

**COMMUNITY FUNDING AGREEMENT**

**THIS COMMUNITY FUNDING AGREEMENT ("Agreement")** made this 23<sup>rd</sup> day of January, 2017.

**BETWEEN:**

**GRAND BEND WIND GP INC.**, as general partner for and on behalf of, **GRAND BEND WIND LIMITED PARTNERSHIP ("Grand Bend")**

- and -

**THE CORPORATION OF THE MUNICIPALITY OF BLUEWATER** (the "**Municipality**")

**WHEREAS** Grand Bend has entered into a Feed-In Tariff Contract dated July 5, 2011 (the "**Supply Contract**") with the Ontario Power Authority for the supply of electricity from renewable generating facilities which are expected to be rated at approximately one hundred megawatts (100 MW); and

**WHEREAS** Grand Bend proposes to construct a renewable energy generating facility partially located within the boundaries of the Municipality (the "**Wind Project**") to supply electricity in accordance with the Supply Contract;

**WHEREAS** part of the Wind Project located within the boundaries of the Municipality is rated at approximately eighty-two megawatts (82 MW) and consists of thirty-three (33) wind turbines, each having the design capacity to generate (2.483) megawatts of electricity, together with the appurtenant equipment, buildings, collection systems and transmission facilities;

**WHEREAS** Grand Bend and the Municipality executed a road use agreement on January 21, 2015 (the "**Road Use Agreement**"); and

**WHEREAS** in recognition of Grand Bend's community relations efforts and to compensate the Municipality for any potential effect the Wind Project may have, directly or indirectly, on the Municipality's infrastructure or its ability to provide services to its residents, Grand Bend has agreed to provide certain amenities and other assurances to the Municipality 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**

1.1 In this Agreement:

- (a) "**Agreement**" means this Agreement and the Schedules attached hereto;

- (b) “**Amenity Contribution**” means the amount payable by Grand Bend to the Municipality in accordance with Part III of this Agreement;
- (c) “**Arbitration Notice**” shall have the meaning set forth in Section 6.1;
- (d) “**Business Day**” means any day that is not a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (e) “**Collateral Agent**” shall have the meaning set forth in Schedule “A”;
- (f) “**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;
- (g) “**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 and occurred on April 19, 2016;
- (h) “**Community Fund**” shall have the meaning set forth in Section 4.1;
- (i) “**Council**” means the Council of the Municipality;
- (j) “**Dispute**” shall have the meaning set forth in Section 6.1;
- (k) “**Effective Date**” shall mean the date hereof as first written above;
- (l) “**Grand Bend**” means Grand Bend Wind GP Inc., as general partner for and on behalf of Grand Bend Wind Limited Partnership;
- (m) “**Municipality**” means The Corporation of the Municipality of Bluewater;
- (n) “**Road Allowance**” and “**Road Allowances**” means any public highway or part thereof, rights-of-way, streets, sidewalks, walkways, driveways, sight triangle, area of road widening, ditches, municipal drains and associated grassy areas and includes the allowances particularly identified in Schedule “A” to the Road Use Agreement, and includes any bridge, trestle, viaduct or other similar structure;
- (o) “**Road Use Agreement**” means the road use agreement between the Municipality and Grand Bend dated January 21, 2015;
- (p) “**Secured Party**” or “**Secured Parties**” shall have the meaning set forth in Section 8.6(b);
- (q) “**Stub Year**” means the period of time between the Commercial Operation Date and December 31 of the same year;
- (r) “**Supply Contract**” has the meaning set out in the recitals to this Agreement;

- (s) “**Term**” has the meaning set out in Section 2.1 of this Agreement;
- (t) “**Transmission Infrastructure**” means infrastructure conveying electricity at voltages in excess of 50 kilovolts and includes without limitation, all structures, equipment or other things used for that purpose including, but not limited to, a line or lines of towers and/or poles, with such wires and/or cables for the transmission of electricity at voltages in excess of 50 kilovolts, and all necessary and proper foundations, safety barriers, footings, cross arms and other appliances, facilities and fixtures for use in connection therewith including without limitation, pads, vaults and junction boxes manholes, handholes, conduits, fiber optics, cables, wires, lines and other conductors of any nature, multiple above or below ground control, communications, data and radio relay systems, and telecommunications equipment, including without limitation, conduits, fiber optics, cables, wires and lines;
- (u) “**Wind Project**” means the renewable energy generating facility and its appurtenant wind turbines, equipment, buildings, collection systems and transmission facilities to be constructed or already constructed by Grand Bend in the Municipality for the purpose of supplying electricity in accordance with the Supply Contract;
- (v) “**wind turbine**” means a wind driven turbine constructed by Grand Bend, or any subsidiaries, suppliers or affiliates of Grand Bend, as part of the Wind Project; and
- (w) “**year**” means a calendar year.

