



AGENDA ITEM
CITY COUNCIL MEETING DATE – FEBRUARY 19, 2019
CONSENT CALENDAR

TO : City Council

FROM : City Attorney

SUBJECT : **AMENDMENT TO THE VALERO/GOOD NEIGHBOR STEERING COMMITTEE AGREEMENT**

EXECUTIVE SUMMARY:

Valero and the Good Neighbor Steering Committee have proposed amendments to the Valero/Good Neighbor Steering Committee Agreement that will resolve the outstanding issues or disagreements about the terms of the agreement. The proposed amendment will allow the agreement to be closed out and various beneficial projects to be funded. The proposed agreement includes not only a commitment by Valero to fence line air monitoring but also provides for updating the community air monitoring equipment provided under the agreement. Approving this agreement eliminates the need for litigation to resolve funding disputes.

RECOMMENDATION:

Authorize the City Manager to execute the proposed second amendment to the Valero/Good Neighbor Steering Committee Agreement with the minor technical change noted in the staff report. Alternatively, the Council could recommend approving the proposed second amendment with a modification to move the Sustainable Solano \$440,00 to the BCAMP air monitoring project.

BUDGET INFORMATION:

There is no direct budget impact from approving this agreement. Approving the agreement eliminates the staff time spent monitoring the funding requests and potential litigation costs.

BACKGROUND:

In 2002 Valero proposed the Valero Improvement Project. The Valero Improvement Project (VIP) would modify existing refinery equipment and install new equipment to allow the refinery to process lower grades of raw materials (crude oil and gas oil) and to increase overall production by about 10%. The project was proposed to be carried out in phases between 2003 and 2009. Project-related impacts would be mitigated by planned components of the project. On April 28, 2003, the Planning Commission certified the Environmental Impact Report (EIR) for the project, approved the Mitigation Monitoring Program, and approved the Use Permit for the project.

This decision was appealed to the City Council. To resolve the appeal, Valero agreed to certain terms and conditions. See Attachment 2. These included providing up to \$15 million dollars for the City's water reuse project¹ and up to \$45,000 related to air monitoring².

By 2007 only a few of the VIP project elements were built. Valero requested modification of the approved Use Permit to modify portions of the VIP to improve air pollution control, energy efficiency, and flare minimization, and to make other technical modifications. In addition, Valero needed to request that the Use Permit expiration date be extended from December 31, 2009 to December 31, 2014 to allow for construction of the project as amended. The changes required that an Addendum to the original EIR be issued. A dispute arose over the adequacy of the Addendum. In 2008, Valero and the Good Neighbor Steering Committee entered into an agreement to resolve their issues. See Attachment 3. Part of the Agreement was subsequently incorporated into the Planning Commission's approval of the modifications.

The 2008 agreement provided for:

1. Air monitoring equipment. \$10,000 per year for 5 years for operation and construction of a permanent air monitoring shelter estimated at \$200,000.
2. Buffer Land. Estimated at up to one million dollars.
3. Greenhouse Gas Reduction projects. Up to \$1,350,000 for various projects.
4. Water Conservation projects. Not to exceed \$2 million per year for 5 years plus \$1 million for watershed land.

By 2010, Valero, the Good Neighbor Steering Committee, and the City decided to enter into an amendment of the agreement to clarify some of the disputes that had arisen. See Attachment 4. The staff report discussion on the amendment is attached as Attachment 5.

While many of the projects contemplated by the 2010 amendment were "easy" to accomplish, other projects were more elusive. In addition, a dispute arose over the buffer land. Valero, the Good Neighbor Steering Committee, and the City met several times over the subsequent years to resolve the differences. In the end, Valero and the Good Neighbor Steering Committee drafted this proposed amendment. While City staff has not been deeply involved in the proposed amendment, the amendment does provide funds for some timely projects and it eliminates the need to fight for the disputed buffer land money.

