

THE CORPORATION OF THE MUNICIPALITY OF SOUTH DUNDAS

BY-LAW NO. 2022-15

A BY-LAW to execute a Lease Agreement with Ontario Power Generation Inc. for the use of land to operate a marina.

WHEREAS *the Municipal Act 2001*, as amended, gives the municipality the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this Act;

AND WHEREAS *the Municipal Act 2001*, as amended, authorizes a municipality to pass By-laws respecting matters within the sphere to culture, parks, recreation and heritage;

AND WHEREAS *the Municipal Act 2001*, as amended, authorizes a municipality to enter into an agreement to provide facilities under a lease agreement.

AND WHEREAS the Council of the Municipality of South Dundas is desirous of using the lands known as the Iroquois Marina;

NOW THEREFORE the Council of the Corporation of the Municipality of South Dundas enacts as follows:

1. That a Lease Agreement be executed with Ontario Power Generation Inc. for the purpose of leasing Part of Lots, 23, 24 & 25, Concession 1 in the former Village of Iroquois, now the Municipality of South Dundas in the County of Dundas.
2. That the Mayor and Clerk are hereby authorized to execute the Agreement attached as Schedule "A" to this By-law.
3. That By-law 2017-07 is hereby repealed.

READ and passed in open Council, signed and sealed this 14th day of February, 2022.



MAYOR



CLERK

LICENCE AGREEMENT

THIS LICENCE made as of the 14 day of February, 2022,

BETWEEN:

ONTARIO POWER GENERATION INC., a corporation incorporated under the laws of the Province of Ontario ("**OPG**")

-and-

The Municipality of South Dundas (the "**Licensee**")

(each a "**Party**" and together the "**Parties**")

RECITALS:

- A. OPG is the owner of the Lands described below.
- B. The Licensee has requested a Licence to use, occupy and enjoy a portion of the Lands being the area depicted in the Sketch (as defined below) (the "**Licensed Lands**") on a non-exclusive basis to enter onto and to pass and repass over the Licensed Lands for the sole purpose of operating a public marina, boat launch and waterway access point to the St. Lawrence River and OPG has agreed to permit the Licensee to use, occupy and enjoy the Licensed Lands for such purpose(s), subject to the terms and conditions contained herein ("**the Licence**")

NOW THEREFORE in consideration of the compensation described in Section 3 hereof, and in consideration of the covenants and conditions hereinafter contained to be kept and performed by OPG and the Licensee, the Parties agree as follows:

1. DEFINITIONS

For the purposes of this Licence, the following definitions shall apply:

- (a) "**Applicable Laws**" in respect of any person, property, transaction or event, means all applicable federal, provincial, municipal and local laws, statutes, rules, regulations, orders, guidelines, codes, by-laws, ordinances, standards, treaties, judgments and decrees applicable to that person, property, transaction or event at the applicable time and, whether or not having the force of law, all applicable approvals, requirements, requests, directives, rules, guidelines, instructions, circulars, manuals, policies and formal interpretations thereof of any governmental authority having or purporting to have authority over that person, property, transaction or event at the applicable time;
- (b) "**Authorized Representatives**" means the Licensee's employees, contractors, agents and assigns including, without limiting the generality of the foregoing, third parties engaged by the Licensee for the operation of the Permitted Use;
- (c) "**Business Day**" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (d) "**Environmental Laws**" mean all applicable federal, provincial, municipal and local laws, statutes, regulations, guidelines, provincial policies, and by-laws, official plans, and all orders, directives, rulings and decisions rendered by any ministry, department or administrative or regulatory agency or court, including any obligations or requirements arising under common law, relating to the protection of the environment, mining, drinking water, wildlife, human health and safety or the manufacture, processing, sewage treatment, storage, disposal, transport, handling, containment, clean-up or other remediation or corrective action or in respect of a Hazardous Substance;
- (e) "**Event of Default**" has the meaning set forth in Section 13;
- (f) "**Hazardous Substance**" means any substance, material, chemical, waste of any nature, or thing (including asbestos, asbestos containing material, petroleum, petroleum by-products, radioactive substances, pesticides, herbicides, polychlorinated biphenyls) which is or is deemed or defined to be, alone or in any combination, hazardous, dangerous, toxic, a pollutant, a deleterious substance, a dangerous good, a designated substance, a contaminant or a source of pollution or contamination or is otherwise regulated, and includes all analogous concepts as defined in or pursuant to any Environmental Law or designated under any Environmental Law;
- (g) "**Improvements**" has the meaning set forth in Section 6(k);

