

This COMMUNITY BENEFITS FUND AGREEMENT (the “**Agreement**”) is entered into as of March 5, 2013 (the “**Effective Date**”)

BETWEEN:

**THE CORPORATION OF THE TOWNSHIP OF
ASHFIELD-COLBORNE-WAWANOSH**, a municipal
corporation under the *Municipal Act, 2001*

hereinafter referred to as “**ACW**”

– AND –

K2 WIND ONTARIO LIMITED PARTNERSHIP, a limited
partnership having its registered office in the Province of Ontario

hereinafter referred to as “**K2 Wind**”

WHEREAS K2 Wind is developing a wind energy project known as the K2 Wind Project (the “**Project**” or the “**Wind Project**”) in the Municipality pursuant to a Power Purchase Agreement dated August 3, 2011, between the Ontario Power Authority and K2 Wind (the “**PPA**”);

AND WHEREAS K2 Wind and ACW (each a “**Party**” and collectively the “**Parties**”) wish to ensure that the Wind Project delivers benefits to all residents of the Municipality;

AND WHEREAS in order to further the goal of delivering Wind Project benefits to the Municipality, the Parties have agreed that ACW will establish and administer a community benefits fund to which K2 Wind will make donations;

AND WHEREAS the Parties have developed a mutual understanding of the scope, commercial terms and legal issues related to the establishment and administration of the Fund;

AND WHEREAS the Parties expect to enter into an agreement governing K2 Wind’s use of road allowances in the Municipality;

NOW THEREFORE IN CONSIDERATION of the undertakings and agreements hereinafter expressed by the Parties, ACW and K2 Wind mutually covenant and agree as follows:

1. **Interpretation**

1.1 In this Agreement,

- (a) “**Additional Payments**” is defined in Section 4.7;
- (b) “**Annual Payments**” means K2 Wind’s annual donations to the Fund, as calculated pursuant to this Agreement;
- (c) “**Arbitration Notice**” is defined in Section 10.1;
- (d) “**Available Nameplate Capacity**” is defined in paragraph 4.1(a);
- (e) “**Commercial Operation Date**” means the Commercial Operation Date as defined in the PPA;
- (f) “**Dispute**” is defined in Section 10.1;
- (g) “**Dollars per Megawatt Factor**” is defined in paragraph 4.1(c);
- (h) “**Effective Date**” means the date of this Agreement;
- (i) “**Fund**” means the community benefits fund to be established by ACW pursuant to this Agreement;
- (j) “**Fund Report**” is defined in Section 3.2;
- (k) “**Incremental Tax Payment**” is defined in Section 4.6;
- (l) “**Municipal Projects**” means those projects developed or identified in accordance with this Agreement that are intended to be funded in whole or in part by the application of monies paid into the Fund;
- (m) “**Municipality**” means the Township of Ashfield-Colborne-Wawanosh;
- (n) “**Payment Offsets**” is defined in Section 4.4;
- (o) “**PPA**” is defined in the first recital;
- (p) “**Project**” and “**Wind Project**” are defined in the first recital;
- (q) “**Project Agreements and Permits**” means, collectively, agreements with ACW and permits and approvals required from ACW in connection with the Project, including, without limitation, the Road Use Agreement, agreements for the use of municipal property for purposes of Project infrastructure, building permits, severance consents, crossing permits, road entry permits and other required development agreements and approvals;

(r) “**Road Use Agreement**” means an agreement between ACW and K2 Wind addressing the location of Project infrastructure in road allowances in the Municipality and related construction matters and the use of roads in the Municipality for the transportation of heavy and oversize loads to Project sites; and

(s) “**Term**” is defined in Section 2.1.

1.2 The following schedule to this Agreement is an integral part of this Agreement:

Schedule A – List of Fees

1.3 Nothing contained in this Agreement shall abrogate or prejudice any statutory rights held by either Party under any applicable statutes including but not limited to the *Ontario Energy Board Act, 1998*, the *Municipal Act, 2001*, the *Green Energy Act, 2009* or the *Electricity Act, 1998*, as amended.

