



April 23, 2013

Linda Rogers  
900 Cheapside Road  
RR#3 Jarvis, ON N0A 1J0

Dear Ms. Rogers:

**Subject: Freedom of Information Request No. 5-2013**  
**RE: Community Vibrancy Fund Agreements**

I write to confirm that Haldimand County is in receipt of a response from Niagara Wind Corporation indicating it has no objections to the release of the related Community Vibrancy Fund Agreement. As such, I have enclosed a copy of this document in full for your review.

As we have not received any representations about the potential release of the documents from the other proponents, a decision has been made to release a copy of the documents to you.

As noted in Section 21 of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56, the documents will be released **unless an appeal is initiated by the third parties within 30 days of this decision notice, which is dated April 23, 2013.**

If you have any questions or concerns in this regard, please contact me directly at 905-318-5932, ext. 262 or at [jshaw@haldimandcounty.on.ca](mailto:jshaw@haldimandcounty.on.ca).

Sincerely,

Jennifer Shaw  
Deputy Clerk/F.O.I. Coordinator

## **COMMUNITY VIBRANCY FUND AGREEMENT**

**THIS COMMUNITY VIBRANCY FUND AGREEMENT** ("this Agreement") made as of the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**NIAGARA REGION WIND CORPORATION** (the "Proponent")

- and -

**THE CORPORATION OF HALDIMAND COUNTY** (the "County")

WHEREAS the Proponent has entered into a Feed-In Tariff Contract dated February 25, 2011 (the "Supply Contract") with the Ontario Power Authority for the supply of electricity from a proposed commercial wind energy generating facility (the "Wind Project") to be located in part on lands and premises within the Municipality of Haldimand County ("Haldimand County"); and

WHEREAS the Wind Project is expected, subject to changes in wind turbine technology and the design and layout of the Wind Project, to include 30 Wind Turbines with an aggregate rated nameplate capacity of 90 megawatts installed within Haldimand County, together with appurtenant equipment, buildings, collection systems, transmission facilities, transformer stations, switchyards, access roads and owned and leased real property; and

WHEREAS the Proponent has agreed to provide certain Community Vibrancy Fund Contributions (as defined herein) for the benefit of the residents of Haldimand County; and

AND WHEREAS the Proponent and the County have agreed to enter into this Agreement and 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 Vibrancy Fund" shall have the meaning set forth in Section 15 of this

Agreement;

“Community Vibrancy Fund Contribution” means the monies payable by the Proponent to the County in accordance with Part III of this Agreement;

“Council” means the elected municipal council of the County;

“Road Use Agreement” means an agreement or agreements to be entered into between the Proponent and the County 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 County 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 115 kV or greater electrical transmission wires and cables 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;

“Transmission Line Payment” means the fixed amount, expressed in dollars, as set out in Section 4(b);

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

“Wind Turbine” means a wind driven electric generator forming part of the Wind Project and located within Haldimand County;

“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 Section 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 County).

(b) In the event that the Proponent obtains an extension of the term of the Supply Contract, the Proponent and the County shall enter into good faith negotiations regarding the extension of the Term and any appropriate amendments to this Agreement.

(c) If the Commercial Operation Date does not occur within five (5) 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 VIBRANCY FUND CONTRIBUTION

3. For the Stub Year and each following year during the remainder of the Term, the Proponent shall pay the County the Community Vibrancy Fund Contribution.

4. Subject to Sections 5 and 6, the Community Vibrancy Fund Contribution for a given year shall be:

- (a) the fixed rate of Three Thousand Five Hundred Dollars (\$3,500.00) multiplied by the aggregate nameplate capacity (expressed in megawatts) of the Wind Turbines that were available for operation for at least 60 days during that year (as determined by the Proponent, acting reasonably), and
- (b) Five Thousand Dollars (\$5,000.00) per kilometer (rounded up to the nearest kilometer) of overhead transmission line of 115 kV or greater installed in municipal rights-of-way and/or road allowances located within the boundaries of Haldimand County pursuant to the Road Use Agreement (the “Transmission Line Payment”).

