

COMMUNITY BENEFIT AGREEMENT

THIS COMMUNITY BENEFIT AGREEMENT (this "Agreement") made as of the \_\_\_ day of \_\_\_\_\_, 2015.

BETWEEN:

WINDLECTRIC INC.

(the  
"Proponent")

-and-

THE CORPORATION OF LOYALIST TOWNSHIP

(the  
"Township")

-and-

ALGONQUIN POWER CO.

("Algonquin")

WHEREAS the Proponent has entered into a Power Purchase Agreement dated February 25, 2011, (the "**Supply Contract**") with the Ontario Power Authority (the "**OPA**") (now the Independent Electricity System Operator) for the supply of electricity from a commercial wind energy generating facility (the "**Wind Project**") located on lands and premises within the geographic limits of Loyalist Township ("**Loyalist Township**");

WHEREAS the Wind Project is expected to include approximately 26 Wind Turbines (as defined herein) with an aggregate rated nameplate capacity of approximately 74.3 megawatts installed on Amherst Island within Loyalist Township, together with appurtenant equipment, buildings, collection systems, transmission facilities, transformer stations, switchyards, access roads and leased real property;

WHEREAS the Proponent has agreed to make certain financial contributions to the Township (hereinafter defined as "**Community Benefit Contributions**") for the purpose of offsetting the impact that the Wind Project will have on Loyalist Township, particularly Amherst Island and its residents

WHEREAS the Township has agreed to provide certain assurances to the Proponent concerning the Township's use of the Community Benefit Contributions for the benefit of the community and its residents as well as giving appropriate recognition to the Proponent for any initiatives that are financed using such contributions;

WHEREAS the Proponent is a wholly-owned subsidiary of Algonquin and Algonquin has agreed to provide certain assurances to the Township concerning the performance of the Proponent's obligations under this Agreement;

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

## **PART I – DEFINITIONS**

1. In this Agreement:

"Base Year" means 2014;

"Canadian GAAP" means accounting principles generally accepted in Canada as recommended in the Handbook of the Canadian Institute of Chartered Accountants, or its successor or equivalent;

"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 Contributions" mean the monies payable by the Proponent to the Township in accordance with Part III of this Agreement;

"Council" means the elected municipal council of the Township;

"CPI" means the Consumer Price Index for "All Items" for Ontario published or established by Statistics Canada (or its successor);

"Current Project Value" shall have the meaning set forth in Section 9 of this Agreement;

"Effective Date" means the date first set out above;

"Governmental Authority" means all federal, provincial, county, municipal and other governments and governmental authorities (including military authorities and courts and other judicial bodies, income and other taxation authorities and labour boards and tribunals), agencies, boards, commissions (including securities commissions) and ministries;

"Laws" means all laws (including the common law), statutes, regulations, rules, codes, by-laws (including zoning and land use by-laws), governmental orders, ordinances, decrees, treaties, standards, directives, guidelines, restrictions, principles of law (at common law and in equity), and policies of any and every nature and kind whatsoever (whether domestic or foreign) of all Governmental Authorities having jurisdiction over, or application to, the matter and/or Person then being referred to and having the force of law; and the term "*applicable*" with respect to "*Laws*" in the context that refers to one or more

Person(s), means *"that and to the extent that such Laws apply to such Person(s) or its/their business, undertaking, property or securities and emanate from a Governmental Authority having jurisdiction over such Person(s) or its/their business, undertaking, property or securities"*;

"Post-FIT Period" means the period commencing on the date which is twenty (20) years following the Commercial Operation Date and ending on the Termination Date;

"Road Use Agreement" means the road use agreement **[to be entered]** into between the Proponent and the Township governing, among other things, the Proponent's use of Township roads in connection with the construction and operation of the Wind Project;

"Security" shall have the meaning set forth in Section 10 of this Agreement;

"Stub Year" means the period of time between the Commercial Operation Date and December 31 of the same year;

"Term" means the Term of this Agreement as defined in Section 2;

"Termination Date" means the later of (i) the date of expiry or earlier termination of the Supply Contract (written notice of which expiry or earlier termination of the Supply Contract shall be delivered by the Proponent to the Township), and (ii) the date upon which the Wind Project permanently stops producing power for delivery to the provincial power grid;

"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 Loyalist Township; and

"year" means a calendar year.

## **PART II – TERM**

2. The term of this Agreement shall commence on the Effective Date and shall continue until the Termination Date (the "**Term**").

