

# COUNCIL F.Y.C.

August 4/15

## COMMUNITY VIBRANCY AGREEMENT

THIS AGREEMENT (the "Agreement") made as of this \_\_\_ day of \_\_\_\_\_, 2015  
(the "Effective Date")

**BETWEEN:**

**THE CORPORATION OF THE TOWNSHIP OF ADDINGTON HIGHLANDS**  
(hereinafter referred to as "Addington Highlands")

**OF THE FIRST PART**

- and -

**NORTHPOINT II WIND, LP**  
(hereinafter referred to as "NORTHPOINT II")

**OF THE SECOND PART**

(Addington Highlands and Northpoint II are hereinafter individually referred to as a "Party" and collectively referred to as the "Parties")

WHEREAS Northpoint II is participating in the Independent Electricity System Operator's ("IESO's") procurement program for large renewable projects (the "Procurement Program") pursuant to which the IESO intends to enter into supply contracts with selected proponents for the supply of electricity from renewable generating facilities; and

WHEREAS Northpoint II proposes to construct a renewable energy generating facility located within the boundaries of The Township of Addington Highlands to be known as the Northpoint II Wind Energy Centre (the "Wind Project") to supply electricity in accordance with any Supply Contract awarded to Northpoint II pursuant to the Procurement Program; and

WHEREAS the Wind Project is expected to be rated at up to 200 megawatts and will consist of Wind Turbines, together with the appurtenant equipment, buildings, collection systems, transmission facilities, and access roads (all or a portion of which will be located within the boundaries of the Township of Addington Highlands); and

WHEREAS Addington Highlands has agreed to provide to Northpoint II the Municipal Council Support Resolution and the Municipal Agreement principally in the forms attached hereto as Schedules A and B respectively, and any similar forms of agreement requested by Northpoint II and/or prescribed by the IESO from time to time in accordance with the terms of the Procurement Program (collectively, the "Municipal Support Documents"); and

WHEREAS in recognition of Northpoint II's community relations efforts and to compensate Addington Highlands for any potential effect the Wind Project may have, directly or indirectly, on Addington Highlands's infrastructure or its ability to provide services to its residents, Northpoint II has agreed to provide certain amenities and other assurances to Addington Highlands in accordance with the terms of this agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the Parties have agreed with each other as follows:

**PART I - DEFINITIONS**

1. In this Agreement:

- (a) "**Anti-Bribery Laws**" mean any anti-bribery law or international convention, as may apply now or in the future, including the Canadian Corruption of Foreign Public Officials Act, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and the OECD Convention on Combating Bribery of Foreign Public Officials
- (b) "**Amenity Fee**" means the fee payable by Northpoint II to Addington Highlands in accordance with Part IV of this Agreement;
- (c) "**Anything of value**" shall have the meaning set forth in Section 17;
- (d) "**Commencement Date**" shall have the meaning set forth in Section 8;
- (e) "**Commercial Operation**" means the point in time when the Wind Project is deemed by the terms of the Supply Contract to have achieved commercial operation;
- (f) "**Commercial Operation Date**" has the same meaning as in the Supply Contract and means the date on which commercial operation of the Wind Project is attained;
- (g) "**Community Vibrancy Fund**" shall have the meaning set forth in Section 15;
- (h) "**Council**" means the Council of Addington Highlands as elected by the community;
- (i) "**Emergency**" means an emergency as defined by the *Emergency Management and Civil Protection Act*, R.S.O. 1990;
- (j) "**Governmental Official**" shall have the meaning set forth in Section 17;
- (k) "**Municipal Support Documents**" shall have the meaning set forth in the recitals to this Agreement;
- (l) "**Secured Party**" means a person, corporation or entity who, from time to time, has a legal right under a financing agreement to assume Northpoint II's position in this Agreement as a result of Northpoint II's default under the said financing agreement;
- (m) "**Stub Year**" means the period of time between the Commercial Operation Date and December 31<sup>st</sup> of the same year;
- (n) "**Supply Contract**" means a supply contract entered into with the IESO pursuant to the qualification of Northpoint II under the Procurement Program;

- (o) "Wind Project" shall have the meaning set forth in the recitals to this Agreement;
- (p) "Wind Turbine" means a wind driven turbine constructed by Northpoint II, or any subsidiaries or affiliates of Northpoint II, as part of the Northpoint II Wind Project; and
- (q) "year" means a calendar year.

#### PART II-TERM

2. This Agreement shall become effective on the Effective Date and shall continue for the term of any Supply Contract (the "Term"), unless earlier terminated pursuant to Sections 19, 33 or 46.

#### PART III – MUNICIPAL SUPPORT DOCUMENTS

3. Addington Highlands shall, within ten (10) business days following receipt of a final draft of any Municipal Support Document(s) from Northpoint II, deliver two (2) executed original copies of same to Northpoint II.

#### PART IV - AMENITY FEE

4. Commencing on the Commercial Operation Date and continuing each year during the Term, Northpoint II shall pay the Amenity Fee to Addington Highlands.

5. The Amenity Fee for a given year shall be, at the election of Addington Highlands, written notice of which must be delivered by Addington Highlands to Northpoint II no later than twelve (12) months following the Effective Date, either:

- a) the greater of:
  - i. the fixed turbine rate of Three Thousand Five Hundred Dollars (\$3,500.00 CAD) multiplied by the aggregate nameplate capacity expressed in megawatts of the Wind Turbines which are located within the Township of Addington Highlands and were operating for at least sixty (60) days during the year, as determined by Northpoint II, acting reasonably, plus Three Thousand Five Hundred Dollars (\$3,500.00 CAD) per km of transmission lines (or any portion thereof) located within rights-of-way owned by Addington Highlands, plus Fifty Thousand Dollars (\$50,000.00 CAD) for each collection substation located within the boundaries of the Township of Addington Highlands; and
  - ii. Five Hundred Thousand Dollars (\$500,000.00); or
- b) for the first twelve (12) months following the Commencement Date, the fixed turbine rate of Ten Thousand Dollars (\$10,000.00 CAD) multiplied by the aggregate nameplate capacity expressed in megawatts of the Wind Turbines which are located within the Township of Addington Highlands and were operating for at least sixty (60) days during the year, as determined by Northpoint II, acting reasonably, plus Ten Thousand Dollars

(\$10,000.00 CAD) per km of overhead transmission lines located within rights-of-way owned by Addington Highlands, plus Fifty Thousand Dollars (\$50,000.00 CAD) for each collection substation located within the boundaries of the Township of Addington Highlands, and, for the balance of the Term, the fixed turbine rate of Two Thousand Five Hundred Dollars (\$2,500.00 CAD) multiplied by the aggregate nameplate capacity expressed in megawatts of the Wind Turbines which are located within the Township of Addington Highlands and were operating for at least sixty (60) days during the year, as determined by Northpoint II, acting reasonably, plus Two Thousand Five Hundred Dollars (\$2,500.00 CAD) per km of overhead transmission lines located within rights-of-way owned by Addington Highlands, plus Fifty Thousand Dollars (\$50,000.00 CAD) for each collection substation located within the boundaries of the Township of Addington Highlands.

6. Notwithstanding the foregoing, the Amenity Fee for a given year shall be reduced by the amount, if any, of the increase in the Township of Addington Highland's share of the property taxes levied by Addington Highlands in respect of the Wind Project, to the extent such increase is the result of either (i) an amendment to, or change in the practices under, the *Assessment Act* (Ontario) subsequent to the execution of this Agreement for determining the assessed value of the Wind Project, or (ii) the Wind Project being taxed at a rate different than other general industrial uses in the Township of Addington Highlands. For greater certainty, there shall be no such reductions to the Amenity Fee resulting solely from an increase in the property taxes levied by the Township of Addington Highlands in respect of the Wind Project due to an increase in the general industrial tax rate as described above, unless such increase exceeds the previous year's taxes in respect of the Wind Project by more than ten percent (10%).

