



City Council Agenda Item

City Council Meeting Date: October 3, 2017

TO: Honorable Mayor and Members of the City Council

FROM: Patrick Wiemiller, City Manager
p_wiemiller@ci.lompoc.ca.us

SUBJECT: Decision Regarding a Waiver of Disposal Fees for Clean-up of Riverbed and Robinson Bridge as Requested by Planting a Seed, Inc.

Recommendation:

Staff recommends the City Council:

- 1) Consider a request by Planting a Seed, Inc. to waive disposal fees (container and landfill tipping fees) for a proposed riverbed clean-up to be performed on October 28, 2017, by Planting a Seed and volunteers (attached); and
- 2) If waiver of fees is approved, authorize payment of those fees to the Solid Waste Fund from the General Fund; and
- 3) Require Planting a Seed, Inc. sign an agreement acceptable to the City Attorney, for Planting a Seed, Inc. to hold harmless the City of Lompoc (City) for activities arising from the clean-up by providing indemnity described in this report.

Background:

Planting a Seed, Inc., a California nonprofit public benefit corporation based in Lompoc, is planning to perform a clean-up of the riverbed of the Santa Ynez River behind Riverbend Park and near the Highway 246 Robinson Bridge, on October 28, 2017. Planting a Seed, Inc. is enlisting volunteers to provide labor for the clean-up, and it has requested the City to provide dumpsters and/or roll-offs for the event, and to ultimately dump the refuse collected at the Lompoc Landfill. Planting a Seed, Inc. has further requested the City waive disposal fees (both container and landfill tipping fees) for the event.

Discussion:

The proposed clean-up has the potential of providing a cleaner riverbed, reduced fire hazards, and an overall positive environmental impact. The efforts of volunteers also allow the City and the County of Santa Barbara to enhance the cleanliness of the riverbed in their respective jurisdictions without considerable cost.

As helpful as a clean-up such as this one would be, it is not without risk. The most notable example arises from the case *Kincaid v. Fresno*, wherein homeless persons sued over items that had been disposed of as the result of a clean-up effort, and the plaintiffs' claims some of what was disposed of as trash was actually personal property of some value to the plaintiffs. The parties settled that case with the City of Fresno paying \$2.35 Million in damages.

Mr. Shawndel Malcolm, Director of Planting a Seed, Inc., has indicated the proposed clean-up operation will employ some, but not all, of the cautionary steps that have become the generally-accepted standard in the aftermath of *Kincaid v. Fresno*. Accordingly, both City staff and the City Attorney have expressed some concern over the potential liability to the City if all of the cautionary steps are not followed. Therefore, the City Attorney and the City staff recommend the City receive proof acceptable to the City Attorney:

- Planting a Seed, Inc. has liability insurance of at least \$2 Million and Workers' Compensation coverage as required by law; and
- Planting a Seed, Inc. has signed an agreement indemnifying the City if someone claims property damage or personal injury directly or indirectly from the clean-up activity.

Fiscal Impact:

The total value of the fees requested to be waived is unknown at this time, and ultimately will depend on the volume and weight of the refuse collected and dumped, but most likely will not exceed a few thousand dollars to the General Fund.

The Solid Waste Utility, an enterprise fund, is subject to Proposition 218 passed by voters in 1996. Proposition 218 requires the enterprise charges for services to not exceed the cost of those services. As the proposed waiver of normal and customary charges for services for this activity, the cost of the activity would be borne by ratepayers in violation of Proposition 218. The recommendation to have the General Fund pay for the normal and customary charges of the Solid Waste Utility for the proposed services allows for the waiver of payment of the normal and customary charges by Planting a Seed, Inc.

Conclusion:

The proposed clean-up will bring safety, sanitary, and aesthetic value to the riverbed area in and near the City. The request to waive disposal fees, as well as the recommendation regarding risk management, both merit Council's consideration.

October 3, 2017
Waiver of Disposal Fees – Riverbed Clean-Up
Page 3 of 3

Respectfully submitted,

Patrick Wiemiller, City Manager

Attachment: [Planting a Seed, Inc. Riverbed Clean-Up Proposal](#)