## **PART III- COMMUNITY BENEFIT CONTRIBUTION**

3. For the Stub Year and each following year during the remainder of the Term, the Proponent shall pay the Community Benefit Contribution to the Township in accordance with the terms of this Agreement.
4. Subject to Sections 5 and 6, the Community Benefit Contribution for a given year shall be:
  - (a) Prior to the Post-FIT Period, the greater of:

- (i) The amount calculated by multiplying the fixed rate of seven thousand dollars (\$7,000) by the aggregate nameplate capacity (expressed in megawatts) of the Wind Turbines (the “**Base Contribution**”); or
- (ii) the Base Contribution as adjusted in any given year by 20% of the increase to the CPI between December of the Base Year and December of the given year according to the following formula]

$$CBC_y = (0.2 \times BC \times (CPI_y/CPI_B)) + (0.8 \times BC)$$

$CBC_y$	Community Benefit Contribution in any year “y”
$BC$	Base Contribution as described in 4(a)(i)
$CPI_y$	CPI for December in year “y”
$CPI_B$	CPI for December in the Base Year

- (iii) For the purposes of the calculations in Section 4(a) above, the aggregate nameplate capacity shall be reduced by the nameplate capacity of any turbine which is not operational because of a malfunction with that turbine for any period of more than sixty (60) to a maximum of one hundred and eighty (180) consecutive days (excluding outages for which the Proponent is reimbursed for lost revenues pursuant to any warranty or insurance policy), on a pro rata basis. As an example only, if one (1) turbine with a nameplate capacity of 2.5 MW is not operational for 200 days in the Base Year (and there is no compensation under any warranty or insurance policy) the Community Benefit Contribution shall be decreased by  $\$7000 \times 2.5 \times 180/365 = \$8630.14$ .

- (b) During the Post-FIT Period, the Community Benefit Contribution to be paid each year for the remainder of the Term shall be equal to two percent (2%) of the gross revenues of the Wind Project for the particular year, net of any delivery charges, calculated in accordance with Canadian GAAP and certified to the Township by the Chief Financial Officer of the Proponent or of the entity that controls the Proponent delivered to the Township.

5. Notwithstanding the foregoing, the Community Benefit Contribution for a given year shall be reduced by the amount, if any, of the increase in the Township's share of the property taxes levied by the Township 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 February 28<sup>th</sup>, 2014 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. For greater certainty, there shall be no such reductions to the Community Benefit Contribution resulting solely from an increase in the property taxes levied by the Township in respect of the Wind Project due to an increase in the general industrial tax rate in the Township.

6. The Community Benefit Contributions for the Stub Year and the final year of the Term shall be calculated in accordance with Section 4, but prorated on the basis of the number of days in the Stub Year or the final year of the Term, as applicable.
7. The Proponent shall pay the Community Benefit 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 Benefit Contribution for the final year of the Term shall survive the expiry or termination of this Agreement.
8. In the event that it is determined by a court of competent jurisdiction or a board or agency having jurisdiction that the Township
  - (a) passed a bylaw or authorized any other municipal action that
    - (i) discriminated against the Proponent, or
    - (ii) violated applicable Laws, or
  - (b) defaulted (and did not cure such default within the applicable cure period) under the Road Use Agreement, or
  - (c) engaged in conduct in bad faith

in a manner that materially interfered with, unduly delayed or frustrated the Proponent's ability to construct, reconstruct, replace, use, monitor, maintain, operate, relocate and/or remove the Wind Project according to the Renewable Energy Approval approved by the Ministry of the Environment, then the obligation of the Proponent to pay the Community Benefit Contribution shall be at an end and of no further force and effect; provided that if the Township exercises its rights of appeal from any such determination, the Proponent's obligation to pay the Community Benefit Contribution shall only be suspended until all rights of appeal have been exhausted. If it is finally determined that the Township did not act in the foregoing manner, the Proponent shall forthwith pay to the Township all suspended payments of the Community Benefit Contribution together with interest calculated thereon at the prime lending rate of the Royal Bank of Canada from the date of suspension to the date of payment. For greater certainty, if it is finally determined that the Township did act in the foregoing manner, or if the Township fails to exercise or abandons at any time the available rights of appeal, then the obligation of the Proponent to pay the Community Benefit Contribution shall be at an end and of no force and effect.