- (h) “**OPG Indemnitees**” has the meaning set forth in Section 12(a);
- (i) “**OPG Representatives**” means OPG’s employees, contractors, agents and assigns from time to time;
- (j) “**OPG Works**” means all structures, facilities and equipment wherever located, owned or used by OPG in connection with the generation, transmission, distribution or sale of electricity including, without limitation, all transmission lines (including buried cables and wires), towers, poles, guys, anchors and transformers (including pad mounted transformers, and communication structures and equipment);
- (k) “**Other Uses**” has the meaning set forth in Section 11(a);
- (l) “**Lands**” means the lands described as part of Lots 23, 24, and 25, Concession 1, Matilda, now in the Municipality of South Dundas, County of Stormont, Dundas and Glengarry, as further described and coloured red on Schedule “B” attached hereto;
- (m) “**Licence**” has the meaning set forth in the Recitals;
- (n) “**Licence Fee**” has the meaning set forth in Section 3;
- (o) “**Licensed Lands**” has the meaning set forth in the Recitals;
- (p) “**Permitted Use**” has the meaning set forth in Section 4(a);
- (q) “**Permittees**” has the meaning set forth in Section 11(a);
- (r) “**Release**” has the meaning prescribed in any Environmental Law and includes any release, intermittent or gradual release, spill, leak, pumping, addition, pouring, emission, emptying, discharge, injection, escape, leaching, disposal, dumping, deposit, spraying, burial, abandonment, incineration, seepage, placement or introduction, whether accidental or intentional;
- (s) “**Sketch**” means the general site sketch illustrating that portion of the Lands being the subject of this Licence as coloured blue on Schedule “A” attached hereto and forming part of this Licence; and
- (t) “**Term**” has meaning set forth in Section 2.

2. DEMISE AND TERM

- (a) OPG hereby grants a licence to the Licensee to use, occupy and enjoy the Licensed Lands in accordance with the covenants and agreements herein, and subject to all existing encumbrances on the Lands, for a period of five (5) years, commencing on January 1, 2022 and terminating on December 31, 2026 (the “**Term**”).
- (b) The Licensee acknowledges having had the opportunity to inspect the Licensed Lands prior to entering into this Licence and hereby accepts the Licensed Lands on an “as is, where is” basis.
- (c) Except as otherwise provided for in this Licence, this Licence may be terminated by either Party at any time during the Term upon three (3) months’ prior written notice to the other.
- (d) OPG may terminate this Licence in whole or in part at any time if the Licensed Land or any portion of the Licensed Land is deemed required by OPG, in OPG’s sole discretion, or if such Licensed Land or any portion thereof are required for the purposes of complying with any law, regulation or order, judgement or rule of anybody having jurisdiction over the Licensed Land or OPG’s operations at, adjacent to near the Licensed Land and OPG will not be liable to the Licensee for any damage or loss occasioned thereby.

3. LICENCE FEE

- (a) In consideration of the use of the Licensed Lands, the Licensee hereby agrees to make a one time payment to OPG in the amount of Two Dollars (\$2.00) CAD (the “**Licence Fee**”), the receipt and sufficiency of which is hereby acknowledged.

4. USE

- (a) It is a condition of this non-exclusive Licence and of the exercise of the rights and privileges hereunder granted to the Licensee, that the Licensed Lands, together with all facilities of ingress and egress to the Licensed Lands be used for the sole purposes of operating a public marina, boat

launch and waterway access point to the St. Lawrence River at or near the Licensed Land or uses as may be agreed to between the Parties from time to time in writing (the "**Permitted Use**").

- (b) For greater clarity, the parking of motor vehicles under this Licence shall mean parking only in connection with the use of the Licensed Lands specified in the immediately preceding paragraph. There shall be no further uses granted by OPG to the Licensee and permitted by this Licence without the prior written consent of OPG, which consent cannot be unreasonably withheld by OPG. Without limiting the generality of the foregoing, it will not be unreasonable for OPG to withhold consent to uses or purposes, whether temporary or not, that in the reasonable opinion of OPG are associated with the accumulation or piling of garbage, soil or any other substance or material and any use which in the reasonable opinion of OPG constitutes a public hazard or nuisance, or a danger or impediment to the effective and efficient operations of OPG or OPG Works.