## **PART II - TERM**

- 2.1 This Agreement shall become effective on the **Effective Date** and shall continue for the initial term of the Supply Contract (the “**Term**”).

## **PART III - CONTRIBUTION**

- 3.1 Commencing on the Commercial Operation Date and continuing each year during the Term of this Agreement, Grand Bend shall pay the Amenity Contribution to the Municipality.
- 3.2 The Amenity Contribution for each calendar year shall be three hundred and fifty thousand dollars (\$350,000). The parties agree that the Amenity Contribution is the amount rounded from calculating the fixed turbine rate of Three Thousand Five Hundred Dollars (\$3,500.00) multiplied by the number of megawatts of rated capacity of Wind Project turbines located in the Municipality plus Five Thousand Dollars (\$5,000) for every kilometer of road upon which the Wind Project’s Transmission Infrastructure is located within the Municipality’s boundaries. The parties hereby agree and acknowledge that in the event the Wind Project expands or is reduced in size compared to what has been used to calculate the Amenity Contribution, the amount of the Amenity Contribution shall be increased or decreased as the case may be in proportion with the expansion or reduction of the Wind Project.

- 3.3 The Amenity Contribution for the Stub Year, if shorter than 365 days, shall be calculated on a daily basis for the period from the Commercial Operation Date to December 31 of the same year at an amount per day that is equal to 1/365 of the Amenity Contribution for that year.
- 3.4 Grand Bend shall pay the Amenity Contribution annually in arrears beginning on March 31 of the first year following the Commercial Operation Date and each March 31 thereafter for the remainder of the Term (for example, as the Commercial Operation Date is April 19, 2016, the first Amenity Contribution payment (with respect to the Stub Year, being April 19, 2016 to December 31, 2016) shall be payable on March 31, 2017; the next Amenity Contribution payment (with respect to January 1, 2017 to December 31, 2017) shall be payable on March 31, 2018; and etc.).
- 3.5 If the parties are unable to resolve any dispute between them involving payment of any amounts 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 Grand Bend and the Municipality. If the parties are unable, in good faith, to resolve the dispute through mediation, same shall be submitted to binding arbitration in accordance with the dispute resolution provisions in Part VI of this Agreement.

#### **PART IV - COMMUNITY FUND**

- 4.1 The Municipality agrees to provide for the establishment of a segregated reserve fund solely for the purposes of receiving the Amenity Contribution made by Grand Bend and administering all expenditures of the Amenity Contribution by the Municipality which form the subject matter of this Agreement (“**Community Fund**”). The Community Fund shall be utilized in any lawful manner by the Municipality 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; shoreline rehabilitation);
  - (c) expenditures relating to development and construction of the Municipality’s recreational facilities (i.e. arenas, community centres, pools, sports facilities, parks, trails, etc.);
  - (d) expenditures for improvement of community and protective services (i.e. police, fire, EMS, healthcare);
  - (e) expenditures related to roads and urban infrastructure;
  - (f) expenditures related to education and job training;
  - (g) expenditures related to economic development initiatives, including hosting events, creating and publishing promotional materials, advertising, travel and attendance

at events, and/or the development and establishment of community improvement plans, business improvement areas, economic development corporations, municipal service corporations, small business incubators; or

