

THE CORPORATION OF THE MUNICIPALITY OF SOUTH DUNDAS

BY-LAW NO. 2014-81

A BY-LAW to enter into an Agreement with South Branch Wind Farm Limited Partnership, a subsidiary of EDP Renewables Canada Ltd., to establish the South Branch Community Fund Agreement.

WHEREAS the *Municipal Act, 2001*, S.O. 2001, Chapter 25, Section 5 (3) as amended, provides that the powers of the municipality shall be exercised by by-law;

AND WHEREAS the Municipality of South Dundas desires to execute an Agreement with South Branch Wind Farm Limited Partnership to establish funding to benefit the community near the South Branch Wind Farm.

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

1. That an Agreement be executed with South Branch Wind Farm Ltd. Partnership, a subsidiary of EDP Renewables Canada Ltd. in accordance with Schedule "A" attached to this by-law.
2. That the Mayor and Clerk are hereby authorized to execute all documents as required to effectively carry out this Agreement.

READ and passed in open Council, signed and sealed this 16th day of September, 2014.

MAYOR 

CLERK 

Schedule "A"
to By-Law No. 2014-81

SOUTH BRANCH COMMUNITY FUND AGREEMENT

THIS SOUTH BRANCH COMMUNITY FUND AGREEMENT ("**Agreement**") is made and entered into as of the 16th day of September, 2014 (the "**Effective Date**") by and between The Corporation of the Municipality of South Dundas ("**South Dundas**") and South Dundas Windfarm Limited Partnership ("**Wind Company**"), a partnership organized under the laws of Ontario. South Dundas and Wind Company are sometimes each referred to herein as a "**Party**" and collectively, as the "**Parties**."

RECITALS

WHEREAS, South Dundas is a Municipal Corporation within the meaning of the *Municipal Act, 2001*, S.O. 2001, Chapter 25.

AND WHEREAS Wind Company is operating a 30 megawatt ("**MW**") wind power energy facility in South Dundas, Ontario (the "**Project**") comprised of ten (10) wind turbine generators, pursuant to a Feed In Tariff Contract (as amended from time to time, the "**PPA**") dated April 30, 2010 between the Ontario Power Authority and the Wind Company;

AND WHEREAS Wind Company and South Dundas wish to ensure that the Project delivers benefits to residents of the Municipality;

AND WHEREAS, the Wind Company wishes to further its policy of good corporate citizenship to enhance the economic development and future well-being and quality of life of the citizens of the Municipality; and

AND WHEREAS in order to further the goal of delivering Project benefits to the Municipality, the Parties have agreed that South Dundas will establish and administer a community benefits fund to which Wind Company will make an annual contribution;

NOW THEREFORE, in consideration of the foregoing, and of the mutual covenants and agreements contained herein, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, South Dundas and Wind Company mutually covenant and agree as follows:

ARTICLE 1
RECITALS

1.1 Recitals Part of Agreement. The representations and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.1.

ARTICLE II DEFINITIONS

2.1 In this Agreement, the following terms used herein shall have the meanings set forth below:

- (a) **"Agreement Term"** is defined in Section 3.1.
- (b) **"Annual Payments"** means Wind Company's annual donations to the Fund, as calculated pursuant to this Agreement;
- (c) **"Commercial Operation Date"** means the Commercial Operation Date as reached on March 4th, 2014;
- (d) **"Community Benefit Fund Area"** as defined on the map in Exhibit A;
- (e) **"Community 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 and distributed in the Community Benefit Fund Area;
- (f) **"CPI"** means the "All-Items Consumer Price Index, Toronto" published monthly by Statistics Canada;
- (g) **"Fund"** means the community benefits fund to be established by pursuant to this Agreement;
- (h) **"Fund Data"** is defined in Section 4.3;
- (i) **"Fund Report"** is defined in Section 4.2;
- (j) **"Municipality"** means The Corporation of The Municipality of South Dundas;
- (k) **"PPA"** is defined in the first recital;
- (l) **"Project"** is defined in the first recital; and
- (m) **"Term"** is defined in the PPA.

2.2 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.

2.3 On or prior to the day that is 60 days after the execution of this Agreement, the Parties shall issue a joint press release announcing this Agreement and the establishment of the Fund. Wind Company may also make and publish announcements from time to time concerning the existence of the Fund and its features, including the projected contributions of Wind Company.