5. TAXES

- (a) The Licensee hereby assumes the liability for and shall pay as they become due, all taxes, rates and assessments of every kind whatsoever or any amount in lieu thereof, that may be imposed by reason of the Licence granted herein, and will at all times indemnify OPG and its successors assigns and
- (b) The Licence shall be net and care free to OPG.

6. LICENSEE'S COVENANTS

The Licensee hereby covenants and agrees with OPG as follows:

- (a) to permit OPG and OPG Representatives at all reasonable times to enter and view the condition of the Licensed Lands, and to promptly alter, repair, restore and maintain them to the satisfaction of OPG in accordance with written notice by OPG or OPG Representatives;
- (b) to comply satisfactorily with all instructions of OPG's inspectors including without limitation instructions to halt business and operations if, in the opinion of such inspectors, the OPG Works or the safe or efficient operation thereof or access thereto may be interfered with or the safety of the public may be in jeopardy, and OPG will not be liable to the Licensee for any damages or loss occasioned thereby;
- (c) to erect traffic controls on the Licensed Lands if requested by OPG;
- (d) to prevent and not to permit or suffer any nuisance or anything which shall cause unnecessary annoyance or disturbance to OPG or the community;
- (e) not to alter the existing grade, contours, drainage, or water courses, nor apply gravel or asphalt to the Licensed Lands, nor erect or construct any building, structure or facility on the Licensed Lands, including retaining walls, without first having obtained all required municipal and governmental permits and approvals, and only after submitting detailed plans for the approval of OPG and having obtained OPG's prior written consent thereto;
- (f) not to operate or permit to be operated vehicles or other equipment within ten (10) feet of any OPG Works without the prior written consent of OPG, which consent may be withheld in OPG's sole and unfettered discretion;
- (g) to comply with all technical specifications of OPG as OPG may at any time and from time to time require and to ensure all employees, agents, contractors, sub-contractors, consultants, workers and permittees of the Licensee observe same;
- (h) use and maintain the Licensed Lands (and any improvements thereon) and perform the uses specified herein:
 - (i) strictly in accordance with Applicable Laws and Environmental Laws;
 - (ii) in a reasonable and careful manner as a prudent owner would do; and
 - (iii) in accordance with all rules, regulations and requirements, as may be prescribed from time to time by OPG or any authority with relevant jurisdiction;
- (i) to obtain and maintain in good standing all necessary permits and licences required for the uses permitted on the Licensed Lands;
- (j) to maintain the Licensed Lands and all structures, facilities and improvements located thereon in a good state of repair and condition;

- (k) at the expiration or earlier termination of this Licence, vacate and yield up to OPG the Licensed Lands in a good state of repair and condition, as determined by OPG acting reasonably. Without limiting the generality of the foregoing, the Licensee further acknowledges and agrees that after the expiration or other termination of the Term, all of the Tenant's trade fixtures, buildings, and improvements (hereinafter referred to collectively as the "**Improvements**") remaining on the Licensed Land will be deemed conclusively to have been abandoned by the Licensee. OPG may, as appropriate, sell, destroy or otherwise dispose of the Improvements without notice or obligation to compensate the Licensee or to account to the Licensee. The Licensee will pay to OPG on demand all reasonable costs incurred by OPG in connection with the above. Notwithstanding anything in this License, OPG will have the option of requiring the Licensee to remove any Improvements made to the Licensed Land during the Term or else previously made under other arrangements with OPG (whether installed by Licensee or not) and to restore the Licensed Land to a state and condition satisfactory to OPG. For greater clarity, the Licensee will promptly repair, at its own expense, any damage to the Licensed Land resulting from the removal of any Improvements, to a state and condition satisfactory to OPG;
- (l) immediately notify OPG of any Release of a Hazardous Substance;
- (m) the Licensee acknowledges that the Licensed Land is below the maximum flooding contour of the St. Lawrence River and therefore, covenants to ensure that there are no habitable buildings located on the Licensed Land, and that the area is clearly marked and signed to prevent any overnight camping and/or habitation of any buildings located on the Licensed Land;
- (n) the Licensee acknowledges that it holds agreements with third party licensees for the placement, use and maintenance of boathouses along the northern edge of the Licensed Lands. The Licensee takes full responsibility for the presence and use of these boathouses and acknowledges that they are included in the definition of "Improvements" as defined in Section 6 (k). Licensee's Covenants; and thereby, must be removed on the expiration or termination of this Licence to the satisfaction of OPG;
- (o) the Licensee is not allowed open pit fires, unless allowed by municipal by-law. The Licensee is responsible for following all Applicable Laws.
- (p) Survey of Site:
 - (i) The Licensee hereby acknowledges and agrees, without compensation or claims, that the Licensed Land may be altered in terms of size, location, configuration and extent upon OPG conducting survey of the Licensed Land and upon verification of ownership. The Licensee further acknowledges and agrees that regardless of the changes from the survey, the Licensee Fee shall remain as provided in this Agreement. The Licensee acknowledges and agrees that OPG and its invitees may survey, inspect or study the Licensed Land at any time or from time to time, at OPG's sole discretion.
 - (ii) OPG reserves the right, and the Licensee hereby agrees that OPG has the right to amend this Licence as a result of any future surveys of the Licensed Land during the Term of this Licence. The Licensee hereby acknowledges and agrees that this Licence, together with a portion of the Licensed Land, may be split to a third party and that the Fees may also be restricted in the event of a split Licence at the sole discretion of OPG. The Licensee hereby agrees to execute any necessary documents to complete the separation of this Licence agreement.