5. Notwithstanding the foregoing, the Community Vibrancy Fund Contribution for a given year shall be reduced by the greater of (i) the amount that property taxes levied by the County in respect of the Wind Project in that year exceed the previous year’s taxes in respect of the Wind Project by more than 50 %, and (ii) the amount that property taxes levied by the County in respect of the Wind Project in that year exceed the property taxes that would have been payable in respect of the Wind Project in 2011 (if the Wind Project as then existing had existed in 2011) by more than 150 %. The parties further agree that the Proponent may from time to time adjust or cancel any Community Vibrancy Fund Contribution if the economic return from the Wind Project is materially and adversely affected by a change in law or other circumstance beyond the control of the Proponent, and for so long as such material and adverse effect exists. Prior to making its determination of such material adverse effect, the Proponent shall:

- (a) engage in meaningful consultation with the County;
- (b) provide to the County reasonable disclosure of its reasons for considering such adjustment or cancellation. For greater certainty, for the purposes of this Section, the Proponent shall not be required to disclose financial statements, financial records or books of account of the Proponent; and
- (c) apply a standard of reasonableness to its determination to ensure that such determination is made in a fair, reasonable and non-arbitrary manner.

6. The Community Vibrancy Fund Contributions for the Stub Year and the final year of the Term shall be calculated in accordance with Section 4, but 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.



7. The Proponent shall pay the Community Vibrancy Fund Contribution for the Stub Year on April 30 of the first year following the Commercial Operation Date and for each year of the Term thereafter on April 30 of the following year. The obligation of the Proponent to pay the Community Vibrancy Fund Contribution for the final year of the Term shall survive the expiry or termination of this Agreement.

8. In the event that other wind or solar energy project proponents undertake projects within the County, the County shall use commercially reasonable efforts to ensure that such proponents pay equal or greater proportionate amounts into a Community Vibrancy Fund as the Proponent.

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

9. The County and the Proponent acknowledge and agree that the support of individual residents of Haldimand County for the duration of the Agreement is paramount to the success of the Wind Project. The County 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 County and its residents for the significant contribution, including payment of the Community Vibrancy 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 County and the Proponent shall consult and agree on specific protocols for public promotion and branding of initiatives financed in large part from the Community Vibrancy Fund which reflect the significant degree of financial benefit being afforded to the County. The County agrees that only wind proponents who enter into an agreement substantially similar to this Agreement and make Community Vibrancy Fund Contributions in amounts not less than those set forth in this Agreement shall be entitled to participate in the branding and promotional activities contemplated herein.

10. (a) In recognition of the Proponent's payments under Section 21, the County agrees to process, review and render decisions on the Proponent's permit applications and Renewable Energy Approval ("REA") municipal consultation submissions including, but not limited to building permits, road use agreements and severance agreements, in an expeditious manner and in no case later than the applicable timeframe outlined in the County's ordinances or forty-five (45) days after the Proponent's application or submission has been submitted, whichever is less.

(b) The commitment by the County 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 County to approve such applications or submissions. All permit applications 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 County and the Proponent both acknowledge that the County cannot enter into any agreement that has the effect of expressly or impliedly fettering the legislative discretion of the current or a



future Council and this Agreement is not intended to have that effect.

11. The County agrees that it shall, upon request from the Proponent, engage in meaningful dialogue with any third parties who intervene, inquire or are otherwise involved or interested in issues concerning the development of the Wind Project.

12. Upon execution of this Agreement by both the Proponent and the County, the County shall withdraw any objections related to the Wind Project as proposed by the Proponent, including any objections made by the County as an intervener in Ontario Energy Board.

13. As soon as practicable following the execution of this Agreement, the County and the Proponent shall negotiate in good faith to reach agreement on a Road Use Agreement in respect of the Wind Project on terms and conditions that are acceptable to both parties, both acting reasonably and with reference to forms of similar agreements entered into between renewable energy proponents and municipalities in Ontario. The County agrees that in no event shall the Road Use Agreement contain any financial obligations on the part of the Proponent other than obligations with respect to the repair and restoration of damaged or disturbed roads. Notwithstanding the other provisions of this Agreement, the County acknowledges and agrees that the obligation of the Proponent to pay the Community Vibrancy Fund Contributions to the County as provided herein shall be conditional upon the execution and delivery of a mutually satisfactory Road Use Agreement and if the parties have not executed a Road Use Agreement by December 31, 2011, or such other date as the parties may agree upon, the Proponent may terminate this Agreement on 30 days' notice to the County unless a mutually satisfactory 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 County 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.