1.4 This Agreement is contingent upon the Parties entering into a mutually acceptable Road Use Agreement.

1.5 Within 30 days after the execution of this Agreement and a Road Use Agreement, the Parties shall issue a joint press release announcing this Agreement and the establishment of the Fund. K2 Wind may also make and publish announcements from time to time concerning the existence of the Fund and its features, including the projected contributions of K2 Wind.

2. **Term**

2.1 The “**Term**” of this Agreement shall be twenty (20) years, commencing upon the Commercial Operation Date of the Project as defined in the PPA. This Term coincides with the production term established in the PPA. If the term of the PPA is shortened or the PPA is terminated, then the Term shall be shortened to match the remaining term of the PPA. If the term of K2 Wind’s PPA is extended, or K2 Wind otherwise continues to operate the Wind Project after the expiration or termination of the PPA, then the Parties shall enter into good faith negotiations to extend the Term and amend this Agreement as appropriate to reflect K2 Wind’s continued operation of the Project under the circumstances then prevailing.

3. **Establishment and Governance of the Fund**

3.1 ACW shall establish the Fund by opening a reserve account in a Canadian Chartered Bank into which K2 Wind’s Annual Payments shall be deposited and held separate from all other accounts and funds held by ACW.

3.2 ACW shall provide to K2 Wind an annual accounting report on the status of the Fund, including but not limited to a reconciliation of all Annual Payments as against all disbursements and expenditures from the Fund, and on the calculation of any Payment Offsets (the “**Fund Report**”).

- 3.3 ACW shall, upon the request of K2 Wind acting reasonably, provide a full accounting of the Fund and the consideration of Payment Offsets, and shall permit K2 Wind or its agents to review Fund records and the data used by ACW to prepare the Fund Report and consider Payment Offsets, including without limitation financial records, correspondence and audit reports.
- 3.4 In respect of a request made by K2 Wind under Section 3.3, the Parties shall adhere to the following protocol:
- (a) K2 Wind's request shall be in writing and shall specify the nature of the request within the scope of Section 3.3;
 - (b) If a full accounting is requested, ACW shall provide same, certified by its Treasurer, within thirty (30) days of receipt of the request;
 - (c) ACW shall promptly respond to any follow up questions from K2 Wind regarding the full accounting;
 - (d) If a request is made by K2 Wind to review Fund records and data used to prepare the Fund Report and/or to consider and calculate Payment Offsets, ACW shall, within thirty (30) days of receipt of the request, make such documents available for review, during municipal business hours at ACW's offices, by K2 Wind and its consultants;
 - (e) None of the Fund records and data used by ACW shall be considered confidential or be otherwise withheld from K2 Wind or the public;
 - (f) K2 Wind may request that all, or some, of the documents be copied and provided to K2 Wind, and K2 Wind shall reimburse to ACW the reasonable cost of providing said copies; and
 - (g) Any disagreement under this Section 3.4 shall be considered a Dispute under Section 10 of this Agreement if it cannot be promptly resolved between the Parties.
- 3.5 ACW acknowledges and agrees that expenditures from the Fund by ACW shall be made only to support the Municipal Projects enumerated in this Agreement.
- 3.6 ACW shall establish and administer the Fund in accordance with and in compliance with all applicable law and any internal corporate codes of conduct applicable to the administration of the Fund and the expenditures of moneys by ACW.

