protects the Conservation Values set forth therein, and the Project Company and County agree to terminate the Scolari Conservation Easements upon the recordation of the Comprehensive Conservation Easements, then concurrent with such recordation, the Scolari Conservation Easements shall have no further force and effect and the County shall execute, acknowledge and record in the Official Records of Santa Barbara County an instrument vacating and abandoning the Scolari Conservation Easements. As set forth in Sections 1 and 2, above, the Project Company's Payment Obligation and Performance Security Obligation shall terminate in the event that the County vacates and abandons its interest in the Scolari Conservation Easements.

4. County Transfer of the Scolari Conservation Easements. The County will not transfer the Scolari Conservation Easements for a period of six months after the Effective Date. Thereafter, the County may transfer the Scolari Conservation Easements to a qualified conservation organization ("Transferee") that is authorized to hold conservation easements pursuant to California Civil Code Section 815.3 and in compliance with the provisions of the Scolari Conservation Easements (a "Transfer"). In the event the County decides to commence a Transfer, the County shall notify Project Company in writing. As set forth in Section 1, above, in the event a Transfer occurs and the parties mutually agree to terminate the Project Company's Payment Obligation, Project Company shall have no further Payment Obligation and the County shall return the Performance Security to Project Company.

5. Notices. Any notice, demand, request, consent, approval, or other communication that any party desires or is required to give to the other parties shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, and addressed as follows:

To Project Company: Strauss Wind Energy Project
5901 Priestly Drive, Suite 300
Carlsbad, CA 92008
Attn: Daniel Duke

To the County: County of Santa Barbara

Attn: _____

or to such other address as each Party shall designate by written notice to the other party. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

6. Amendment; Replacement and Termination. This Agreement may be amended by the parties only by mutual written agreement. Any such amendment shall be consistent with the purposes of the Scolari Conservation Easements and California law governing conservation easements.

7. Additional Provisions.

(a) Controlling Law and Venue. The interpretation and performance of this Agreement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state, and the venue for any arbitration, mediation, litigation, or other legal action to enforce or interpret the terms hereof shall be in the Superior Court for the County of Santa Barbara, Santa Maria Division.

(b) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Agreement, such action shall not affect the remainder of this Agreement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Agreement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(c) Assignment. The rights and obligations set forth in this Agreement are assignable. Each and all of the covenants and conditions of this Agreement shall inure to the benefit of and shall be binding upon the respective heirs, executors, administrators, successors and assigns of the parties.

(d) Entire Agreement. This Agreement, the recitals and exhibits hereto set forth the entire agreement between the parties and supersede all prior discussions, negotiations, understandings, or agreements of the parties relating to the Agreement.

(e) No Recording. Neither party shall record this Agreement or a memorandum of this Agreement in the Official Records.

(f) Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto. Facsimile, documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement, with such facsimile, scanned and electronic signatures having the same legal effect as original signatures. The parties agree that this Agreement may be accepted, executed or agreed to through the use of an electronic signature in accordance with the

Electronic Signatures in Global and National Commerce Act, Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act and California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17), as such laws may be amended from time to time. Any document accepted, executed or agreed to in conformity with such laws will be binding on both Project Company and the County the same as if it were physically executed.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF the parties have executed this Funding Agreement as of the Effective Date.

PROJECT COMPANY:

STRAUSS WIND, LLC,
a California limited liability company

By: BayWa r.e. Wind, LLC
Its Sole Member

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

COUNTY:

ATTEST: COUNTY OF SANTA BARBARA

Mona Miyasato
County Executive Officer
Clerk of the Board

By: _____

By: _____
Deputy Clerk Chair, Board of Supervisors

Date: _____

APPROVED AS TO FORM:
Michael C. Ghizzoni
County Counsel

By: _____

EXHIBIT A
FORM OF SECURITY