- (a) The Parties further agree that Northpoint II may from time to time apply to Addington Highlands to adjust the Amenity Fee where the economic return from the Wind Project is materially and adversely affected by a change in law or other circumstance beyond the control of Northpoint II (including, without limitation, any new charges, levies, deductions or taxes that may in the future be charged, applied or assessed by the IESO or any other governmental authority, against the Wind Project (or revenues therefrom) or Northpoint II or its affiliates in respect of the Wind Project (or revenues therefrom), other than income taxes of general application), and for so long as such material and adverse effect exists. Northpoint II shall request the consent of Addington Highlands prior to making a final determination that such material adverse effect has occurred and prior to adjusting the Amenity Fee. As part of the application to Addington Highlands Northpoint II shall:
- i. provide to Addington Highlands reasonable disclosure of its reasons for considering such adjustment;
  - ii. provide to Addington Highlands any information that supports the request for adjustment and the quantum of adjustment to enable Addington Highlands to assess the reasonableness of the request;
  - iii. engage in meaningful consultation with Addington Highlands; and
  - iv. apply a standard of reasonableness to its assessment of the need for an adjustment to ensure that request is made in a fair, reasonable and non-arbitrary manner.

- (b) Upon completion of the request and consultation described above, Northpoint II may adjust the Amenity Fee in accordance with the stated reasons provided to Addington Highlands, regardless of whether Addington Highlands consents.
- (c) The parties agree that Addington Highlands may submit the adjustment of the Amenity Fee to the dispute resolution provisions in accordance with this Agreement and the arbitrator shall determine whether the adjustment is reasonable in the circumstances.
- (d) The parties agree that the information and reasons submitted by Northpoint II pursuant to this section and any information provided at any subsequent arbitration shall be treated as confidential business information, the disclosure of which could prejudice the competitive position of Northpoint II.

7. The Amenity Fee for the Stub Year and the final year of the Term shall be prorated using the percentage that the number of days in the Stub Year or the final year of the Term, as applicable, is to 365.

8. Northpoint II shall pay the Amenity Fee annually beginning on March 31<sup>st</sup> of the first year following commencement of commercial operations (the "**Commencement Date**") and by each March 31<sup>st</sup> thereafter for the remainder of the Term. Northpoint II shall provide written notice to Addington Highlands of the Commercial Operation Date within sixty (60) days of achieving same.

9. If the Parties are unable to resolve any dispute between them involving payment of any fees set forth in this Agreement, either Party may request that the dispute be submitted first to mediation by an impartial third party to be agreed upon by Northpoint II and Addington Highlands. If the Parties are unable, in good faith, to resolve the dispute through mediation, the dispute shall be submitted to binding arbitration in accordance with the dispute resolution provisions in Part VII of this agreement.

#### PART V - PERMITS

10. Northpoint II shall pay to Addington Highlands permit fees for all components of the Wind Project, for which a permit is required, in accordance with the Addington Highlands's permit fee by-laws in effect at the time of application. For greater clarity, this shall include building permits for the Wind Turbines and the maintenance and administration buildings, if any; entrance permits; oversized or overweight haul permits; and other permits for the Wind Project. The Parties acknowledge that the amount of the permit fees pursuant to this Section are anticipated to be reasonable charges for Addington Highlands to administer and enforce the *Building Code Act* and other appropriate by-laws, but in any event shall not, in aggregate, exceed Eight Thousand Dollars (\$8,000.00 CAD) (the "**Permit Payment**") per Wind Turbine. Said fees shall cover the following:

- (a) the cost to review all plans and drawings in support of the application for the permit;
- (b) all inspections of the construction required by the *Building Code Act*;
- (c) if applicable, the cost to inspect entrance culverts to be installed by Northpoint II at the entrance onto the property on which the Wind Turbines will be constructed, such culverts to be of a standard specified by and installed to the satisfaction of the Addington Highlands;
- (d) if applicable, the assigning (but not the installation) of a municipal address for the

Wind Turbine; and

- (e) all other efforts reasonably anticipated to be necessary for the issuance of the permit.

**11. [Intentionally deleted]**

12. Addington Highlands agrees to process, review and render a decision on Northpoint II's permit applications in an expeditious manner and in no case more than the earlier of (i) the timeframe outlined in Addington Highlands' ordinances; and (ii) thirty (30) days, provided that such permit applications are complete and contain all information required in accordance with the applicable ordinances.

13. The commitment by Addington Highlands to expedite the processing of permit applications made by Northpoint II as referenced above shall not be interpreted as implying any obligation on the part of Addington Highlands to approve such applications or submissions. All permit application and submissions made by Northpoint II shall be considered by Council or the appropriate administrative officer on their merits at the time the applications or submissions are made. Addington Highlands and Northpoint II both acknowledge that Addington Highlands cannot enter into any agreement that has the effect of expressly or impliedly fettering the legislative discretion of the current or a future Council or the administrative discretion of any municipal officer, acting reasonably, and this Agreement is not intended to have that effect.

**PART VI – NORTHPOINT II COVENANTS**

14. In addition to the covenants to pay the fees set out in Parts IV and V hereof, Northpoint II further covenants and agrees with Addington Highlands as follows:

- a) To use commercially reasonable efforts to enter into a Road Use Agreement with Addington Highlands prior to the commencement of construction of the Wind Project which Road Use Agreement shall include, but not be limited to, covenants and agreements related to the following: municipal works; permit fees; letters of credit; installation work; electrical infrastructure; snow clearance; entrances and entrance work; tree work; abandonment and decommissioning; and municipal costs. It is the intent of the Parties that Northpoint II shall be responsible for all costs and repairs to Addington Highland's roads and infrastructure impacted by the Wind Project. Furthermore, in carrying out the Road Use Agreement, Northpoint II shall indemnify Addington Highlands against all third party actions, causes of action, suits, claims and demands whatsoever to the extent arising out of, resulting from, or caused by Northpoint II, its employees, servants or agents except for negligent or tortious acts, errors, or omissions by Addington Highlands;
- b) to use good faith efforts to hire local suppliers of labour and materials, to the extent available and to the extent that such local suppliers are competitive and comply with the requirements set forth in the Supply Contract, in respect of the construction and operation of the Wind Project;
- c) subject to Sections 17-19 of this Agreement, within ninety (90) days of the entering

into of a Supply Contract, provide to the Corporation Fifty Thousand Dollars (\$50,000 CAD) for the Municipality to establish a bursary on terms acceptable to the Municipality to disburse a maximum of Ten Thousand Dollars (\$10,000.00 CAD) per year which shall be accessible by: 1) individuals attending post-secondary education programs; 2) individuals seeking to acquire skills in anticipation of providing services related to the construction, operation, or management of renewable energy projects; and 3) educational institutions within the township to support initiatives such as technology upgrades and the establishment of student scholarships;

- d) to provide training free of charge to local emergency services in respect of calls related to Wind Turbines;
- e) commencing on the date Northpoint II enters into a Supply Contract and terminating on the Commercial Operation Date, Northpoint II shall reimburse Addington Highlands for expenses incurred by Addington Highlands for legal, consulting, and other costs, supported by an undisputed invoice and any supporting documentation, to negotiate the agreements denoted in Subsection (a) and (c) of this Section 14, and for participating in the Renewable Energy Approval process. The Parties agree that the reimbursement under this Subsection (e) shall not exceed One Hundred and Fifty Thousand Dollars (\$150,000.00 CAD);
- f) to investigate the technical, regulatory and financial feasibility of installing light mitigation technology to significantly reduce the impact of wind turbine aviation safety lights on the night sky in the area of the wind turbines, and to provide an assessment of the technical, regulatory and financial viability to Council prior to commencing construction.
- g) To use commercially reasonable efforts to implement mitigation technology or mitigation strategies to significantly reduce the impact of wind turbine aviation safety lights on the night sky in the area of the wind turbines;
- h) If it is not feasible to implement mitigation technologies or mitigation strategies to reduce the impact of wind turbine aviation safety lights on the night sky in the area of the wind turbines Northpoint II agrees that the Amenity Fee payment schedule shall be increased such that the fee to be paid in the first year after COD shall be increased by Two Hundred and Fifty Thousand Dollars (\$250,000.00 CAD), all remaining payments to remain the same, with the second regular annual payment commencing on the second anniversary; and
- i) in the event, following expiration or earlier termination of the Supply Contract, Northpoint II enters into a supply contract with the IESO or another entity under a program other than the Procurement Program in respect of the Wind Project, Northpoint II shall negotiate a Community Vibrancy Agreement with Addington Highlands with respect to same. The parties agree to use reasonable efforts to negotiate an agreement that is commercially reasonable for both parties and which includes, without limitation, the following elements:
  - i. the creation or continuation of the Community Vibrancy Fund;

- ii. the creation or continuation of Amenity Fee payments, the value of which payments shall have regard to the commercial terms and economic return of the continued project and Supply Contract;
- iii. Anti-bribery provisions;
- iv. accounting requirements; and
- v. dispute resolution.