7. **INSURANCE**

- (a) The Licensee shall obtain and maintain in full force and effect, at its sole cost, throughout the Term and during such other time as the Licensee occupies or otherwise is in possession of the Licensed Lands, the following insurance:
 - (i) "all risks" property insurance covering all property of the Licensee, including property for which it is legally liable, located within the Licensed Lands and the Lands, including all contents, Licensee improvements, inventory, stock-in-trade, furniture and moveable equipment, in an amount of not less than the full replacement cost thereof, with an agreed amount co-insurance clause. Insurance coverage must at a minimum insure the event of fire and other perils covered under Insurance Advisory Organization's Standard Extended Coverage Endorsement, including earthquake, flood and collapse, and showing OPG and any mortgagee of OPG as additional named insured as their respective interests may appear with a waiver of subrogation provided by the underwriter(s). Anyone else designated in writing by OPG shall be additional named insured;

- (ii) boiler and machinery insurance on all objects in, on or servicing the Licensed Lands, all of which are owned, operated and controlled by the Licensee in the Licensed Lands or relating to or serving only the Licensed Lands, on a blanket repair or replacement basis including, without limitation, a by-law endorsement and disputed loss provisions, with limits for each accident in an amount not less than the full replacement cost of such objects as well as of any the Licensee improvements and trade fixtures, and such insurance shall also name OPG and any mortgagee of OPG as additional named insured as their respective interests may appear with a waiver of subrogation provided by the underwriter(s). Anyone else designated in writing by OPG shall be additional named insured;
 - (iii) commercial general liability insurance on an occurrence basis with limits of not less than Ten Million Dollars (\$10,000,000) CAD, inclusive, for both bodily injury, including death, personal injury and damage to property, including loss of use thereof, for each occurrence. Coverage shall specifically include but not be limited to the following: blanket contractual liability, damage to all property of OPG, including loss of use thereof, pollution liability coverage on at least a sudden and accidental basis, products & completed operations, employer's liability; non-owned automobile liability; the Licensee's legal liability and, broad form property damage with respect to the Licensee's business, use or occupation of the Licensed Lands by the Licensee or any of its servants, agents, contractors or persons for whom the Licensee is in law responsible and showing OPG and any mortgagee of OPG as additional named insured as their respective interests may appear with a severability of interests and a cross-liability clause;
 - (iv) automobile liability insurance, covering all licensed motor vehicles operated by the Licensee, covering bodily injury and property damage liability to a combined inclusive minimum limit of Two Million Dollars (\$2,000,000) CAD and mandatory accident benefits; and
 - (v) any other forms of insurance as OPG, acting reasonably, or any mortgagee of OPG, may require from time to time, in amounts and for insurance risks against which a prudent owner would insure;
- (f) Each of the Licensee's insurance policies will contain, as appropriate:
- (i) any standard mortgage clauses that may be required by any mortgagee of OPG;
 - (ii) a waiver of any subrogation rights which the Licensee's insurers would have against OPG or any person for whom OPG is in law responsible;
 - (iii) a provision stating that the Licensee's insurance policy will be primary and will not call into contribution any other insurance available to OPG; and
 - (iv) a waiver, as respects the interests of OPG and of any mortgagee of OPG, of any provision in any of the Licensee's insurance policies with respect to any breach of any warranties, representations, declarations, or conditions contained in the Licensee's policies;
- (g) All policies will be taken out with insurers and be in a form satisfactory to OPG. The Licensee will deliver to OPG prior to the date it occupies the Licensed Lands for any purpose either certificates of insurance and/or certified copies of the Licensee's insurance policies. The Licensee will, from time to time, or as required by OPG, furnish to OPG certificates or other evidences acceptable to OPG as to the Licensee's insurance in effect and its renewal or continuation in force. In addition, the Licensee will provide to OPG such evidence as OPG requires describing how the full replacement cost of the Licensee's stock-in-trade, furniture, fixtures, and the Licensee improvements was determined. Failure of OPG to demand such certificate or other evidence of full compliance with these insurance requirements or failure of OPG to identify a deficiency from evidence provided will not be construed as a waiver of the Licensee's obligation to maintain such insurance. The acceptance of delivery by OPG of any certificate of insurance evidencing the required coverage's and limits does not constitute approval or agreement by OPG that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements;
- (h) All policies will contain an undertaking by the insurers that no material change, cancellation or termination of any policy will be made unless OPG has received at least thirty (30) days prior notice of the change, which notice shall be delivered in accordance with Section 15 of this Licence;
- (i) If the Licensee at any time fails to take out, keep in force or pay the premiums on any insurance as required in this Licence, or if the Licensee fails from time to time to deliver to OPG satisfactory proof of the good standing of any such insurance or the payment of premiums as required in this