**ARTICLE III
TERM AND TERMINATION**

3.1 Agreement Term. The "**Agreement Term**" of this Agreement shall be twenty (20) years, commencing upon the Commercial Operation Date of the Project. This Agreement Term coincides with the Term (as defined in the PPA). If the Term of the PPA is shortened or the PPA is terminated for any reason whatsoever, then the Agreement Term shall be shortened to match the remaining Term of the PPA. If the Term of Wind Company's PPA is extended, or Wind Company otherwise continues to operate the Project after the expiration or termination of the PPA, then the Parties agree that this Agreement will automatically renew under the same terms and conditions of this Agreement to reflect Wind Company's continued operation of the Project for the balance of time during which Wind Company operates the Project.

3.2. Termination. Wind Company may terminate this Agreement by providing written notice to South Dundas upon any breach of this Agreement by South Dundas that has not been cured by South Dundas in accordance with Section 8.1.

**ARTICLE IV
ESTABLISHMENT AND GOVERNANCE OF THE FUND**

4.1 South Dundas shall establish the Fund by opening a reserve account in a Canadian Chartered Bank into which Wind Company's Annual Payments shall be deposited and held separate from all other accounts and funds held by South Dundas.

4.2 South Dundas shall provide to Wind Company 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 (the "**Fund Report**").

4.3 South Dundas shall, upon the request of Wind Company acting reasonably, provide a full accounting of the Fund, and shall permit Wind Company or its agents to review Fund records and the data used by South Dundas to prepare the Fund Report (the "**Fund Data**").

4.4 In respect of a request made by Wind Company under Section 4.3, the Parties shall adhere to the following protocol:

- (a) Wind Company's request shall be in writing and shall specify the nature of the request within the scope of Section 4.3;
- (b) If a full accounting is requested, South Dundas shall provide same, certified by its Treasurer, on or prior to the date that is thirty (30) days after receipt by South Dundas of the request;
- (c) South Dundas shall promptly respond to any follow up questions from Wind Company regarding the full accounting;

- (d) If a request is made by Wind Company to review Fund Data, South Dundas shall, on or prior to the date that is thirty (30) days after receipt by South Dundas of the request, make such Fund Data available for review, during municipal business hours at South Dundas' offices, by Wind Company and its consultants;
 - (e) None of the Fund Data shall be considered confidential or be otherwise withheld from Wind Company or the public; and
 - (f) Wind Company may request that all, or some, of the Fund Data be copied and provided by South Dundas to Wind Company, and Wind Company shall reimburse to South Dundas the reasonable cost of providing said copies.
- 4.5 South Dundas acknowledges and agrees that expenditures from the Fund by South Dundas shall be made only to support the Community Projects enumerated in this Agreement in the Community Benefit Fund Area, as shown in "Exhibit A".
- 4.6 South Dundas 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 South Dundas.

ARTICLE V FINANCIAL DONATIONS TO THE FUND

- 5.1 Wind Company agrees to make financial donations to the Fund in annual lump-sum payments of \$30,000.00 CAD (each, an "**Annual Payment**") for each calendar year during the Agreement Term. Reflecting the fact that 20% of the power price payable to Wind Company under the PPA is subject to escalation, the Annual Payment 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 in effect as at December 1, 2015.
- 5.2 Wind Company shall be responsible for making Annual Payments to the Fund on the basis of the lump sum payment determined in accordance with Section 4.1, 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.
- 5.3 Wind Company's Annual Payment to the Fund shall be paid annually in a lump sum in respect of each calendar year, with the first Annual Payment being made by Wind Company prior to or on the day that is sixty (60) days after the Effective Date of this Agreement and all subsequent Annual Payments by February 15th of each year.

**ARTICLE VI
USE OF THE FUND**

6.1 South Dundas agrees that the Fund shall be used exclusively for Community Projects as herein enumerated, and for no other purpose.

6.2 South Dundas shall provide advance notice to Wind Company of the selection of Community Projects to be financed in whole or in part by monies from the Fund and South Dundas shall give due consideration to any comments or input that Wind Company may offer with respect to selection of said Community Projects.

6.3 Prior to any expenditure of monies in excess of FIVE THOUSAND CANADIAN DOLLARS (CAD \$5,000.00) from the Fund South Dundas shall:

(a) Present such expenditure and the relevant municipal project as agenda items to be considered for approval by South Dundas's Council during a scheduled public meeting; or

(b) If public approval of the expenditure by South Dundas's Council is not required or is not appropriate, give Wind Company ten (10) days' notice in writing in advance of the expenditure from the Fund, specifying the intended expenditure.