The covenants and contemplated agreements set out in this Section 14 shall be subject to anti-bribery and corruption provisions acceptable to Northpoint II in its sole discretion, including but not limited to terms and conditions similar to those set forth in Sections 15-19 of this Agreement.

#### **PART VII - COMMUNITY VIBRANCY FUND**

15. The expenditure of the Amenity Fee by Addington Highlands which forms the subject matter of this Agreement ("**Community Vibrancy Fund**") shall be utilized in any lawful manner by Addington Highlands to support the following:

- (a) Expenditures relating to energy sustainability (i.e. municipal renewable energy systems; vehicle fleet upgrades; building energy-efficiency upgrades; conservation programs);
- (b) land stewardship initiatives (i.e. habitat creation/improvement; tree planting);
- (c) expenditures relating to development and construction of Addington Highlands recreational facilities and community facilities (i.e. arenas, parks, trails);
- (d) expenditures for improvement of community and protective services (i.e. police, fire, healthcare);
- (e) expenditures related to roads, urban infrastructure and community facilities;
- (f) expenditures related to education and job training;
- (g) property tax relief for residents and businesses in the community; or
- (h) other community-related activities sanctioned by Addington Highlands;

For greater certainty, no payments made pursuant to this Agreement shall be used by Addington Highlands in connection with or in support of any party or participant, including Addington Highlands, either directly or indirectly, for appeals, judicial review, or for any litigation contrary to the interests of Northpoint II.

16. All proposed expenditures or application of funds from the Community Vibrancy Fund pursuant to Section 15 of this Agreement shall require approval by Addington Highlands in a public forum, pursuant to the *Municipal Act* and in accordance with all of Addington Highlands's obligations under Sections 17-19 of this Agreement.

17. Addington Highlands agrees that the amount of any Amenity Fee, permit fee, or other payment



made under this Agreement will be used only for the purposes set forth in this Agreement and in compliance with all Anti-Bribery Laws and all other applicable laws. Notwithstanding anything to the contrary herein, Addington Highlands, in its administration of this Agreement, the Community Vibrancy Fund, any Amenity Fees, permit fees or other payments, shall refrain from offering, giving or promising, directly or indirectly, money or anything of value to a Governmental Official to influence the official in his or her official capacity, induce the official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person. For the purposes of this Section 17, "anything of value" shall include, but not be limited to, cash or a cash equivalent (including, a "grease", "expediting" or facilitation payment), discounts, gifts, use of materials, facilities or equipment, entertainment, drinks, meals, transportation, lodging, insurance benefits, or promise of future employment. "Governmental Official" shall mean any official, employee, agent, or representative of any Canadian, state, federal, provincial, municipal, local or tribal government or any instrumentality thereof; any official, employee, agent, or representative of any government-owned or government-controlled enterprise, any foreign public administration or publicly funded organization, any public international organization, or any political party; any candidates for public office or political parties; or any relatives or close family/household members of any of those listed above. It being hereby agreed that a breach by either Party of this Section 17 shall constitute a fundamental breach of this Agreement.

18. In regards to the receipt and administration of the Amenity Fees and other fees and payments received from Northpoint II pursuant to the terms of this Agreement, and in regards to administration of the Community Vibrancy Fund, Addington Highlands shall, at a minimum, institute the following processes and procedures:

- (a) Make and keep books, records, and accounts, in accordance with generally accepted accounting principles, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the Amenity Fees and other fees received from Northpoint II and of the dispositions of funds held in the Community Vibrancy Fund; and
- (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
  - (i) transactions and dispositions are executed in accordance with Addington Highlands's general or specific authorization;
  - (ii) transactions and dispositions are recorded as necessary (a) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (b) to maintain accountability for all payments received, transactions, and dispositions of funds;
  - (iii) access to the Community Vibrancy Fund and all payments held therein is permitted only in accordance with Addington Highlands's general or specific authorization; and
  - (iv) the recorded accountability for all such payments held in the Community

Vibrancy Fund is compared with the existing Community Vibrancy Fund balance at reasonable intervals and appropriate action is taken with respect to any differences.

19. Upon reasonable notice to Addington Highlands, Northpoint II shall have the right to: (i) inspect and audit (at Northpoint II's sole cost and expense) all books, records, and accounts which relate to the receipt of funds and any transactions undertaken by Addington Highlands with regard to this Agreement; and (ii) receive annual audited financial statements of Addington Highlands, prepared by an independent third party in accordance with the *Municipal Act*. Notwithstanding any other provision of this Agreement to the contrary, Northpoint II shall have the right to terminate this Agreement in the event of any breach of Sections 15 through 19 of this Agreement.

To the extent Addington Highlands retains or otherwise engages a third-party to undertake initiatives or projects pursuant to Sections 15-16 of this Agreement, Addington Highlands shall use its best efforts to ensure that such third-party agrees in writing to anti-bribery and corruption provisions substantially similar to those contained in Sections 17-19 of this Agreement.

#### **PART VIII - DISPUTE RESOLUTION**

20. In the event that either Party provides the other Party with written notice of a dispute regarding the interpretation or implementation of this Agreement (a "**Dispute**") then both Parties shall use their best efforts to settle the Dispute by consulting and negotiating with each other in good faith to reach a solution satisfactory to both Parties. If the Parties are unable to resolve any dispute between them, either Party may request that the dispute be submitted first to mediation by an impartial third party to be agreed upon by Northpoint II and Addington Highlands. If the Parties are unable, in good faith, to resolve the dispute through mediation, within sixty (60) days following receipt of the said notice, then either Party may provide written notice to the other Party (the "**Arbitration Notice**") requiring resolution by arbitration and thereafter the Dispute shall be referred to arbitration in accordance with the provisions of the *Arbitration Act, 1991*.

21. This Section sets out the rules and procedures that shall govern any matter that may be arbitrated between the Parties in accordance with the terms of this Agreement. If a Party has the right to request that a matter be submitted to arbitration, the Party may commence the arbitration by delivering a written request to the other Party setting out the issue that the Party requests be submitted to arbitration and the section of this agreement that entitles the Party to request that the matter be resolved by arbitration, and thereafter the matter shall be submitted to arbitration pursuant to the *Arbitration Act*, or any applicable successor legislation, and the decision of the arbitrator or, if more than one, the decision of a majority shall be final and binding on the Parties with no right of appeal on a question of law, fact or mixed law and fact.

22. Where a Party requests a matter be submitted to arbitration, the matter shall be decided by a single arbitrator acceptable to the Parties, unless either Party notifies the other that the former wishes the matter be decided by a Board of Arbitration, in which case each Party may appoint one member to the Board of Arbitration and the two members appointed by the Parties shall appoint the third member who shall act as Chair. The arbitration shall be conducted in English and shall take place in Addington Highlands, Ontario,

23. Notwithstanding anything to the contrary herein, the arbitrator will not have any power to alter

or change any provisions of this Agreement or to impose any new provisions to this Agreement or to substitute any new provisions for any existing provisions or to give any decision inconsistent with the terms and provisions of this Agreement.