Licence then OPG will, without prejudice to any of its other rights and remedies under this Licence, have the right, but not the obligation, to place such insurance on behalf of the Licensee. This cost together with all expenses incurred by OPG and an amount equal to 15% of those costs and expenses to cover OPG's overhead and supervision costs will be paid by the Licensee to OPG promptly upon demand.

8. PROTECTIVE INSTALLATIONS

In the event OPG considers it necessary that any of the OPG Works be fenced or otherwise protected or made separate, the Licensee shall at its sole cost and expense, erect and maintain such fences or other protective installations as OPG may reasonably require.

9. OPG ACTIVITIES

- (a) OPG may at any time upon reasonable notice to the Licensee (except in an emergency when no notice shall be required), enter onto the Licensed Lands and inspect, install, maintain, repair, replace, remove, alter, relocate or add to any of the OPG Works located thereon and may construct, install, inspect, maintain, repair, replace and remove any new works on the Licensed Lands and conduct excavation without liability to the Licensee. For greater certainty, the Licensee acknowledges that OPG shall not be responsible for any damage to the Licensee's improvements, facilities, landscape or business caused by OPG in the exercise of the above rights.
- (b) Notwithstanding anything to the contrary in this Licence, the Licensee acknowledges and agrees that the primary use of the Licensed Lands is for OPG's operations, and the Licensee's use is secondary to OPG's in all material respects, and the Licensee further acknowledges that its operations may from time to time be affected, adversely or not, by OPG's operations.

10. INCREASE IN OPG'S COSTS

If at any time or times this Licence or any of the operations carried out pursuant to this Licence or any improvements made to the Licensed Lands by or for the benefit of the Licensee should, in the reasonable opinion of OPG, directly or indirectly increase the cost or expense of any existing or future OPG Works, or the maintenance, construction or operation thereof, the Licensee shall pay to OPG upon 30 days' prior written notice from OPG, such increase in cost or expense, including without limitation, the cost to OPG of acquiring any additional lands or rights which would not have been required but for the existence of this Licence or of the Licensee's improvements, use or possession of the Licensed Lands; provided that the Licensee shall have the option of terminating this Licence within such 30 day notice period, in which case all other provisions of this Licence (including restoration obligations under Section 6 (k)) shall be applicable.