4. **Financial Donations to the Fund**

- 4.1 K2 Wind agrees to make financial donations to the Fund in annual lump-sum payments (each an “**Annual Payment**”) for each calendar year during the Term, as follows:
- (a) Subject to any Payment Offsets in accordance with Section 4.4, the Annual Payment for a particular year shall be calculated by multiplying the aggregate nameplate capacity of the Project that is available for operation at the beginning of that year, expressed in megawatts net of any turbine de-rating (the “**Available Nameplate Capacity**”) by a factor of \$2,600 per megawatt (the “**Dollars per Megawatt Factor**”), adjusted for inflation as described in paragraph (c) below.
 - (b) For the first calendar year of the Term, the Available Nameplate Capacity shall be determined as of the Commercial Operation Date. For any subsequent calendar year, the Available Nameplate Capacity shall be determined as of January 1 of that year, provided that if a turbine is out of service on January 1 of a particular year but is brought back into service before March 1 of that year it shall be deemed available for operation for that year.
 - (c) Reflecting the fact that 20 percent of the power price payable to K2 Wind under the PPA is subject to escalation, the Dollars per Megawatt Factor shall be adjusted on January 1 of each year by 20% of the percentage that the CPI for the immediately preceding December exceeds the CPI for January 2014.
- 4.2 K2 Wind shall be responsible for making Annual Payments to the Fund on the basis of the Available Nameplate Capacity of its Wind Project only, and not on the basis of the nameplate capacity of, or the electricity generated by, any other wind project that may be located in or operating in the Municipality, and not on the basis of money donated or paid into the Fund or similar funds by the operators of such other wind farms as may be located in or operating in the Municipality.
- 4.3 K2 Wind’s Annual Payment to the Fund shall be paid yearly in a lump sum in respect of each calendar year, with the first payment being made within ninety (90) days after the Commercial Operation Date, and payments in subsequent years being made on or before September 30 of each year. The Annual Payments for the first and last partial calendar years of the Term shall be prorated using the percentage that the number of days in each such partial year is to 365.

- 4.4 K2 Wind's Annual Payment to the Fund shall be reduced, or rebated by ACW, as the case may be, on a dollar-for-dollar basis (the "**Payment Offset**") for
- (a) that portion of municipal, county and education property taxes levied by ACW in the year of the Annual Payment that is attributable to:
 - (i) increases in tax rates applicable to wind turbines, distribution and transmission lines, transformer stations, access roads or other related infrastructure and real property that are enacted or come into effect after the Effective Date, to the extent such increases exceed rates of increase in the CPI by more than 50% during the period of time from the Commercial Operation Date through the date of the increase in tax rates; and
 - (ii) increases in the assessed values of wind turbines, distribution and transmission lines, transformer stations, access roads or other related infrastructure and real property after the Effective Date, to the extent such increases exceed (A) the previous year's assessed values by more than 50% or (B) the values that would have been assessed in 2011 (if the Wind Project as then existing had existed in 2011) by more than 150% (whichever exceedance is greater); and
 - (b) the amount of any new charges, levies, deductions or taxes that may in the future be charged, applied or assessed by any governmental authority, including the Ontario Power Authority, against the Wind Project or revenues therefrom or to K2 Wind in respect of the Wind Project or revenues therefrom, other than income taxes of general application.
- 4.5 ACW shall consider and calculate any Payment Offset applicable under Sections 4.4(a)(i) and 4.4(a)(ii) by June 30 of each year during the Term, and shall advise K2 Wind of the results. K2 Wind shall advise ACW as soon as practicable of the amount of any new charges, levies, deductions or taxes within the meaning of Section 4.4(b). If the total amount of the Payment Offset cannot be determined for the year for which the Annual Payment is due before the Annual Payment must be paid by K2 Wind, so as to permit a reduction of the Annual Payment, then ACW agrees to promptly rebate to K2 Wind the amount of the Payment Offset under Sections 4.4(a)(i) and 4.4(a)(ii) once it has been determined. In all instances the amount of the Annual Payment paid by K2 Wind shall be reduced, in accordance with Section 4.4(b), by the amount of any new charges, levies, deductions or taxes in that year made or to be made by K2 Wind.
- 4.6 K2 Wind has agreed with the owners of lands on which wind turbines and other Project infrastructure will be located that it will reimburse them for the portion of their property taxes that is attributable to Project leases and infrastructure. To assist K2 Wind in making such payments to landowners, ACW agrees, subject to receiving the written consent of the landowner in each case, to send K2 Wind duplicate copies of property tax bills for those parcels on which Project infrastructure is located, as identified to ACW by K2 Wind.