24. Each Party shall pay its own costs of the arbitration and shall share equally the costs of the arbitrator and any incidental expenses.

#### PART IX - ASSIGNMENT

25. Neither Party may assign this Agreement without the written consent of the other; provided that no consent shall be required for Northpoint II to assign this Agreement to: (i) a successor or affiliated entity; (ii) NextEra Energy Canada Partners Holdings, ULC ("**NECPH**") and any successor or affiliated entity of NECPH or (iii) a Secured Party. Addington Highlands acknowledges that a change in control of Northpoint II shall not be considered an assignment of this Agreement or any of Northpoint II's rights or obligations hereunder. Addington Highlands hereby grants to any Secured Party the rights and remedies set forth in Schedule "C" hereto and, in addition, shall, from time to time, at the request of any of Secured Party, promptly execute and deliver in favour of such Secured Party such consents and acknowledgements granting and confirming the rights and remedies in this Agreement. The Corporation shall also enter into any other reasonable agreements with any such Secured Party as may reasonably be required by Northpoint II in order to obtain financing from such Secured Party.

26. If NCDCA proposes to sell, convey, transfer, assign, lease or otherwise dispose of its ownership or control of the Northpoint II Wind Project, or to make a bulk sale of NCDCA's assets within the provisions of the *Bulk Sales Act*, NCDCA covenants and agrees to notify Addington Highlands sixty (60) days following said change.

27. NCDCA agrees to provide, following any such change, an acknowledgement from any transferee, lessee, or assignee that it has written notice of and acknowledges this Agreement, and agrees to be fully bound by and to perform the duties and obligations of NCDCA hereunder in the same manner as if such person was an original signatory to this Agreement.

#### PART X - GENERAL

28. All invoices, notices and communications to Northpoint II in connection with this Agreement shall be addressed to the Party at:

Northpoint II Wind, LP  
ATTN: Business Management  
390 Bay Street, Suite 1720  
Toronto, ON M5H 2Y2  
Phone (416) 364-9714

With a copy to:

Northpoint II Wind, LP  
ATTN: General Counsel  
700 Universe Blvd. LAW/JB  
Juno Beach, Florida 33408

Phone (561) 691-2359

29. All invoices, notices and communications to Addington Highlands in connection with this Agreement shall be addressed to:

The Township of Addington Highlands  
72 Edward Street  
PO Box 89  
Flinton, ON K0H 1P0  
Phone (613) 336-2286

30. Any invoice, notices or other communication required or permitted to be given or made under this Agreement shall be in writing, and shall be properly given or made if:

- (a) Delivered in person during normal business hours left with the addressee or any other responsible employee at the relevant address set out herein, or
- (b) telexed, telecopied or sent by other means of recorded electronic communication provided receipt thereof is electronically confirmed.

31. Any Party to this Agreement may from time to time change its address for notice by giving notice to the other Party in the manner as herein provided.

32. No amendment to this Agreement shall be permitted, except by the written mutual consent of both Parties, and any amendment shall be in writing.

33. The mere failure of either Party to give notice to the other of the breach or non-fulfillment of any provision of this Agreement shall not constitute acceptance of the breach or non-fulfillment.

34. The acceptance of a breach or non-fulfillment of any provision of this Agreement shall not constitute acceptance of a further breach or non-fulfillment of either the same provision, or any other provision of this Agreement.

35. Notwithstanding anything to the contrary herein, either Party may, by written notice of default to the other, terminate this Agreement in whole or in part if the defaulting Party violates any representation herein or fails to perform any of its responsibilities as set forth in this Agreement or any extension hereof. The non-defaulting party's right to terminate this Agreement may be exercised if the defaulting party does not cure such violation or failure (if the violation or failure is capable of cure) within thirty (30) days following receipt of the default notice from the non-defaulting party specifying the violation or failure.

36. This Agreement shall be governed by and interpreted in accordance with the laws of Canada and the Province of Ontario.

37. Time shall be of the essence in this Agreement.

38. This Agreement constitutes the entire agreement or understanding between the Parties with respect to the subject matter hereof and supersedes all prior negotiations and documents in relation

thereto.

39. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid, shall be enforced to the fullest extent permitted by law.

40. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

41. Whenever in this Agreement the approval or consent of either Party is required or contemplated, unless otherwise specified, such approval or consent shall not be unreasonably withheld or delayed.

42. This Agreement shall inure to the benefit of Addington Highlands and Northpoint II, and their respective successors and assigns.

43. The Parties hereby acknowledge and agree that the entering into this Agreement constitutes good and valuable consideration for the performance and enforceability of the respective covenants and obligations of each Party contained in this Agreement.

44. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of the Parties will constitute or be deemed to constitute the Parties as partners, joint-venturers or principal and agent in any way or for any purpose. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any person other than the Parties and their respective successors and assigns.

45. In carrying out this Agreement, Northpoint II shall indemnify Addington Highlands against all third party actions, causes of action, suits, claims and demands whatsoever to the extent arising out of, resulting from, or caused by Northpoint II, its employees, servants or agents except for negligent or tortious acts, errors, or omissions by Addington Highlands.

46. In carrying out this Agreement, Addington Highlands shall indemnify and hold harmless Northpoint II from all claims brought against Northpoint II as a result of Addington Highlands or its representatives' failure to comply with Section 17 hereof. Addington Highlands shall immediately report any breach of Section 17 by Addington Highlands or its representatives.

47. The Parties agree that, notwithstanding anything contained in this Agreement, each Party's liability to any other Party in connection with this Agreement will be limited to direct damages and will exclude any other liability, including without limitation, liability for special, indirect, punitive or consequential damages in contract, tort, warranty, equity, strict liability or otherwise.

48. Northpoint II shall have the right to terminate this Agreement if it is not awarded a Supply Contract under the IESO's Procurement Program.

48. Northpoint II shall reimburse Addington Highlands for reasonable legal fees not to exceed \$5,000 incurred to review this Agreement within ninety (90) days of presentation of a final undisputed invoice and any supporting documentation to Northpoint II in respect of same.

**IN WITNESS WHEREOF** The Parties have cause this Agreement to be executed their duly authorized representatives to be effective as of the Effective Date.

**THE CORPORATION OF THE TOWNSHIP  
OF ADDINGTON HIGHLANDS**

\_\_\_\_\_  
Per:

\_\_\_\_\_  
Per:

**NORTHPOINT II WIND, LP by its general partner  
NORTHPOINT II WIND GP, INC.**

\_\_\_\_\_  
Per:

Schedule A  
Municipal Council Support Resolution  
[see attached]

Schedule B  
Municipal Agreement  
[see attached]



Schedule C  
Rights and Remedies Afforded to Secured Parties

1. Addington Highlands agrees that, upon a Secured Party giving Addington Highlands written notice that it has the legal right to assume Northpoint II's position under this Agreement, the Secured Party will, without any further action being required, assume Northpoint II's position.
2. Northpoint II hereby authorizes Addington Highlands to take these actions at the request of a Secured Party, without Northpoint II's consent and without proof of the Secured Party's entitlement to assume Northpoint II's position.
3. Addington Highlands hereby acknowledges that Northpoint II may grant security to a trustee or collateral agent acting on behalf of one or more lenders, which trustee or collateral agent is a corporation, trust company or other similar entity that is authorized to carry out the business of a trustee or collateral agent in any of the Provinces of Canada (a "**Collateral Agent**") and Addington Highlands hereby acknowledges and agrees that upon receipt of notice that such security was granted, the Collateral Agent will be entitled to all of the rights of the Secured Party set forth in this Schedule "C", and such notice will constitute notice of the existence of the Collateral Agent as the Secured Party.