11. PERMITTED ENCUMBRANCES

- (a) This Licence and the Licensee's interest herein shall be subject to all existing leases, Licences, easements, rights of use or occupation and other property rights which may exist at the date hereof, whether or not registered, and OPG may from time to time renew or extend such arrangements or enter into new ones, whether or not with the same parties, and to which new arrangements this Licence shall also be subject, so long as the rights granted thereunder do not interfere unreasonably with the Licensee's use of the Licensed Lands.
- (b) Notwithstanding anything to the contrary in this Licence, the Licensee hereby acknowledges that OPG, in its sole discretion, shall be entitled at any time and from time to time to permit a portion or portions of the Licensed Lands to be used by it, the OPG Representatives or other permittees (the "Permittees") for further or other purposes, uses, businesses or undertakings (the "Other Uses") of its choice that do not, in the reasonable opinion of OPG, interfere unreasonably with the operations of the Licensee on the Licensed Lands, and to renew, extend, or grant such rights and make and complete such arrangements in this regard with such Permittees as OPG considers necessary or desirable, all at no further expense or condition and without being in default under this Licence or otherwise liable to the Licensee.
- (c) The Licensee hereby agrees to cooperate and discuss in good faith and in a timely fashion with OPG and such Permittees all proposals, impacts or reasonable requests of OPG or other Permittees with respect to the Other Uses.
- (d) If OPG notifies the Licensee at any time that OPG wishes to renew, extend, or grant rights and make arrangements to authorize such Other Uses, the Licensee hereby covenants to accept and consent to each of the same.
- (e) If OPG notifies the Licensee at any time that OPG considers it necessary, practicable or desirable:

- (i) to surrender any part or parts of the Licensed Lands, to give effect to such Other Uses and to better implement OPG's proposed arrangements with any Permittees; and/or
- (ii) to surrender and replace any privileges and permission of the Licensee in respect of this Licence in return for the entering into of a shared use or other reciprocal arrangement among OPG, the Licensee and such Permittees, the Licensee shall immediately do so to the reasonable satisfaction of OPG, all without the need of any further expense, compensation or condition of any kind save and except the following:
 - (A) all documentation shall be prepared by and at the expense of OPG;
 - (B) any replacement agreement is no more onerous to the Licensee than the remaining material terms and conditions contained in this Licence.

12. LIMITATION OF LIABILITY; REMEDIES

- (a) In consideration of the rights and privileges granted herein, the Licensee shall assume all liability and obligation for any and all loss, damage or injury (including death), by reason of fire, accident or otherwise to all persons or property, howsoever arising, as a result of or connected in any way with the use and occupation of the Licensed Lands or that otherwise would not have occurred but for the granting of this Licence or the use and occupation of the Licensed Lands by the Licensee or any Authorized Representatives, save and except for any loss, damage or injury (including death) arising out of OPG's gross negligence or willful misconduct (or any person for whom it is in law responsible). The Licensee does hereby release and forever discharge OPG, its subsidiary and affiliated corporations, predecessors, agents, successors, assigns and all persons acting on its or their behalf (together, the "OPG Indemnitees"), from all claims, actions, suits, demands or any proceedings which are attributable to or connected with, or arising from, or that which would not have occurred but for the granting of this Licence or the use and occupation of the Licensed Lands by the Licensee or its employees, agents, contractors, sub-contractors, consultants, workers and permittees, including any charges, expenses or costs associated therewith, and whether arising in law, equity, or otherwise and in further considerations of same. The Licensee hereby agrees to indemnify and save harmless the OPG Indemnitees from and against all such claims, actions, suits, demands or proceedings which are attributable to or connected with, or arising from, or that which would not have occurred but for the granting of this Licence or the use and occupation of the Licensed Lands by the Licensee or its employees, agents, contractors, sub-contractors, consultants, workers and permittees, including any expenses or costs associated therewith, and whether arising in law, equity or otherwise, save and except for any loss, damage or injury (including death) arising out of OPG's gross negligence or willful misconduct. These indemnities are in addition to any other indemnities contained in this Licence and shall survive the expiration or earlier termination of this Licence.
- (b) All personal property owned by or in the possession of Licensee on the Licenced Lands shall be at the sole risk of the Licensee. OPG shall not be liable for any loss or damage thereto, however occurring. The Licensee releases and indemnifies the OPG Indemnitees from all claims and demands in respect of any such loss or damage.
- (c) Without limiting the foregoing, if at any time OPG or the Licensee is required by any governmental authority pursuant to any Environmental Laws to take remedial action in respect of Hazardous Substances or any breach or violation of Environmental Laws respecting the Licenced Lands which would not have occurred but for the granting of this Licence or the Licensee's or its Authorized Representatives' use, occupation or activities on the Licenced Lands, then Licensee shall, at its cost, take all required remedial action in respect of the Hazardous Substances or breach or violation of Environmental Law, including any repairs or replacements to the Licenced Lands and the facilities and the removal, treatment, disposal, restoration and replacement of the soil or any other part of the Licenced Lands.
- (d) OPG shall have all remedies, including without limitation, damages and injunction, available to OPG at law or in equity arising upon any default by the Licensee under this Licence.