- 4.7 Schedule "A" lists the current application and permit fees of general application which ACW intends to impose or expects will be imposed on K2 Wind related to the Project. ACW agrees that if K2 Wind is required to pay fees for Project Agreements and Permits in addition to those set out in Schedule "A," or fees exceeding the fees set out in Schedule "A" by more than the percentage increase in the Ontario Consumer Price Index (All Items) after the Effective Date ("Additional Payments"), K2 Wind shall be entitled to reduce its first Annual Payment to the Fund by the amount of such Additional Payments, and if the amount of such Additional Payments is not fully recovered by reducing the first Annual Payment, subsequent Annual Payments shall be reduced until the Additional Payments have been fully recovered. For greater certainty, Additional Payments shall include any portion of Building Permit fees related to or calculated with respect to wind turbine components other than the foundation.

5. Landowner Contact Information

- 5.1 K2 Wind may make annual payments directly to the registered owner or owners, as shown on the tax roll for each year, of each parcel of land in the Municipality that is improved, as of the Effective Date, with a residential dwelling that is located wholly or in part within one kilometre of any Wind Project turbine. To facilitate such payments, ACW shall annually give K2 Wind a list of landowner contact information as shown on the tax roll for parcels to be identified to ACW by K2 Wind, such list to be provided within 30 days after ACW receives the tax roll.

6. Use of the Fund

- 6.1 ACW agrees that the Fund shall be used exclusively for Municipal Projects as herein enumerated, and for no other purpose.
- 6.2 ACW shall consult with K2 Wind in advance of selecting Municipal Projects to be financed in whole or in part by monies from the Fund and ACW shall give due consideration to any comments or input that K2 Wind may offer with respect to selection of said Municipal Projects.
- 6.3 Prior to any material or significant expenditure of monies from the Fund ACW shall :
- (a) Present such expenditure and the relevant Municipal Project as agenda items to be considered for approval by ACW's Council during a scheduled public meeting; or
 - (b) If public approval of the expenditure by ACW's Council is not required or is not appropriate, give K2 Wind ten (10) days notice in writing in advance of the expenditure from the Fund, specifying the intended expenditure.
- 6.4 ACW acknowledges and agrees that ACW must have the legal jurisdiction to undertake and finance the Municipal Projects selected for funding through the Fund. The Parties agree that the following Municipal Projects located wholly within the Municipality are generally appropriate for funding through the Fund:

- (a) Undertakings relating to energy sustainability, including but not limited to municipal renewable energy systems, vehicle fleet efficiency upgrades, building energy efficiency upgrades, and conservation programs;
 - (b) Land stewardship initiatives including but not limited to natural habitat creation and improvement, tree planting, and shoreline rehabilitation;
 - (c) Public recreational facilities, including but not limited to the construction, renovation or rehabilitation of public arenas, parks and trails;
 - (d) Community and protective services, including but not limited to police, fire, emergency medical services and healthcare;
 - (e) Roads and municipal servicing infrastructure;
 - (f) Education and job training programs;
 - (g) Property tax relief for residents and businesses in the community as may be permitted under the *Municipal Act, 2001* for certain purposes; and
 - (h) Other community related activities sanctioned by the community through public approval by the Council of ACW.
- 6.5 ACW agrees to publically acknowledge the contribution made by K2 Wind to any Municipal Projects, services, programs or activities funded in whole or in part by monies from the Fund. This shall be done in consultation with K2 Wind through appropriate signage or other advertising, branding or promotional opportunities, provided that any costs shall be the responsibility of K2 Wind.