**RESOLUTION APPROVING THE COMMUNITY VIBRANCY AGREEMENT  
PROPOSED BY NEXTERA ENERGY CANADA**

Moved by \_\_\_\_\_, seconded by \_\_\_\_\_

WHEREAS Northpoint II Wind, LP (NEXtera) has proposed a Community Vibrancy Agreement with respect to the Northpoint II Wind Energy Centre;

AND WHEREAS the Council of the Corporation of the Township of Addington Highlands has reviewed and negotiated this agreement;

NOW THEREFORE BE IT RESOLVED that the Council of the Corporation of the Township approves the final draft of the Community Vibrancy Agreement;

AND FURTHER that a by-law be enacted to execute said agreement.

Capitalized terms not defined herein have the meaning ascribed to them in the LRP I RFP.

Resolution NO: \_\_\_\_\_ Date: \_\_\_\_\_

**[WHEREAS]:**

1. The Registered Proponent is proposing to develop, construct and operate a Large Renewable Project, with the characteristics outlined in the table below, under the LRP I RFP.

Name of the Large Renewable Project:	Northpoint II Wind Energy Centre
Registered Proponent:	NextEra Canada Development & Acquisitions, Inc.
Renewable Fuel of the Large Renewable Project:	On-Shore Wind
Contract Capacity of the Large Renewable Project <MW>:	200 MW
Description of the Properties within geographic bounds of the Local Municipality on which the Site and/or Connection Line is located <PIN(s) (if a PIN is not available, use legal description), Grid Cell(s) and/or Waterpower Site Number>:	See Schedule A attached (the "Lands")

2. The Registered Proponent acknowledges that the Large Renewable Project and/or proposed Connection Line, either in whole or in part is to be located on lands under the jurisdiction of The Corporation of the Township of Addington Highlands;
3. The Registered Proponent has requested that the council of The Corporation of the Township of Addington Highlands indicate by resolution their support for the Large Renewable Project and/or proposed Connection Line on the Lands;
4. Pursuant to the LRP I RFP, Proposals that receive the formal support of the local jurisdictional authorities of all the Project Communities in which the Large Renewable Project and proposed Connection Line are being located in the form of a support resolution will be awarded Rated Criteria points for the purpose of ranking the Proposal in relation to other Proposals for a contract under the LRP I RFP; and

**[NOW THEREFORE BE IT RESOLVED THAT]:**

5. The council of The Corporation of the Township of Addington Highlands supports the development, construction and operation of the Large Renewable Project and/or proposed Connection Line on the Lands.
6. This resolution's sole purpose is to enable the Registered Proponent to receive Rated Criteria points under LRP I RFP and may not be used for the purpose of any other form of approval in relation to the Proposal or Large Renewable Project and/or proposed Connection Line or for any other purpose. Rated Criteria points will be used to rank the Registered Proponent's Proposal in relation to other Proposals received by the IESO under the LRP I RFP.

**Prescribed Template – Municipal Council Support Resolution**

Page 2 of 0

Mar 2015

IESORP/f-LRPIRFP-013r2

7. Though this resolution may impact the rank of the Registered Proponent's Proposal in relation to other Proposals received by the IESO, it does not guarantee a contract will be offered to the Registered Proponent under the LRP I RFP.

**[DULY RESOLVED BY THE LOCAL MUNICIPALITY]**

on the \_\_\_ day of \_\_\_\_\_, 20\_\_

1.	Name:	Title:
	Signature:	
2.	Name:	Title:
	Signature:	
3.	Name:	Title:
	Signature:	
4.	Name:	Title:
	Signature:	
5.	Name:	Title:
	Signature:	

<Signature lines for elected representatives. At least one signature is required.>

# COUNCIL F.Y.C.

## RESOLUTION REGARDING THE ROAD USE AGREEMENT PROPOSED BY NEXTERA ENERGY CANADA

Moved by \_\_\_\_\_, seconded by \_\_\_\_\_

WHEREAS the Council of the Corporation of the Township of Addington Highlands has provided Northpoint II Wind, LP (NEXTera) with a municipal resolution of support for the Northpoint II Wind Energy Centre;

AND WHEREAS the Council of the Corporation of the Township of Addington Highlands has approved the Community Vibrancy Agreement;

AND WHEREAS the Council of the Corporation of the Township of Addington Highlands has received and reviewed a draft Road Use Agreement from Northpoint II Wind, LP;

NOW THEREFORE BE IT RESOLVED that the Council of the Corporation of the Township of Addington Highlands continues to negotiate the terms of the proposed Road Use Agreement until said agreement is mutually acceptable to both parties.

August 4/15

## COMMUNITY BENEFITS & DEVELOPMENT AGREEMENT

THIS COMMUNITY BENEFITS AND DEVELOPMENT AGREEMENT (this "Agreement") made as of the \_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date").

### BETWEEN:

**DENBIGH WIND LP**  
300 Léo-Pariseau, suite 2516,  
Montreal, Québec, H2X 4B3  
(the "Proponent")

### AND

**THE CORPORATION OF THE TOWNSHIP OF ADDINGTON HIGHLANDS**  
72 Edward Street, P.O. BOX 89  
Flinton, Ontario, K0H 1P0  
(the "Municipality")

### PREAMBLE

**WHEREAS** the Proponent intends to bid a project within the Municipality, with the goal to enter into a Large Renewable Procurement Contract (the "Supply Contract") with the Independent Electricity System Operator (the "IESO") under the Large Renewable Procurement process (the "LRP") and for the supply of electricity from a commercial wind energy generating facility (the "Wind Project") located on lands and premises within the Municipality; and

**WHEREAS** the Wind Project is expected to have an aggregate rated nameplate capacity of up to 170 megawatts installed within the Municipality, together with associated equipment, buildings, collection systems, transmission facilities, and access roads; and

**WHEREAS** the Proponent has agreed to provide certain Community Benefit Fund Contributions (as defined herein) for the benefit of the residents of the Municipality; and

**WHEREAS** the Proponent and the Municipality have agreed to enter into this Agreement, as well as a Road Use Agreement, as separate and distinct agreements.

**NOW THEREFORE** in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, and under legal seal, the parties agree with each other as follows:

## PART I – DEFINITIONS

1. In this Agreement:

“**Commercial Operation Date**” means the date on which commercial operation of the Wind Project is attained within the meaning of the Supply Contract;

“**Community Benefit Fund**” shall have the meaning set forth in Section 13 of this Agreement;

“**Community Benefit Fund Contribution**” shall have the meaning set forth in Section 3 of this Agreement;

“**Council**” means the elected municipal council of the Municipality;

“**IESO**” shall have the meaning set forth in the Preamble of this Agreement;

“**LRP**” shall have the meaning set forth in the Preamble of this Agreement;

“**Prescribed Form – Municipal Agreement**” means the prescribed form published by the IESO as part of the LRP documentation with reference number IESORP/f-LRPIRFP-015r2.

“**Prescribed Form – Municipal Support Resolution**” means the prescribed form published by the IESO as part of the LRP documentation with reference number IESORP/f-LRPIRFP-013r2.

“**Road Use Agreement**” means an agreement or agreements (including any transmission easements) to be entered into between Proponent and the Municipality in respect of the access, travel, use and occupation over, under, in, on, and through the system of public roads and highways under the jurisdiction of the Municipality in connection with the construction, operation and maintenance of the Wind Project, including without limitation the placement of overhead and buried electrical collector system and a transmission easement for 115 kV or greater electrical transmission wires and cables (under a separate easement agreement if requested by the Proponent) on lands comprising such public roads and highways;

“**Stub Year**” means the period of time between the Commercial Operation Date and December 31 of the same Year;

“**Supply Contract**” shall have the meaning set forth in the Preamble of this Agreement;

“**Wind Project**” means the wind energy generating facility described in the recitals, including, for greater certainty, the appurtenant components and property listed in the second recital;

“**Year**” means a calendar year.