13. EVENTS OF DEFAULT AND TERMINATION

An event of default ("Event of Default") shall be deemed to have occurred hereunder if any one or more of the following events occurs:

- (a) if default is made in the due payment of the Licence Fee set out in Section 3 or any other monies payable hereunder, and such default is not remedied within 5 days after written notice specifying the default has been delivered by OPG to the Licensee;

- (b) if default is made by the Licensee in the performance of or compliance with any other covenants, agreements, terms or conditions contained in this Licence, other than those referred to in subsection 13(a) above, and such default has not been remedied within 15 days after written notice specifying the default has been delivered by OPG to the Licensee, or in the case of failure to obtain or maintain insurance, within three Business Days after written notice specifying the default has been delivered by OPG to the Licensee, or in the case of a default which affects, or is likely to affect, the operations, maintenance or construction of the OPG Works, within 24 hours after written notice specifying the default has been delivered by OPG to the Licensee. However, with respect to any such default (other than a failure to obtain or maintain insurance, or a default which affects, or is likely to affect, the operation, maintenance or construction of the OPG Works for which there shall be no extension) which is of a nature that it cannot, with reasonable diligence, be cured within a period of 15 days, an Event of Default shall not be deemed to exist if the Licensee has commenced to diligently cure such default within 10 days after written notice thereof from OPG and so long as the Licensee thereafter proceeds with all due diligence and takes all appropriate action to complete the curing of such default;
- (c) if the Licensee files a voluntary assignment in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief from creditors under any Applicable Laws, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of the Licensee or of all or of any substantial part of its property, or makes any general assignment for the benefit of creditors, as the case may be;
- (d) if a petition is filed against the Licensee or any party comprising the Licensee seeking an adjudication of bankruptcy of the Licensee or the reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief from creditors under any Applicable Laws and remains undismissed or unstayed for an aggregate of 90 days (whether or not consecutive), or if a trustee, receiver or liquidator of the Licensee or of all or of any substantial part of its property, is appointed and such appointment remains unvacated or unstayed for an aggregate of 90 days (whether or not consecutive).

If any Event of Default occurs, then and in every case and so often as same shall happen, OPG shall have the right, at its option, and in addition to any other rights or remedies which OPG is entitled to hereunder or at law or in equity:

- (e) to remedy any default of the Licensee, provided that the Licensee shall pay to OPG promptly upon demand all reasonable costs incurred by OPG in remedying or attempting to remedy any such default; or
- (f) to re-enter onto the Licensed Lands or to terminate this Licence with or without re-entry, by giving the Licensee not less than 10 days' notice of cancellation and termination, and upon the expiration of the time fixed in such notice, all rights of the Licensee with respect to the Lands or any part thereof and this Licence shall be absolutely forfeited and shall lapse in the same manner and with the same force and effect as if the expiration of the time fixed in such notice of cancellation and termination were the end of the term including all permitted extensions.

14. FORCE MAJEURE

If either Party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Licence by any strike, labour dispute, Act of God, fire or other casualty or by any other event beyond the control of such party, other than financial inability, then the time to perform such obligation or satisfy such condition shall be postponed by the period of time consumed by the delay, provided that nothing herein contained shall be construed so as to postpone or delay the payment of the Licence Fee or other sums owing hereunder.

15. NOTICE

- (a) Except as otherwise provided in this Licence, every notice required or permitted under this Licence must be in writing and may be delivered in person, by courier or by electronic mail to the applicable Party as follows:

To OPG at: Ontario Power Generation Inc.
700 University Avenue,
Toronto, ON M5G 1X6

Telephone: 416-592-4154
Email: realestate@opg.com
Attention: Ray Davies Real Estate Services

To the Licensee at: The Municipality of South Dundas
34 Ottawa St., PO Box 740,
Morrisburg, ON, K0C 1X0

Telephone: 613-543-1076
Email: sgeraghty@southdundas.com
Attention: Shannon Geraghty, Chief Administrative Officer

or to any other address, or individual that a Party designates by notice. Any notice under this Licence, (i) if delivered personally or by courier will be deemed to have been given when actually received, or (ii) if delivered by electronic mail before 3:00 p.m. on a Business Day, will be deemed to have been delivered on that same Business Day.

- (b) Unless otherwise specified, notice of any accident, incident, spill, damage, injury, or emergency shall be given at the same time as notice is required by law to be given under any legal authority or forthwith if there is no specific notice requirement set by law. All such notice shall be properly given if done in person, by email and/or by phone.