- (h) other community-related activities sanctioned by the Municipality.
- 4.2 For greater certainty, no contributions made pursuant to this Agreement shall be used by the Municipality in connection with or in support of any party or participant, including the Municipality, either directly or indirectly, for appeals or judicial review of Grand Bend's Renewable Energy Approval nor for any other means that frustrate the Wind Project as determined by Grand Bend in its discretion.
- 4.3 Grand Bend shall have the right to reject any such proposed expenditures or application of funds that it determines, after acting reasonably, do not support the lawful purposes identified in Section 4.1 or the implementation of which Grand Bend reasonably determines results in a risk of violation of any of the Municipality's obligations under Sections **Error! Reference source not found.** or 4.4 of this Part IV. Grand Bend shall have the right to deduct any and all legal costs Grand Bend incurs as a result of the Municipality's prohibited actions contemplated in Section 4.2 from Amenity Contribution due or paid to the Municipality. All proposed expenditures or application of funds from the Community Fund shall firstly require the Municipality to deliver not less than fifteen (15) days' written notice to Grand Bend with respect to any proposed expenditure or application of funds, along with reasonable details of the same, and secondly, the proposals approved for submission to Grand Bend by the Municipality at a meeting of Council. For clarity, Grand Bend shall approve or reject any proposed expenditures, acting reasonably, based on the criteria set out in Section 4.1 and shall respond to the Municipality within ten (10) days. If Grand Bend fails to provide a response to the Municipality within ten (10) days of receiving said notice, the Municipality may proceed with expending or applying the funds as proposed without approval by Grand Bend. The Municipality may submit any number of proposed expenditures to Grand Bend but Council shall not be obliged to implement the proposed expenditure after Grand Bend has provided its approval.
- 4.4 With regards to the receipt and administration of the Amenity Contribution received from Grand Bend to the Community Fund, the Municipality shall, at a minimum, institute the following process and procedures:
- (a) Maintain records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the Amenity Contribution received from Grand Bend; and
  - (b) maintain a system of internal accounting controls sufficient to conform with Generally Accepted Accounting Principles for municipalities in the Province of Ontario.
- 4.5 Upon reasonable notice to the Municipality of not less than fifteen (15) business days, Grand Bend shall, at its own expense, have the right to inspect all records created and maintained which relate to the transactions undertaken by the Municipality with regard to

the Community Fund, subject to compliance with Section 8.8 herein. Notwithstanding any other provision of this Agreement to the contrary, Grand Bend shall have the right to terminate this Agreement in the event of any breach of Sections 4.1 through 4.5 of this Part IV, subject to compliance with Section 8.8 herein.

## **PART V - COMMUNITY SUPPORT**

- 5.1 The Municipality and Grand Bend shall work cooperatively during the term of this Agreement, including meeting at least twice each year, to develop and review plans for ensuring that Grand Bend is appropriately recognized by the Municipality and its residents for the material contribution that Grand Bend has made and is continuing to make through payment of the Amenity Contribution. The Municipality shall not be required to incur any material costs with respect to such recognition. Grand Bend will pay such recognition costs not to exceed One Thousand (\$1,000.00) Dollars per annum to the Municipality. Recognition may take the form of including the logo of Grand Bend or its affiliates on promotional material and advertising for events and projects that received funding from the Community Fund. For clarity, the Municipality is not obligated pursuant to this agreement to install or place the logo of Grand Bend or its affiliates on any municipal buildings or vehicles.
- 5.2 The Community Fund contributions are made in consideration of the Municipality's agreement to appropriately recognize the value to the community of Grand Bend's investment within the Municipality.
- 5.3 Subject to Section 5.4 below, nothing in this Agreement shall fetter or restrict the discretion of the Council in the exercise of its power under any statute or other enabling power and nothing in this Agreement constitutes a waiver of the obligations of Grand Bend to comply with the By-laws of the Municipality or any restrictions or regulations lawfully imposed by any other authorities having jurisdiction in connection therewith.
- 5.4 Should the Municipality impose any fees or payments upon Grand Bend in addition to those currently payable as of the date of this Agreement (subject to reasonable increases related to inflation) then Grand Bend, at its option, may recover such fees or payments from the Amenity Contribution except for the following which may not be deducted:
  - (a) payments to the Municipality already committed to by Grand Bend in other agreements with the Municipality; and
  - (b) fees and payments lawfully imposed and of general application to any and all businesses operating in the Municipality, except where such fees disproportionately affect wind farm operators.