7. Compliance with ACW Requirements

- 7.1 ACW acknowledges that K2 Wind has consulted in good faith with ACW with respect to material development decisions in respect of the Project, including without limitation a review and consideration of ACW's Wind Turbine Development Policy, as set out in By-Law No. 66-2010. ACW acknowledges that the Project is governed by provincial requirements for a Renewable Energy Approval under the Environmental Protection Act and other applicable provincial laws, regulations, guidelines and policies, which address and pre-empt certain requirements of ACW's Wind Turbine Development Policy, and that the Project has been designed in consideration of and substantially meets the requirements of those parts of ACW's Wind Turbine Development Policy that are not addressed or pre-empted by provincial laws, regulations, guidelines and policies, in a manner satisfactory to ACW. The foregoing is without prejudice to the right of ACW to submit specific comments to the Ministry of the Environment with respect to the Project in the municipal consultation form pursuant to the Renewable Energy Approval process.

- 7.2 If, as a result of statutory or regulatory amendments made after the Effective Date, the Project is required to comply with ACW's zoning by-law or other requirements in respect of land uses or site plan approval, ACW shall, in a timely manner, consider such approvals, variances and consents as may be required to enable the Project to proceed as currently planned.
- 7.3 ACW agrees to process all applications and requests made by K2 Wind to ACW on an expeditious basis and without delay, including but not limited to applications for Project Agreements and Permits, and ACW shall direct such resources as are necessary to ensure expeditious review of said applications and requests.

8. Liability

- 8.1 K2 Wind shall not incur any liability in any way related to the Municipal Projects, including without limitation the selection, financing, construction, operation, maintenance, repair and replacement of the Municipal Projects. ACW hereby agrees to indemnify and hold harmless K2 Wind in relation to the Municipal Projects in all respects, including from and against any and all losses, claims, actions, suits, proceedings, causes of action, demands, damages, judgments, executions, liens, liabilities, costs, charges, fees and expenses in connection with loss of life, personal injury, or damage to property, economic loss, or any other loss or injury whatsoever, in any way related to a Municipal Project funded in whole or in part by monies from the Fund.
- 8.2 There is no relationship between the Parties in the nature of a joint venture, partnership, co-ownership arrangement or other similar relationship.

9. Default

- 9.1 Without prejudice to any other rights or remedies it may have, either Party shall be entitled to terminate this Agreement if the other Party (the "**Defaulting Party**") fails to perform any material covenant or obligation hereunder and such failure is not remedied within fifteen (15) days after written notice of such failure is given to the Defaulting Party, provided that such cure period shall be extended by a further thirty (30) days from the expiry of the first notice if the Defaulting Party is diligently attempting to remedy such failure and such failure is capable of being cured within such extended cure period.
- 9.2 K2 Wind shall be entitled to terminate this Agreement if ACW passes any resolution or by-law which prevents the Project from proceeding substantially as proposed. This does not include any resolution or by-law passed by ACW in furtherance of the provisions of this Agreement. The foregoing is also without prejudice to right of ACW to submit specific comments to the Ministry of the Environment with respect to the Project in the Municipal Consultation form pursuant to the Renewable Energy Approval process.

10. Dispute Resolution

- 10.1 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. However, if the Parties do not resolve the Dispute within thirty (30) days following receipt of such 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*.
- 10.2 The arbitration tribunal shall consist of one 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. The arbitrator shall be qualified by education and training to pass upon the matter to be decided.
- 10.3 The arbitration shall be conducted in English and shall take place in Goderich, Ontario or another place mutually agreed upon by the Parties.
- 10.4 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.
- 10.5 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.

11. Further Assurances

- 11.1 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, agreements, 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.

12. Governing Law

- 12.1 This Agreement shall be governed by, and be construed and interpreted in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario.