16. SUSPENSION

OPG will have the right, without invalidating or terminating this Licence, to suspend the Licence for such reasonable period of time as OPG may require for safety, security or emergency operational purposes, by giving the Licensee 24 hours' written notice, where practicable. OPG will not be liable to the Licensee for any costs, damages or loss occasioned thereby.

17. NO ASSIGNMENT

The Licensee shall not be entitled to assign, transfer or sublicense its rights and obligations under this Licence or the benefit of this Licence without the prior written consent of OPG, which consent may be withheld in its sole and unfettered discretion.

18. TITLE

The Licensee hereby agrees to keep title to the Lands, including every part thereof, free and clear of any lien, encumbrance or security interest or notice thereof. The Licensee shall not enter into any agreements for the Licensed Lands, which would run with the Licensed Lands and become an obligation of OPG upon termination or expiry of this Licence without OPG's prior written consent, which consent may be withheld in OPG's sole discretion.

19. NO RELEASE OF LIABILITY

No termination of this Licence or permitted assignment of this Licence shall relieve the Licensee of its liability and obligations hereunder and such liability and obligations shall survive any such termination or assignment.

20. SUCCESSORS AND ASSIGNS

This Licence shall enure to the benefit of and binds the Parties and their respective successors and permitted assigns.

21. GENERAL

- (a) In this Licence, words importing the singular number only will include the plural and vice versa; words importing the masculine gender will include the feminine and neuter genders and vice versa; the terms "this Licence", "hereof", "hereunder" and similar expressions refer to this Licence and not to any particular section or other portion hereof and include any agreement supplemental hereto; "including" or "includes" will be without limitation; "Section", "subsection" or "Article" followed by a number or a letter refers to the correspondingly numbered or lettered section or article hereof; "person" will be interpreted broadly and includes an individual, partnership, association, trust, body corporate or other entity.
- (b) This Licence constitutes the entire agreement between the Parties with respect to the subject matter and supersedes all prior agreements, negotiations, discussions, representations, warranties and understandings, whether written or verbal.
- (c) Nothing contained herein shall be deemed or construed by the Parties, nor by any third party, as creating the relationship of principal and agent, landlord and tenant, or of partnership or of joint venture between the Parties, it being understood and agreed that none of the provisions contained


herein, nor any of the acts of the Parties shall create any relationship between the Parties other than that of licensor and licensee as described in the Licence.

- (d) The Parties intend that this Licence will not benefit or create any right or cause of action in favour of any person or entity, other than the Parties.
- (e) Except as otherwise expressly provided in this Licence, each Party will be responsible for its own costs and expenses incurred in connection with the negotiation, execution and performance of this Licence.
- (f) This Licence may only be amended, supplemented or otherwise modified by written agreement executed by the Parties.
- (g) The Licensee shall not have the right to register this Licence or notice hereof against title to the Lands or any part thereof.
- (h) No waiver of any of the provisions of this Licence will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Licence will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right it may have.
- (i) If any provision of this Licence is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Licence and the remaining provisions will remain in full force and effect. The Parties shall engage in good faith negotiations to replace such provision with a valid, enforceable, and applicable provision, the effect of which substantially reflects that of the illegal, invalid or unenforceable provision it replaces.
- (j) This Licence, and all activities undertaken in connection with this Licence by any Party (or anyone for whom it is at law responsible) shall fully comply with and will be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (k) This Licence may be signed and delivered in any number of counterparts (including counterparts by electronic mail), each of which when signed and delivered is an original but all of which taken together constitute one and the same instrument.


[Remainder of page intentionally left blank; signature page follows]

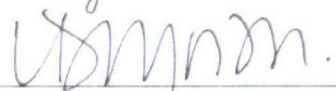
IN WITNESS WHEREOF, the Parties have executed this Licence as of the date first above written.

ONTARIO POWER GENERATION INC.

By: 
Name: Vicky Bennett
Title: Real Estate Associate
I have the authority to bind the Corporation

THE MUNICIPALITY OF SOUTH DUNDAS

By: 
Name: Steven Byrds
Title: Mayor

By: 
Name: Leslie Bryman
Title: Clerk
[I/We] have the authority to bind the Corporation

SCHEDULE "A"

SKETCH OF LICENSED LANDS

Licensed Lands Coloured Blue



SCHEDULE "B"

DESCRIPTION AND SKETCH OF LANDS

Shaded Red

Pt Lts 23, 24, 25, Con 1 Matilda

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