The Second Amendment expands on the fence line monitoring program with Valero agreeing to construct, install, and maintain the equipment approved by the regulator Bay Area Air Quality Management District (BAAQMD). See pages 5 and 6 of Attachment 1. The fence line monitoring project costs are in addition to the money Valero is paying for the projects under the proposed amendment. Valero is also agreeing to pay \$1,500,000 for other projects including air monitoring and water related projects. While not all of these projects are the ones that City staff would have recommended, they are projects that will provide a benefit to the residents and workers in Benicia. While the air monitoring examples provide an easily recognizable benefit, others like the Integrated Water Management Plan might not be so obvious. The Integrated Water Management Plan and its implementation provide a \$450,000 benefit to the water rate

¹ See paragraph 5 of Attachment 2.

² See paragraph 6 of Attachment 2.

payers of the City. The American Planning Association states an Integrated Water Management Plan “focuses on the watercycle as a single connected system and promotes coordinated development and management of water, land, and related resources to maximize the economic and social benefits while minimizing impacts on the environment.” The plan should help make Benicia’s water system infrastructure more resilient and adaptable to various scenarios including prolonged droughts.

A suggestion has been made to move the \$440,000 proposed for Sustainable Solano to air monitoring projects. Valero is paying for the fence line monitoring on page 5 and 6 of Attachment 1. It does not make sense to “give them back” the \$440,000 they are contributing. Putting that money to the BCAMP is unnecessary per the Good Neighbor Steering Committee since the funds allocated to BCAMP plus anticipated grant funds cover the costs of updating and maintaining that equipment.

One proposal in the Second Amendment that catches attention is the \$50,000 proposed for attorney’s fees for Dana Dean. She has represented the Good Neighbor Steering Committee in the negotiations over the years. While it would be great if all who were involved could recover for their time in the negotiations this is not feasible. It is worth noting that the City Attorney and Valero’s attorney are paid by their respective clients.

What really should be recognized is the value of the time the members of the Good Neighbor Steering Committee have put into the amendment (and the prior agreements and negotiations). Without the persistence of Good Neighbor Steering Committee members Marilyn Bardet, Mary Frances Kelly-Poh, Kathy Kerridge, Constance Buettel, and Nancy Lund, the issue over the disputed funds might have lingered on. They were instrumental in the beginning of the agreement and over the lifetime of the agreement. The members of the committee, unlike the lawyers and staff members of the other parties, have not received fees or money for their efforts. It is rare when the value of volunteers can be measured in terms of millions of dollars. These volunteers are responsible for bringing in millions of dollars of projects that have benefited the community.

Speaking of time, during the long course of negotiations on the proposed amendment the California Rules of Professional Conduct for lawyers were updated. This means that the reference on Page 6 of Attachment 1 needs to be updated to Rule 1.15. Valero’s and GNSC’s lawyers have agreed to add that any of the parties can ask for the accounting and such specified in the Rule until the time that the GNSC is made a non-profit.

It is my recommendation that the proposed amendment be approved with the technical updates to the reference to the Rules of Professional Conduct. I do not believe that there are additional funds that have been left on the table. The projects proposed are reasonably beneficial to the community and except for the Integrated Water Management Plan will not create much additional staff time. In addition, resolving the dispute over the \$1 million for the buffer land is valuable.

NEXT STEPS:

The agreement will be executed and the funds will be distributed. Projects will then be implemented.

ALTERNATIVE ACTIONS:

Direct that staff negotiate changes to the proposed agreement such as moving the Sustainable Solano money to the BCAMP air monitoring.

General Plan	Create a sustainable community in Benicia.
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Strategic Plan	Strategic Issue #2: Protecting and Enhancing the Environment Strategy #1: Reduce greenhouse gas emissions and energy consumption Strategy #3: Pursue and adopt sustainable practices
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CEQA Analysis	The Amendment to the Agreement does not constitute a project as defined by the California Quality Act Guidelines (CEQA) Section 15378 (b) (2) which excludes continuing administrative activities, therefore this action is not subject to environmental review pursuant to CEQA Guidelines Section 15060 (c) (3).
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ATTACHMENTS:

1. Draft Second Amendment to Valero/Good Neighbor Steering Committee Agreement.
2. 2003 VIP Settlement
3. 2008 VIP Settlement
4. 2010 Settlement Agreement
5. Staff Report for 2008 VIP Settlement

For more information contact: Heather C. Mc Laughlin, City Attorney

Phone: 707-746-4216

E-mail: hmclaughlin@ci.benicia.ca.us