9. The Proponent hereby agrees to provide an annual compliance certificate, signed by its Chief Financial Officer or of the entity that controls the Proponent, to the

Township by no later than March 15 in each year during the Term, reporting as to whether the Proponent's total indebtedness as at December 31 of the preceding year is less or greater than sixty-five percent 65% of the Current Project Value on the assets comprising the Wind Project and any other assets of the Proponent, as determined by the Proponent acting reasonably (the "**Project Leverage Rate** "). For the purposes of this Agreement, "Current Project Value" shall mean ten (10) times the EBITDA for the Wind Project from the previous twelve (12) month period, where "EBITDA" means earnings before interest, taxes, depreciation and amortization, and during the initial period until EBITDA is reported for a full twelve (12) month period, EBITDA shall mean thirty-five million dollars (\$35,000,000).

10. During each year that the Project Leverage is greater than sixty-five percent 65% and as security for the Proponent's obligation to pay the Community Benefit Contributions in accordance with this Agreement, the Proponent shall, within thirty (30) days after delivery of the compliance certificate referred to in Clause 9, provide the Township with an unconditional guarantee of the Proponent's obligations hereunder from Algonquin, or another parent entity, or other affiliated entity, where such entity has had its corporate debt rated as "investment grade", being a rating from S&P of BBB- or better, or from Moody's of Baa or better, or such equivalent rating from any successor or replacement rating agency. In the event that no parent or affiliated entity with an investment grade credit rating exists, or where the debt of such parent or affiliated entity is no longer investment grade, and for so long as such situation persists, the Proponent shall supply to the Township an irrevocable standby letter of credit issued by a Canadian chartered bank in a form satisfactory to the Township for an amount equal to two (2) years of Community Benefit Contributions payable hereunder calculated based on the most recent year's Community Benefit Contribution (collectively, the "**Security**").
11. If the Proponent, having provided the Security to the Township in accordance with Clause 10 above, subsequently delivers a compliance certificate under Clause 9 stating that the Project Leverage Rate is equal to or less than sixty-five percent 65%, the Township shall forthwith release the Security to the Proponent, but such release of the Security shall not absolve the Proponent to again provide Security in accordance with Clause 10 if a subsequent compliance certificate should indicate that the Project Leverage Rate is greater than sixty-five percent 65%.
12. If the Proponent should, at any time during the Term of this Agreement, default in its obligation to pay the Community Benefit Contributions and if such default should continue for more than 60 days from the date on which the Township delivers written notice of such default to the Proponent, the Township may, in addition to any other remedies available to it at law, seek payment of the amount owing to it from the Security.

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

13. The Township agrees to deposit the Community Benefit Contribution payments received from the Proponent each year into a designated reserve fund in accordance with the requirements of the *Municipal Act, 2001* ("**Community Benefit Fund**") and to use as much of the principal and interest thereof as the

Council of the Township may from time to time and in its absolute discretion deem advisable for the benefit of the Township and its residents subject only to the following statements of purpose and intent of the parties, which statements of purpose and intent form part of the consideration of this Agreement:

- (a) The Community Benefit Fund will be used to support initiatives involving the provision of services and/or facilities to the residents of the whole Township or a specific area of the Township;
  - (b) There shall be no obligation that the amount of the Community Benefit Contribution received in any given year shall be spent in that year; and
  - (c) For greater certainty, the use of all or any portion of the Community Benefit Fund for the purpose of establishing and funding a separate community heritage fund shall qualify as an acceptable use of the Community Benefit Fund and the Community Benefit Contributions made to it by the Proponent.
14. The Township shall, by no later than April 30 of each year of the Term following the first year that Community Benefit Contributions are received by the Township provide a brief written report to the Proponent of monies received and expenditures made out of the Community Benefit Fund, including a general description of the initiatives on which the funds were spent, during the preceding year.

#### **PART V - COMMUNITY SUPPORT**

15. The Township 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 Township and its residents for the financial contribution made by the Proponent to the Community Benefit Fund for the betterment of the community. Without limiting the generality of the foregoing, the Township and the Proponent shall consult and agree on specific protocols for public recognition and branding of initiatives financed in large part from the Community Benefit Fund.
16. For the purpose of publicly recognizing and branding initiatives financed using the Community Benefit Contributions received from the Proponent, the Township shall ensure that such level of public recognition and branding is commensurate with the amount that such financing is to the total cost of the particular initiative. In no event shall funds spent on public recognition and branding exceed \$3,000 per year, which amount shall be adjusted by the Consumer Price Index annually.

#### **PART VI – ASSIGNMENT**

17. If the Proponent sells or transfers the Wind Project it shall provide notice thereof to the Township 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.