13. Assignment

- 13.1 K2 Wind may not assign this Agreement without the written consent of the Corporation, which shall not be unreasonably withheld, except that no consent shall be required (i) for K2 Wind to assign this Agreement to an affiliated or successor entity, or to a buyer of all or part of K2 Wind's interest in the Project, provided that all payments due under this Agreement have been satisfied and the assignee agrees in writing to assume and fulfill all of the covenants, agreements, terms and provisions and to abide by all limitations set forth in this Agreement, or (ii) for an assignment given by K2 Wind for purposes of securing indebtedness or other obligations respecting the Project, provided that if the secured party realizes on the security and further assigns this Agreement, the assignee agrees in writing to assume and fulfill all of the covenants, agreements, terms and provisions and to abide by all limitations set forth in this Agreement. For purposes of this section, a change in control of K2 Wind shall not be considered an assignment of this Agreement by K2 Wind.
- 13.2 This Agreement shall not be assignable by the Corporation, either absolutely or as security, but shall enure to the benefit of any successor to the Corporation resulting from an amalgamation or other reorganization under the *Municipal Act, 2001* or similar future legislation.

14. Negotiations and Related Costs

- 14.1 Each Party shall bear its own costs and expenses in connection with the preparation, negotiation, authorization, execution and delivery of this Agreement, except that ACW shall be reimbursed by K2Wind for reasonable legal fees incurred in connection with the review of this Agreement up to a maximum of \$15,000.

15. Notices

- 15.1 All notices, communications and requests for approval which may be or are required to be given by either party to the other herein shall be in writing and shall be given by delivery by courier or by facsimile addressed or sent as set out below or to such other address or facsimile number as may from time to time be the subject of a notice:

To the Corporation:

The Township of Ashfield-Colborne-Wawanosh
82133 Council Line
RR #5
Goderich, ON N7A 3Y2

Attention: Administrator/Clerk-Treasurer
Facsimile: 519-524-1951

To K2 Wind:

c/o Pattern Renewable Holdings Canada ULC
Pier 1, Bay 3
San Francisco, CA 94111
Attention: General Counsel
Facsimile: 415-362-7900

With a copy to:

Capital Power Corporation
70 York Street, Suite 1720
Toronto, ON M5J 1S9

Attention: Director, Business Development
Facsimile: 647-253-3710

- 15.2 Any notice, if delivered by courier, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by facsimile with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the day it was received, whether or not such day is a business day.

16. Miscellaneous

- 16.1 No supplement, modification, amendment, or waiver of this Agreement shall be binding unless executed in writing by the Parties.
- 16.2 Each obligation of the Parties hereto contained in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.
- 16.3 The invalidity or unenforceability of any provision or covenant contained in this Agreement shall affect the validity or enforceability of such provision or covenant only and any such invalid provision or covenant shall be deemed to be severable from the balance of this Agreement, which shall be enforced to the greatest extent permitted by law.
- 16.4 Each covenant in this Agreement is a separate and independent covenant and a breach of covenant by either Party will not relieve the other Party from its obligation to perform each of its covenants, except as otherwise provided herein.
- 16.5 This Agreement may be executed by facsimile or PDF transmission and in one or more counterparts, all of which shall be considered one and the same Agreement.


IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives to be effective as of the Effective Date stated at the top of this Agreement.

**CORPORATION OF THE TOWNSHIP OF
ASHFIELD-COLBORNE-WAWANOSH**



Name: Mark Becker

Title: Administrator/Clerk-Treasurer



Name: Barry Millian

Title: Councillor

**K2 WIND ONTARIO LIMITED
PARTNERSHIP by its general partner, K2
WIND ONTARIO INC.**



Name: Paul F. Wendelgass

Title: Authorized Signatory

SCHEDULE "A"

List of Fees

BUILDING FEES

New Commercial, Industrial or Institutional and additions thereto:

\$60.00 plus \$0.50 per square foot of floor area

Wind Turbines:

\$60.00 plus \$12.00 per thousand of actual value of construction of footings and foundation.

9-1-1 PROPERTY SIGNS

Blade + Hardware \$45.00

ROAD DEPARTMENT

Entranceways

\$35.00 permit fee, \$300.00 + HST refundable deposit. A refund of \$300.00 + HST shall be refunded to the owner within 30 days upon completion and inspection.