## PART II – TERM

2. (a) This Agreement shall become effective on the date first above written (the “**Effective Date**”) and, subject to Paragraph 2 (c), shall continue thereafter for a period (the “**Term**”) expiring on the earlier of (i) the date which is twenty (20) Years following the Commercial Operation Date; and (ii) the date of termination of the Supply Contract (written notice of which termination of the Supply Contract shall be delivered by the Proponent to the Municipality).

(b) In the event that the Proponent obtains an extension of the term of the Supply Contract, this Agreement shall automatically be renewed for the extended term of the Supply Contract upon the same terms and conditions, unless the parties mutually agree to an amendment of any applicable terms or conditions.

(c) If the Commercial Operation Date does not occur within six (6) Years of the Effective Date, this Agreement shall terminate and be deemed to be null and void and of no further force or effect.

## PART III – COMMUNITY BENEFIT FUND CONTRIBUTION

3. Subject to Sections 4 and 5, for the Stub Year and each following Year during the remainder of the Term, the Proponent shall pay the Municipality a fixed amount of Three Thousand Five Hundred Dollars (\$3,500.00) multiplied by the aggregate nameplate capacity (expressed in megawatts) of the Wind Project as indicated in the Supply Agreement (collectively the “**Community Benefit Fund Contribution**”).

4. The Municipality shall not introduce any change in its by-laws that would disproportionately and adversely affect the Wind Project, compared to other participants in the industry, following the execution of this Agreement. Notwithstanding the foregoing, the Community Benefit Fund Contribution for a given year shall be reduced by the amount, if any, of the increase in the Municipality's share of the property taxes levied by the Municipality in respect of the Wind Project, only to the extent such increase is the result of either (i) an amendment to, or change in, the *Assessment Act* (Ontario) for determining the assessed value of the Wind Project, or (ii) the Wind Project being taxed at a rate different than the one established at the Effective Date. For greater certainty, there shall be no such reductions to the Community Benefit Fund Contribution resulting solely from an increase in the property taxes levied by the Township of Addington Highlands in respect of the Wind Project due to an increase in the general industrial tax rate as described above, unless such increase exceeds the previous year's taxes in respect of the Wind Project by more than ten percent (10%).

5. (a) The parties further agree that the Proponent may apply to the Municipality to adjust the Community Benefit Fund Contribution if the economic return from the Wind Project is materially and adversely affected by a change in Applicable Law, and for so long as such material and adverse effect exists. Prior to making a final determination of such material adverse effect, the Proponent shall:

i. provide to the Municipality reasonable disclosure of its reasons for considering such



adjustment;

- ii. Provide to the Municipality any information that supports the request for adjustment and the quantum of adjustment to enable the Municipality to assess the reasonableness of the request;
- iii. engage in meaningful consultation with the Municipality; and
- iv. apply a standard of reasonableness to its determination to ensure that such determination is made in a fair, reasonable and non-arbitrary manner.

(b) Upon completion of the consultation described above, the Proponent may adjust the Community Benefit Fund Contribution in accordance with the stated reasons provided to the Municipality, regardless of whether the Municipality consents.

(C) The parties agree that the Municipality may submit the adjustment of the Community Benefit Fund Contribution to the dispute resolution provisions in accordance with this Agreement to resolve any dispute as to whether the adjustment was reasonable in the circumstances.

(d) The parties agree that the information and reasons submitted by the Proponent pursuant to this section and any information provided at any subsequent arbitration shall be treated as confidential business information, the disclosure of which could prejudice the competitive position of the Proponent.

6. The Community Benefit Fund Contribution for the Stub Year and the final Year of the Term shall be calculated in accordance with Section 3, but prorated by the ratio of the number of days in the Stub Year or the final Year of the Term, as applicable, to 365.

7. The Proponent shall pay the Community Benefit Fund Contribution for the Stub Year on March 1 of the first Year following Commercial Operation Date and for each Year of the Term thereafter on March 1 of the following Year. The obligation of the Proponent to pay the Community Benefit Fund Contribution for the final Year of the Term shall survive the expiry or termination of this Agreement.

8. The Proponent shall make one additional payment to the Municipality of Three Thousand Five Hundred (\$3,500.00) multiplied by the aggregate nameplate capacity (expressed in megawatts) of the Wind Project as indicated in the Supply Agreement, within thirty days following commencement of construction of the Wind Project. In addition, the Proponent agrees to contribute an additional amount of twenty thousand dollars (\$20,000.00) within thirty (30) days of submission of the bid for the Wind Project to be used by the Municipality in accordance with section 16.

#### **PART IV - COMMUNITY SUPPORT**

9. The Municipality and the Proponent acknowledge and agree that the support of individual residents of the Municipality for the duration of the Agreement is paramount to the success of the Wind

Project. The Municipality and the Proponent shall work cooperatively throughout the Term, including meeting at least once each Year, to develop and review plans for ensuring that the Proponent is appropriately recognized by the Municipality and its residents for the significant contribution, including payment of the Community Benefit Fund Contribution, that the Proponent has made and is continuing to make toward the betterment of the community. Without limiting the generality of the foregoing, the Municipality and the Proponent shall consult and agree on specific protocols for public promotion and branding of initiatives financed in large part from the Community Benefit Fund which reflect the degree of financial benefit being afforded to the Municipality.

10. Concurrently with the execution of this Agreement, the Proponent and the Municipality agree to complete and sign the Prescribed Forms demonstrating preliminary support for the Wind Project and that a formal agreement has been reached regarding the Wind Project – the Prescribed Form Municipal Agreement and the Prescribed Form – Municipal Support Resolution, which will be appended to the Proponent’s submission into the IESO LRP request for proposals.

11. (a) the Municipality agrees to process, review and render a decision on the Proponent’s permit applications and Renewable Energy Approval (“**REA**”) municipal consultation submissions including, but not limited to building permits and road use agreements, in an expeditious manner and in no case more than the lesser of (i) the timeframe outlined in the Municipality’s ordinances and (ii) sixty (60) days after the relevant Proponent’s application or submission has been submitted.

(b) The commitment by the Municipality to expedite the processing of permit applications and REA municipal consultation submissions made by the Proponent as referenced above shall not be interpreted as implying any obligation on the part of the Municipality to approve such applications or submissions. All permit application and submissions made by the Proponent shall be considered by Council or the appropriate administrative officer on their merits at the time the applications or submissions are made. The Municipality and the Proponent both acknowledge that the Municipality cannot enter into any agreement that has the effect of expressly or impliedly fettering the legislative discretion of the current or a future Council or the administrative discretion of any administrative officer and that this Agreement is not intended to have that effect.

12. The Municipality agrees that it shall, upon reasonable request from the Proponent, reply to any third parties who are legally authorized to inquire in regulatory issues concerning the development of the Wind Project.

13. The Proponent agrees to provide training free of charge to local emergency services in respect of calls related to Wind Turbines.

14. The Parties understand that, as soon as practicable following the Effective Date of this Agreement, and, in the case of the Proponent’s execution of a Supply Contract, the Municipality and the affiliate of the Proponent will negotiate in good faith a Road Use Agreement, including any associated access easement agreements, in respect of the Wind Project on terms and conditions that are acceptable to both parties, both acting reasonably and with reference to forms and financial conditions of similar

agreements entered into between renewable energy or other industry proponents or other similar agreements from other municipalities in Ontario. The easement would be granted in consideration of an annual payment of Three Thousand Five Hundred Dollars (\$3,500 CAD) per kilometer of length of municipal roads required for use by the Wind Project or any portion thereof. If, acting reasonably, the Road Use Agreement has not been executed within twelve (12) months following the execution date of the Supply Contract, or such other date as agreed upon by relevant parties thereto, the Proponent may terminate this Agreement on 30 days' notice to the Municipality unless a Road Use Agreement is executed and delivered within such 30 day notice period. The parties agree that in the event of any breach by the Municipality in the performance of its obligations pursuant to the Road Use Agreement which remains uncured within any applicable cure periods set out therein, the Proponent may, at its option, terminate this Agreement.