6.4 South Dundas acknowledges and agrees that South Dundas must have the legal jurisdiction to undertake and finance the Community Projects selected for funding through the Fund. The Parties agree that the following Community Projects located wholly within the Community Benefit Fund Area are generally appropriate for funding through the Fund, to promote and/or benefit:

- (a) Public recreational facilities and programs;
- (b) Community gathering facilities, events, and related Municipal usage fees; and
- (c) Educational and job training related to sustainability or renewable energy.

6.5 South Dundas agrees to publically acknowledge the contribution made by Wind Company to any Community Projects, services, programs or activities funded in whole or in part by monies from the Fund. This shall be done in consultation with Wind Company through appropriate signage or other advertising, branding or promotional opportunities, provided that any costs shall be the responsibility of Wind Company.

ARTICLE VII NOTICES

7.1 Notices. All notices, statements, demands, correspondence or other communications required or permitted by this Agreement shall be:

- (a) in writing,
- (b) deemed given,
 - (i) when personally delivered to the receiving Party;
 - (ii) five (5) days after deposit to the United States mail or Canadian mail, as applicable, certified and postage prepaid by the delivering Party; or
 - (iii) one (1) day after deposit to a reputable overnight courier (provided a receipt is obtained by the delivering Party and all charges are prepaid by the delivering Party); and
- (c) addressed as follows:

If to South Dundas: The Corporation of the Municipality of South Dundas
34 Ottawa Street
P.O. Box 740
Morrisburg, Ontario K0C 1X0

If to Wind Company: South Dundas Windfarm Limited Partnership
c/o EDP Renewables Canada Ltd.
110 Spadina Avenue, Suite 609
Toronto, Ontario M5V 2K4

With a copy to:
EDP Renewables North America LLC
808 Travis, Suite 700
Houston, Texas 77002
Attention: General Counsel

Any Party may change its address (and the person to whom notice is to be sent) for purposes of this Section by giving written notice of such change to the other Parties in the manner provided in this Section.

ARTICLE VIII REMEDIES

8.1 Remedies and Enforcement. Each Party covenants and agrees that, if a Party (the "**Breaching Party**") fails to comply with or perform its obligations pursuant to this Agreement, the Party seeking to enforce this Agreement (the "**Non-Breaching Party**") shall provide the Breaching Party with written notice of such failure to perform, which notice shall describe the details of such failure to comply or perform. If the Breaching Party does not cure the breach prior to or on the day that is thirty (30) days after receipt of such notice from the Non-Breaching Party (or if the breach cannot be cured within such thirty (30) day period, if the Breaching Party has not commenced and continued its efforts to cure the breach) then the Breaching Party will be in default. In the event of such default, the Non-Defaulting Party may seek specific performance, injunctive relief, or any other remedy available at law or in equity.

**ARTICLE IX
REPRESENTATIONS AND WARRANTIES**

9.1 Due Authorization. Each Party represents and warrants as to itself: (i) each person or entity signing this Agreement on behalf of such Party is authorized to do so, (ii) each Party has the unrestricted right, power and authority to enter into and perform its obligations under this Agreement and to grant the rights granted hereunder and (iii) no other person is required to execute this Agreement in order for it to be fully enforceable.

**ARTICLE X
RELEASE AND INDEMNIFICATION**

10.1 Compliance with Laws. Each Party shall comply with all applicable laws of Canada and of Ontario and the applicable by-laws of South Dundas.

10.2 Indemnity. The Wind Company covenants and agrees to indemnify, defend, release and save harmless South Dundas and its directors, officers, employees, agents, elected officials, contractors and assigns from and against all losses, claims, including charges, damages and expenses which they may at any time or times bear, sustain or suffer by reason, or on account of the breach of this agreement by the Wind Company and the Wind Company will, upon demand by South Dundas, at its sole risk and expense, defend any and all suits, actions or other legal proceedings which may be brought or instituted by third parties against South Dundas on any such claim, demand or cause of action, and will pay and satisfy any judgment or decree which may be rendered against South Dundas in any such suit, action or legal proceeding, and will reimburse South Dundas for any and all reasonable legal expenses on a solicitor-client basis incurred in connection therewith. The Wind Company's obligation to indemnify, defend and save harmless South Dundas shall not be applicable to losses, claims, charges, damages or expenses which arise from the negligence or willful misconduct of Wind Company or its directors, officers, employees, agents, elected officials, contractors and assigns.

**ARTICLE XI
MISCELLANEOUS**

11.1 Governing Law. This Agreement and the enforcement thereof shall be governed by and construed under the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each of the parties hereby submits to the jurisdiction of the courts in the Province of Ontario.

11.2 Counterparts. This Agreement may be executed in one or more counterparts which when taken together shall constitute one Agreement.