18. Neither this Agreement nor any of the benefits or burdens hereunder shall be assigned, in whole or in part, by the Township without the prior written consent of the Proponent, which consent shall not be unreasonably withheld.

#### **PART VII – DOMESTIC CONTENT**

19. The parties acknowledge that the Proponent shall be required to demonstrate to the OPA that it has met the minimum domestic content requirements for the Wind Project under the OPA's Feed-in Tariff Program. In accordance with such requirement, the Proponent shall be utilizing the services of individuals resident in Ontario, such that no more than 5% of the total person-hours for all construction and on-site labour is performed by individuals that are not resident in Ontario.

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

20. (a) 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.  
  
(b) 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(s). If these negotiations fail, the parties may, by mutual agreement, refer the issue(s) to a mediator to be chosen and paid for jointly by the parties without prejudice to the rights of any party to proceed to arbitration in accordance with this Part should such mediation fail.
21. Where a party determines that a dispute should be submitted to arbitration the party may commence arbitration by delivering a written request to the other parties setting out the issue that the party requests be submitted to arbitration and thereafter the matter shall be submitted to arbitration pursuant to the *Arbitrations Act, 1991* (Ontario), 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 any party notifies the other that the former wishes the matter be decided by a board of arbitration, in which case each of the Proponent and the Township 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.
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. During the course of the arbitration process described in Part VIII of this Agreement, the Proponent may postpone payments it is required to make pursuant to this Agreement. In the event that a decision of the arbitrator is not rendered within six (6) months of submitting the written request for arbitration, the Proponent shall make all payments that are due, to be held in trust by the Township pending resolution of the dispute in accordance with this Agreement.

#### **PART IX – GENERAL**

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

Windlectric Inc..  
354 Davis Road  
Oakville, Ontario  
L6J 2X1  
Attention: President  
Facsimile: 905-465-4514

And a copy to:

Algonquin Power Co.  
354 Davis Road  
Oakville, Ontario  
L6J 2X1  
Attention: VP, Business Development  
Facsimile: 905-465-4514

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

The Corporation of Loyalist Township  
P. O. Box 70  
263 Main Street  
Odessa, Ontario  
Canada, K0H 2H0  
ATTN: Clerk  
Phone: (613) 386-7351  
Facsimile: (613) 386-3833

27. 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,

- (b) delivered by courier or pre-paid mail to the relevant address; or
  - (c) 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 notice by giving notice to the other parties in the manner as herein provided.
  29. No amendment to this Agreement shall be permitted, except by the written mutual consent of all parties, and any amendment shall be in writing.
  30. The mere failure of any party to give notice to the other of the breach or nonfulfillment 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 and the federal laws of Canada applicable therein.
  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 the parties acknowledge that there are no collateral representations or warranties made by either in respect of the subject matter of this Agreement.
  34. Time shall be of the essence in this Agreement.
  35. This Agreement shall enure to the benefit of the parties and their respective successors and assigns.
  36. The invalidity or unenforceability of any provision or covenant contained in this Agreement shall affect the validity and enforceability of such provision or covenant only and any such invalid provision or covenant shall be severed from the balance of this Agreement, which shall be enforced to the greatest extent permitted by law.
  37. No supplement, modification, amendment or waiver of this Agreement shall be binding unless executed in writing by the parties.
  38. Each of the parties covenants and agrees with the other that it will at all times hereafter execute and deliver, at the request of the other, all such further documents, deeds and instruments and will do and perform all such acts as may be necessary to give full effect to the intent and meaning of this Agreement.
  39. In this Agreement, words importing the singular number include the plural and vice versa and words importing one gender include the other two genders as well.
  40. 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.

41. 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.

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

THE CORPORATION OF LOYALIST TOWNSHIP

Per: \_\_\_\_\_  
Name: Bill Lowry  
Office: Mayor

Per: \_\_\_\_\_  
Name: Robert Maddocks  
Office: Chief Administrative Officer

I/We have the authority to bind the Corporation.  
WINDLECTRIC INC.

Per: \_\_\_\_\_  
Name: Ian Robertson  
Office: Chief Executive Officer

Per: \_\_\_\_\_  
Name: David Bronicheski  
Office: Chief Financial Officer

I/We have the authority to bind the Corporation.

ALGONQUIN POWER CO.

Per: \_\_\_\_\_  
Name: Ian Robertson  
Office: Chief Executive Officer

Per: \_\_\_\_\_  
Name: David Bronicheski  
Office: Chief Financial Officer

I/We have the authority to bind the Corporation.