## **PART VI - DISPUTE RESOLUTION**

- 6.1 In the event that either party provides the other 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 Grand Bend and the Municipality. If the parties are unable 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 and:
- (a) the arbitration tribunal shall consist of a qualified arbitrator appointed by mutual agreement of the parties or, if the parties fail to agree on an arbitrator within ten (10) days after receipt of the Arbitration Notice then either party may apply to a judge of the Superior Court of Justice to appoint an arbitrator;
  - (b) the arbitration shall be conducted in English and shall take place in London, Ontario;
  - (c) the arbitration award shall be given in writing and shall address the question of costs of the arbitration and all related matters. The arbitration award shall be final and binding on the parties as to all questions of fact and shall be subject to appeal only with respect to matters of law or jurisdiction;
  - (d) except to the extent that a matter is specifically the subject of a Dispute, both parties shall continue to observe and perform the terms and conditions of this Agreement pending the resolution of a Dispute;
  - (e) 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; and
  - (f) each party shall pay its own costs of the arbitration and shall share equally the costs of the arbitrator and any incidental expenses.

## **PART VII - INDEMNITY AND INSURANCE**

- 7.1 Grand Bend hereby agrees to defend, indemnify and save harmless, the Municipality from and against any and all losses, damages, claims, demands, costs, including legal costs, expenses and/or other obligations or liabilities suffered by the Municipality, Councillors or anyone employed by the Municipality or for whose acts the Municipality is responsible, as a result of a claim by any third party arising from or resulting from the failure by Grand Bend, its employees, agents, assignees or contractors to comply with and/or implement the

provisions of this Agreement. Grand Bend does not agree to defend, indemnify or save harmless the Municipality for losses, damages, claims, demands, costs, including legal costs, expenses and/or other obligations or liabilities arising out of the negligence of or intentional misconduct by (i) the Municipality, (ii) anyone directly or indirectly employed by the Municipality, or (iii) anyone for whose acts the Municipality is in law responsible.

- 7.2 The Municipality hereby agrees to defend, indemnify and save harmless, Grand Bend from and against any and all losses, damages, claims, demands, costs, including legal costs, expenses and/or other obligations or liabilities suffered by Grand Bend, or anyone employed by Grand Bend or for whose acts Grand Bend is responsible, as a result of a claim by any third party arising from or resulting from failure by the Municipality, its employees, agents, assignees or contractors to comply with and/or implement the provisions of this Agreement. The Municipality does not agree to defend, indemnify or save harmless Grand Bend for losses, damages, claims, demands, costs, including legal costs, expenses and/or other obligations or liabilities arising out of the negligence of or intentional misconduct by (i) Grand Bend, (ii) anyone directly or indirectly employed by Grand Bend, or (iii) anyone for whose acts Grand Bend is in law responsible.

#### **PART VIII – GENERAL**

- 8.1 All invoices, notices and communications to Grand Bend in connection with this Agreement shall be addressed to the party at:

GRAND BEND WIND LIMITED PARTNERSHIP  
30 St. Clair Avenue West, suite 1200  
Toronto, ON M4V 3A1  
Phone: (416) 288-1115  
Attention: General Counsel

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

THE CORPORATION OF THE MUNICIPALITY OF BLUEWATER  
14 Mill Avenue  
Zurich, Ontario N0M 2T0  
Attention: Clerk

- 8.3 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.

- 8.4 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.



- 8.5 No amendment to this Agreement shall be permitted, except by the written mutual consent of both parties, and any amendment shall be in writing.
- 8.6 Assignment:
- (a) Grand Bend shall be entitled to assign this Agreement without the consent of the Municipality, provided Grand Bend provides the Municipality with at least ten (10) business days' written notice of its intention to assign this Agreement, and provided that the assignee executes formal and proper documents to legally assume all of the obligations of this Agreement. Grand Bend shall provide the Municipality with a written declaration from its lawyer confirming the formal and proper documentation has been executed for the assignee to legally assume all of the obligations of this Agreement.
  - (b) Grand Bend shall be entitled to assign this Agreement and all of its rights thereunder without the consent of the Municipality to Grand Bend's lenders ("**Secured Parties**" or "**Secured Party**" as applicable) as security for Grand Bend's obligations to such Secured Parties which shall be further entitled to assign this Agreement and Grand Bend's rights thereunder in connection with an enforcement of their security. The Municipality hereby grants to any Secured Party the rights and remedies set forth in Exhibit "A" hereto. In addition, the Municipality will, from time to time, at the request of the Secured Party, promptly execute and deliver in favour of any Secured Party such consents and acknowledgements granting and confirming the rights and remedies hereunder and in Exhibit "A" hereto, subject to the Municipality's reasonable review of such documents. The Municipality shall act reasonably in considering all requests to enter into any other agreements with the Secured Party and will promptly review such agreements, as may be required by Grand Bend in order to obtain financing from the Secured Party.
  - (c) The Municipality may not assign this Agreement without Grand Bend's prior written consent, which consent shall not be unreasonably withheld.
- 8.7 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. 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.
- 8.8 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 30 days following receipt of the default notice from the non-defaulting party specifying the violation or failure.