15. The Community Benefit Fund Contributions are made in consideration of the Municipality's agreement to appropriately recognize the value to the community of the Wind Project and the Proponent's investment within the Municipality.

#### **PART V - COMMUNITY BENEFIT FUND ADMINISTRATION AND EXPENDITURES**

16. The Municipality agrees to provide for the establishment of a segregated community fund ("**Community Benefit Fund**") financed solely by Community Benefit Fund Contributions made by the Proponent. The Community Benefit Fund shall be utilized in any lawful manner by the Municipality to support the following types of initiatives, which list is not exhaustive:

- (a) economic development initiatives;
- (b) land stewardship initiatives (e.g., habitat creation/improvement; tree planting; shoreline rehabilitation);
- (c) expenditures relating to development and construction of municipal recreational facilities (e.g., arenas, parks, trails);
- (d) expenditures for improvement of community, public transport, and protective services (e.g., bus service, police, fire, EMS, healthcare);
- (e) expenditures related to roads and public municipal infrastructure; or
- (f) such other community-related activities as may be deemed appropriate by Council in its discretion.

17. All proposed expenditures or application of funds from the Community Benefit Fund shall require (i) approval by the Council in a public forum, and (ii) consultation with the Proponent on no less than 30 day written notice to the Proponent prior to submission of any request to the Council for approval.

18. In regard to the receipt and administration of the Community Benefit Fund Contributions, the Municipality shall, at a minimum, institute the following process and procedures:

- (a) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the Community Benefit Fund; and
- (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
  - (i) transactions are executed in accordance with the Municipality's general or specific authorization;
  - (ii) transactions are recorded as necessary (a) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (b) to maintain accountability for all payments received;
  - (iii) access to the fund and all payments held therein is permitted only in accordance with the Municipality's general or specific authorization; and
  - (iv) the recorded accountability for all such payments held in the fund is compared with the existing fund balance at reasonable intervals and appropriate action is taken with respect to any differences.

19. Upon reasonable notice to the Municipality, the Proponent shall have the right to inspect all records created and maintained which relate to the transactions undertaken by the Municipality with regard to the Community Benefit Fund.

20. Notwithstanding anything to the contrary herein, Municipality, in its administration of the Community Benefit Fund, shall refrain from offering, giving or promising, directly or indirectly, money or anything of value to a Canadian or foreign Governmental official to influence the official in his or her official capacity, induce the official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person. For the purposes of this Section, "anything of value" includes, but is not limited to, cash or a cash equivalent, discounts, gifts, use of materials, facilities or equipment, entertainment, drinks, meals, transportation, lodging, insurance benefits, or promise of future employment. "Governmental official" shall mean any person holding any level of legislative, administrative, or judicial office of the Canadian or a foreign government or any of its departments or agencies or divisions; any person acting on behalf of the Canadian or a foreign government, including a local or provincial agency, enterprise, or organization; any official or agent of a Canadian or a foreign public administration or publicly funded organization; any official of a Canadian or a foreign political party; any officer or agent of a public international organization (e.g., World Bank, International Monetary Fund, World Health Organization, United Nations, World Trade Organization); or any relatives or close family/household members of any of those listed above.

21. In addition to the Community Benefit Fund, during the development phase of the Wind Project, which will run from the execution of the Supply Contract until the beginning of construction of the Wind Project, the Proponent will, within ninety (90) days of the entering into of a Supply Contract, provide to the Municipality twenty five thousand dollars for the Municipality to establish a bursary on terms acceptable to the Municipality to disburse a maximum of five Thousand Dollars (\$5,000.00 CAD) per year which shall be accessible by: 1) individuals attending post-secondary education programs; 2) individuals seeking to acquire skills in anticipation of providing services related to the construction, operation, or management of renewable energy projects; and 3) educational institutions within the township to support initiatives such as technology upgrades and the establishment of student scholarships.

#### **PART VI – BUILDING PERMIT AND DEVELOPMENT FEES**

22. The Proponent shall pay any applicable permit fees for all components of the Wind Project for which a building permit is required in accordance with the laws of the Province of Ontario, in the amounts published in the Municipality's permit fee by-laws in effect as of the date of issuance of the permit. The parties acknowledge that such permit fees are anticipated to be reasonable charges for the Municipality to administer and enforce the Building Code Act, 1992. Such fees shall cover the following:

- (a) the cost to review all plans and drawings in support of the application for the permit;
- (b) all inspections of the construction required by the Building Code Act, 1992;
- (c) all other efforts reasonably anticipated to be necessary for the issuance of the permit.

23. The Proponent shall pay all of the Municipality's costs to process and review all applications submitted in relation to the Wind Project, including without limitation all submissions to the Municipality and the Province and all associated technical reports and permit approvals. The parties further agree that the costs incurred shall be capped at forty thousand dollars (\$40,000) per annum for each of the three (3) years following the Effective Date. The parties further agree that in the event that the Municipality's costs exceed the per annum amount established above that it may request such additional funding ~~as is necessary in the circumstances, providing~~provided that evidence such request be made to Proponent in advance of the need for expenses being incurred and such additional funding is provided to be found necessary in the circumstances, by the Proponent— acting reasonably. The parties further agree that this payment shall not include building permit fees, which shall be assessed in accordance with the *Building Code Act* and all applicable by-laws.

#### **PART VII – ASSIGNMENT**

24. If the Proponent sells or transfers the Wind Project it shall provide notice thereof to the Municipality and shall ensure that the transferee acknowledges this Agreement and agrees to be fully bound by and perform the duties and obligations of the Proponent hereunder in the same manner as if such transferee was an original signatory to this Agreement.

25. Neither this Agreement nor any of the benefits or burdens hereunder shall be assigned, in whole or in part, by the Municipality.

#### **PART VIII – LOCAL LABOUR AND LIGHT MITIGATION**

26. The Proponent will use commercially reasonable efforts to hire local labour and suppliers of equipment and materials, to the extent available and to the extent that such local labour and suppliers are competitive in respect of the construction and operation of the Wind Project. The Proponent will post any contracting tender opportunities related to the construction of the Wind Project with the Municipality or its economic development office.

27. The Proponent will investigate the technical, regulatory and financial feasibility of installing light mitigation technology to significantly reduce the impact of wind turbine aviation safety lights on the night sky in the area of the wind turbines, and to provide an assessment of the technical, regulatory and financial viability to Council prior to commencing construction.

28. The Proponent further agrees to use commercially reasonable efforts to implement mitigation technology or mitigation strategies to significantly reduce the impact of wind turbine aviation safety lights on the night sky in the area of the wind turbines.

29. If it is not possible to implement mitigation technologies or mitigation strategies to reduce the impact of wind turbine aviation safety lights on the night sky in the area of the wind turbines, the Proponent agrees that the Community Benefit Fund payment schedule shall be escalated such that the fee to be paid in the first year after COD shall be the payment for year one and year twenty, all remaining payments to remain the same, with the last annual payment being on the nineteenth year following COD.

#### **PART IX - DISPUTE RESOLUTION**

30. This Part sets out the rules and procedures that shall govern any matter that may be arbitrated between the parties in accordance with the terms of this Agreement.

31. Prior to submitting a dispute to arbitration in accordance with this Part, the parties shall conduct good faith negotiations with a view to resolving the outstanding issue. If these negotiations fail, the parties may by mutual agreement refer the issue to a mediator to be chosen and paid for jointly by the parties without prejudice to the rights of either party to proceed to arbitration in accordance with this Part should such mediation fails.