11.3 Assignment. Wind Company shall have the right at any time to assign this Agreement in whole or in part without the consent of South Dundas. Wind Company shall have the right to pledge, mortgage, grant a security interest in, collaterally assign, encumber and hypothecate this Agreement in connection with any financing or financing of the Project without the consent of South Dundas.

11.4 Amendments and Integration. This Agreement shall constitute the complete and entire agreement between South Dundas and Wind Company with respect to the subject matter hereof. No prior statement or agreement, oral or written, shall vary or modify the written terms hereof. This Agreement may be amended only by a written agreement signed by all of the parties.


11.5 Successors and Assigns. This Agreement shall endure to the benefit of and shall be binding upon the Parties hereto, their respective successors and assigns.

11.6 Severability. If any provision of this Agreement is held invalid under any applicable law, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision and, to this end, the provisions hereof are severable. As used in this Agreement, the term "Agreement" shall be interpreted to mean (i) the main body of this Agreement, (ii) all exhibits, attachments, appendices, and schedules attached hereto (collectively, "**Exhibits**") which are incorporated herein by reference, and as such Exhibits may be amended from time to time in accordance with this Agreement, and (iii) documents incorporated in this Agreement by reference but not attached hereto; *provided*, that in the event of any conflict or inconsistency between or among the aforementioned constituents of this Agreement, such constituents shall prevail between and among themselves in the following order (from most to least authoritative): (1) Exhibits; (2) the main body of this Agreement; and (3) other documents incorporated herein by reference.

IN WITNESS WHEREOF this Agreement has been executed by the Parties as of the date first written above.

**THE CORPORATION OF THE MUNICIPALITY OF
SOUTH DUNDAS**

By: 
Name: Steven Bywelds
Title: Mayor

By: 
Name: Brenda Brunt
Title: Clerk
I have authority to bind the Corporation.

**SOUTH DUNDAS WINDFARM LIMITED
PARTNERSHIP, by its general partner, SBWF GP
INC.**


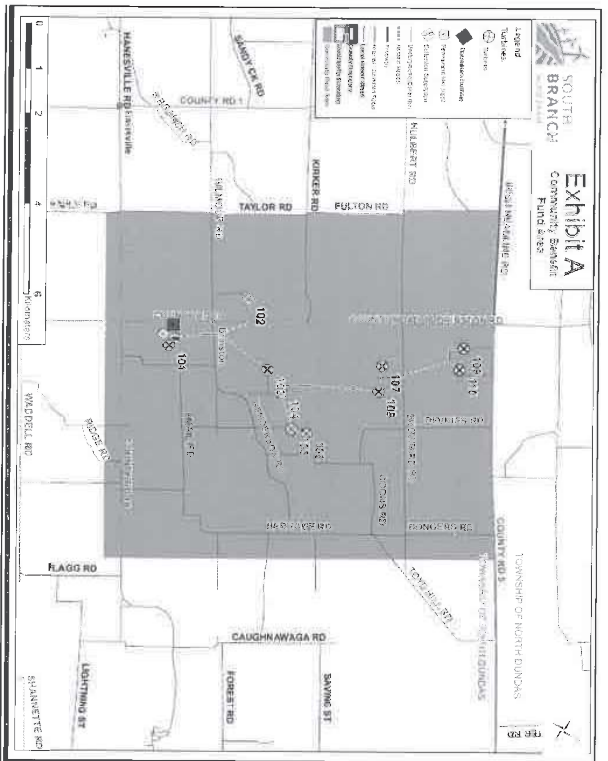
By: 
Name: Andrew Young
Title: AUTHORIZED REPRESENTATIVE
I have authority to bind the Limited Partnership.

EXHIBIT A





MUNICIPALITY OF SOUTH DUNDAS
34 Ottawa Street, P.O. Box 740
Morrisburg ON K0C 1X0
613.543.2673 | southdundas.com

September 17, 2014

EDP Renewables Canada Ltd.
110 Spadina Ave., Suite 609
Toronto ON M5V 2K4

Dear Sir:

Re: South Branch Community Fund Agreement

Please find enclosed three executed copies of the above mentioned Agreement as well as a certified true copy of the by-law. At your earliest convenience, please review, sign and return one executed copy to us for our records and forward the extra copy on to EDP Renewables North America LLC.

If you require anything further at this time, please do not hesitate to contact our office.

Thank you in advance for your co-operation.

Yours truly,

A handwritten signature in cursive script, appearing to read "Brenda Brun".

Brenda M. Brunt, CMO
Clerk

BB/lam

cc: Ben Macpherson, Recreation
Program Coordinator