- 8.9 This Agreement shall be governed by and interpreted in accordance with the laws of Canada and the Province of Ontario.
- 8.10 Time shall be of the essence in this Agreement.
- 8.11 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 directly thereto. The provisions of this Agreement are not intended to replace those of the Road Use Agreement, and if any provisions of the Agreement are inconsistent or conflict with provisions of the Road Use Agreement, the provisions of the Road Use Agreement prevail.
- 8.12 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.
- 8.13 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.
- 8.14 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.
- 8.15 This Agreement shall enure to the benefit of the Municipality and Grand Bend, and their respective successors and assigns.

**(SIGNATURES PAGE FOLLOWS)**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first written above.

**THE CORPORATION OF THE  
MUNICIPALITY OF BLUEWATER**

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Mayor

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Clerk  
We have the authority to bind the Corporation

**GRAND BEND WIND LIMITED  
PARTNERSHIP**, by its general partner,  
**GRAND BEND WIND GP INC.**

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Name:  
Title:  
I have the authority to bind the Corporation  
and the Partnership

TOR01: 5860411: v21

**SCHEDULE "A"**

**RIGHTS AND REMEDIES ACCORDED TO SECURED PARTIES**

1. The Municipality will from time to time execute and deliver such consents and acknowledgements reasonably requested by the Secured Party.
2. The Municipality agrees that, upon the Secured Party giving the Municipality written notice of a mortgage, the Secured Party will, without any further action being required, have the benefit of the following provisions until such time as the Secured Party advises the Municipality in writing that its security is no longer in effect (and, if the Secured Party so requests, the Municipality will (i) acknowledge in writing that the Secured Party so benefits from these provisions, or (ii) enter into a written agreement with the Secured Party substantially in accordance with these provisions):
  - (a) the Municipality will give prompt written notice to the Secured Party of any breach or default by Grand Bend of its obligations under this Agreement in respect of which the Municipality proposes to exercise any of its remedies;
  - (b) the Municipality will give the Secured Party the right to cure any breach or default by Grand Bend under the Agreement, within a period of 90 days commencing on the later of (i) the expiry of the cure period afforded Grand Bend under this Agreement, and (ii) the date on which the Municipality gives the Secured Party notice of such breach or default pursuant to Section 2(a), or such longer period of time as the Secured Party may reasonably require to cure such breach or default, provided that the Secured Party has diligently taken the necessary steps to cure such breach or default; and no exercise by the Municipality of any of its rights or remedies against Grand Bend will be effective against Grand Bend or the Secured Party unless the Municipality has given the Secured Party such notice and opportunity to cure.
  - (c) the Municipality will, at any time and from time to time, upon not less than thirty (30) days' prior request by Grand Bend or the Secured Party or proposed the Secured Party, execute any agreements, certificates or acknowledgements that Grand Bend or the Secured Party may reasonably request with respect to this Agreement; and
  - (d) all notices to the Secured Party from the Municipality will be in writing and will be sent by personal delivery, registered mail, email or by fax to the address, email address or facsimile number of the Secured Party set out in any notice that the Secured Party delivers to the Municipality.
3. The provisions of Section 2 will enure to the benefit of the Secured Party and its successors and assigns, and any rights conferred on the Secured Party by the terms of this Exhibit "A" or limiting its liability under this Agreement will benefit each receiver or receiver-manager appointed by the Secured Party or by a court of competent jurisdiction.

4. The Municipality hereby acknowledges that Grand Bend may grant security to a trustee or collateral agent acting on behalf of one or more lenders (a “**Collateral Agent**”), and the Municipality hereby acknowledges and agrees that upon its 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 Exhibit “A” and such notice will constitute notice of the existence of the Collateral Agent as the Secured Party.