14. The Community Vibrancy Fund Contributions are made in consideration of the County's agreement to appropriately recognize the value to the community of the Wind Project and the Proponent's investment within Haldimand County.

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

15. The County agrees to provide for the establishment of a segregated community fund ("Community Vibrancy Fund") financed solely by Community Vibrancy Fund Contributions made by the Proponent and similar contributions made by other proponents of renewable energy projects in Haldimand County. The Community Vibrancy Fund shall be utilized in any lawful manner by the County to support the following:

- (a) land stewardship initiatives (e.g., habitat creation/improvement; tree planting; shoreline rehabilitation);



- (b) expenditures relating to development and construction of County recreational facilities (e.g., arenas, parks, trails);
- (c) expenditures for improvement of community and protective services (e.g., police, fire, EMS, healthcare);
- (d) expenditures related to roads and public municipal infrastructure; or
- (e) such other community-related activities as may be agreed between the parties.

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

17. In regard to the receipt and administration of the Community Vibrancy Fund Contributions, the County 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 Vibrancy 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 County'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 County'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.

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

19. The County shall provide a written report of monies received and expenditures made out of the Community Vibrancy Fund, including a detailed description of the projects on which funds were spent, no later than March 1 of each year of the Term following the first year that Community Vibrancy Fund Contributions are received by the County.

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

20. 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 County's permit fee by-laws in effect as of August 1, 2011. The parties acknowledge that such permit fees are anticipated to be reasonable charges for the County 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 applications for the permits;
- (b) all inspections of the construction required by the Building Code Act, 1992;
- (c) the cost to inspect entrance culverts to be installed by the Proponent at the entrances to the properties on which the Wind Turbines will be constructed, such culverts to be of a standard specified by and installed to the satisfaction of the County;
- (d) the assigning of a municipal address for each Wind Turbine; and
- (e) all other efforts reasonably anticipated to be necessary for the issuance of the permits.

21. Commencing on the date that the Proponent first submits a permit application or submission to the County as contemplated by Section 10(a) above and continuing for a period of two (2) years thereafter, the Proponent shall reimburse the County for additional administrative and staffing costs incurred by the County to facilitate the timely process of the Proponent's permit applications and submissions as contemplated in Section 10(a) above, up to a maximum cost of Sixty Six Thousand Dollars (\$66,000.00).

#### **PART VII – ASSIGNMENT**

22. If the Proponent sells or transfers the Wind Project it shall provide notice thereof to the County 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 person was an original signatory to this Agreement.

23. Neither this Agreement nor any of the benefits or burdens hereunder shall be



assigned, in whole or in part, by the County.

## **PART VIII – LOCAL LABOUR**

24. The Proponent will use commercially reasonable efforts to hire local suppliers of labour and materials, to the extent available and to the extent that such local suppliers are competitive in respect of the construction and operation of the Wind Project. The foregoing undertaking shall be subject to all such suppliers' compliance with the domestic content requirements set forth in the Supply Contract.

## **PART IX – GENERAL**

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

Niagara Region Wind Corporation  
277 Lakeshore Rd. East  
Suite 211  
Oakville, Ontario L6J 6J3  
Canada  
Attention: Robert Daniels

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

The Corporation of Haldimand County  
45 Munsee Street North  
P. O. Box 400  
Cayuga, Ontario  
Canada, N0A 1E0  
ATTN: Clerk  
Phone: (905)318-5932  
Facsimile: (905) 772-3542

27. Any invoices, notices or other communications 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 and 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.

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

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

30. 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.

31. 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.

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

33. 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.

34. 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.

35. 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.

*(Remainder of page intentionally left blank)*



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 HALDIMAND  
COUNTY

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

Name: Ken Hewitt

Office: Mayor

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

Name: Evelyn Eichenbaum

Office: Clerk

NIAGARA REGION WIND CORPORATION

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

Name: ROBERT DANIELS

Office: VICE-PRESIDENT

I have the authority to bind the Proponent Corporation.