32. If a party has the right to request that a matter be submitted to arbitration, the party may commence the arbitration by delivering a written request to the other party setting out the issue that the party requests be submitted to arbitration and the section of this agreement that entitles the party to request that the matter be resolved by arbitration, and thereafter the matter shall be submitted to

arbitration pursuant to the Arbitrations Act, or any applicable successor legislation, and the decision of the arbitrator or, if more than one, the decision of a majority shall be final and binding on the parties with no right of appeal on a question of law, fact or mixed law and fact.

33. Where a party requests a matter be submitted to arbitration, the matter shall be decided by a single arbitrator acceptable to the parties, unless either party notifies the other that the former wishes the matter be decided by a Board of Arbitration, in which case each party may appoint one member to the Board of Arbitration and the two members appointed by the parties shall appoint the third member who shall act as Chair.

34. Notwithstanding anything to the contrary herein, the arbitrator will not have any power to alter or change any provisions of this Agreement or to impose any new provisions to this Agreement or to substitute any new provisions for any existing provisions or to give any decision inconsistent with the terms and provisions of this Agreement.

35. During the pendency of negotiations pursuant to the dispute resolution process described in Part IX of this Agreement, the Proponent shall submit all required payments to the solicitors for the Municipality, which payments shall be held in escrow pending the disposition of any dispute resolution process in accordance with this Agreement.

#### **PART X – GENERAL**

36. All invoices, notices and communications to the Proponent in connection with this Agreement shall be addressed to the party at:

37. All invoices, notices and communications to the Municipality in connection with this Agreement shall be addressed to:

The Township of Addington Highlands  
72 Edward Street, P.O. BOX 89  
Flinton, Ontario, K0H 1P0  
ATTN: Clerk  
Phone: (613) 336-2286  
Facsimile: (613) 336-2847

38. Any invoice, notices or other communication required or permitted to be given or made under this Agreement shall be in writing, and shall be properly given or made if:

- (b) delivered in person during normal business hours left with the addressee or any other responsible employee at the relevant address set out herein, or
- (c) telexed, telecopied or sent by other means of recorded electronic communication provided receipt thereof is electronically confirmed.

39. Any party to this Agreement may from time to time change its address for notice by giving notice to the other party in the manner as herein provided.

40. No amendment to this Agreement shall be permitted, except by the written mutual consent of both parties, and any amendment shall be in writing.

41. The mere failure of either party to give notice to the other of the breach or non-fulfillment of any provision of this Agreement shall not constitute acceptance of the breach or non-fulfillment.

42. The acceptance of a breach or non-fulfillment of any provision of this Agreement shall not constitute acceptance of a further breach or non-fulfillment of either the same provision, or any other provision of this Agreement.

43. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario without reference to conflict of laws provisions.

44. This Agreement constitutes the entire agreement or understanding between the parties with respect to the subject matter hereof and supersedes all prior negotiations and documents in relation thereto, and each party acknowledges that there are no collateral representations or warranties made by either in respect of the subject matter of this Agreement.

45. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid, shall be enforced to the fullest extent permitted by law.

46. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

(the signature page immediately follows)



IN WITNESS WHEREOF this Agreement has been executed by the parties under seal by their authorized signing officers to be effective as of the date first set out above.

**THE CORPORATION OF THE TOWNSHIP OF  
ADDINGTON HIGHLANDS**

Per: \_\_\_\_\_

Name:

Office:

Per: \_\_\_\_\_

Name:

Office:

We have the authority to bind the Municipality.

**DENBIGH WIND LP by its general partner  
DENBIGH WIND (GP) INC.**

Per: \_\_\_\_\_

Name: Peter Clibbon

Office: President

I have the authority to bind the Corporation.

**RESOLUTION APPROVING THE COMMUNITY BENEFITS AND DEVELOPMENT AGREEMENT  
PROPOSED BY RES CANADA**

Moved by \_\_\_\_\_, seconded by \_\_\_\_\_

WHEREAS Denbigh Wind, LP (RES) has proposed a Community Benefits and Development Agreement with respect to the Denbigh Wind Farm;

AND WHEREAS the Council of the Corporation of the Township of Addington Highlands has reviewed and negotiated this agreement;

NOW THEREFORE BE IT RESOLVED that the Council of the Corporation of the Township approves the final draft of the Community Benefits and Development Agreement;

AND FURTHER that a by-law be enacted to execute said agreement.

**cribed Template – Municipal Council Support Resolution**

Capitalized terms not defined herein have the meaning ascribed to them in the LRP I RFP.

Resolution NO: \_\_\_\_\_ Date: \_\_\_\_\_

**[WHEREAS]:**

1. The Registered Proponent is proposing to develop, construct and operate a Large Renewable Project, with the characteristics outlined in the table below, under the LRP I RFP.

Name of the Large Renewable Project:	<u>Denbigh Wind Project</u>
Registered Proponent:	<u>Denbigh Wind LP</u>
Renewable Fuel of the Large Renewable Project:	<u>On-Shore Wind</u>
Contract Capacity of the Large Renewable Project <MW>:	<u>TBD</u>
Description of the Properties within geographic bounds of the Local Municipality on which the Site and/or Connection Line is located <PIN(s) (if a PIN is not available, use legal description), Grid Cell(s) and/or Waterpower Site Number>:	<u>To be finalized – as per the Notice and final project boundary</u>

2. The Registered Proponent acknowledges that the Large Renewable Project and/or proposed Connection Line, either in whole or in part is to be located on lands under the jurisdiction of the Township of Addington Highlands;
3. The Registered Proponent has requested that the council of the Township of Addington Highlands indicate by resolution their support for the Large Renewable Project and/or proposed Connection Line on the Lands;
4. Pursuant to the LRP I RFP, Proposals that receive the formal support of the local jurisdictional authorities of all the Project Communities in which the Large Renewable Project and proposed Connection Line are being located in the form of a support resolution will be awarded Rated Criteria points for the purpose of ranking the Proposal in relation to other Proposals for a contract under the LRP I RFP; and

**[NOW THEREFORE BE IT RESOLVED THAT]:**

5. The council of the Township of Addington Highlands supports the development, construction and operation of the Large Renewable Project and/or proposed Connection Line on the Lands.
6. This resolution's sole purpose is to enable the Registered Proponent to receive Rated Criteria points under LRP I RFP and may not be used for the purpose of any other form of approval in relation to the Proposal or Large Renewable Project and/or proposed Connection Line or for any other purpose. Rated Criteria points will be used to rank the Registered Proponent's Proposal in relation to other Proposals received by the IESO under the LRP I RFP.

**Prescribed Template – Municipal Council Support Resolution**

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7. Though this resolution may impact the rank of the Registered Proponent's Proposal in relation to other Proposals received by the IESO, it does not guarantee a contract will be offered to the Registered Proponent under the LRP I RFP.

**[DULY RESOLVED BY THE LOCAL MUNICIPALITY]**

on the \_\_ day of \_\_\_\_\_, 20\_\_

1.	Name:	Title:
	Signature:	
2.	Name:	Title:
	Signature:	
3.	Name:	Title:
	Signature:	
4.	Name:	Title:
	Signature:	
5.	Name:	Title:
	Signature:	

<Signature lines for elected representatives. At least one signature is required.>

# COUNCIL F.Y.C.

## RESOLUTION REGARDING THE ROAD USE AGREEMENT PROPOSED BY RES CANADA

Moved by \_\_\_\_\_, seconded by \_\_\_\_\_

WHEREAS the Council of the Corporation of the Township of Addington Highlands has provided Denbigh Wind LP (RES) with a municipal resolution of support for the Denbigh Wind Farm project;

AND WHEREAS the Council of the Corporation of the Township of Addington Highlands has approved the Community Benefits and Development Agreement;

AND WHEREAS the Council of the Corporation of the Township of Addington Highlands has received and reviewed a draft Road Use Agreement from Denbigh Wind LP;

NOW THEREFORE BE IT RESOLVED that the Council of the Corporation of the Township of Addington Highlands continues to negotiate the terms of the proposed Road Use Agreement until said agreement is mutually acceptable to both parties.