



THE CORPORATION OF THE TOWNSHIP OF
ASHFIELD-COLBORNE-WAWANOSH

BY-LAW NUMBER 34-2025

BEING A BY-LAW to authorize the execution of Community Benefits Fund Agreement between the CP Renewable Energy (Kingsbridge) L.P. and the Township of Ashfield-Colborne-Wawanosh.

WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act;

AND WHEREAS section 11(2) of the *Municipal Act, 2001* authorizes municipalities to pass by-laws respecting economic, social and environmental well-being of the municipality, including services or things that the municipality is authorized to provide;

AND WHEREAS the Corporation of the Township of Ashfield-Colborne-Wawanosh deems it to be in the public interest to enter into an agreement with CP Renewable Energy (Kingsbridge) L.P. regarding monetary donations to the Township known as the Community Benefits Fund;

NOW THEREFORE, the Council of the Corporation of the Township of Ashfield-Colborne-Wawanosh enacts as follows:

1. The Mayor and Clerk are hereby authorized to execute the agreement attached hereto as Schedule A.
2. This by-law shall come into force upon final passing.

Read a first and second time 3rd day of June 2025.

Read a third time and finally passed this 3rd day of June 2025.

Mayor, Glen McNeil

Clerk, Florence Witherspoon

By-Law 34-2025
Schedule A

This **COMMUNITY BENEFITS PAYMENTS AGREEMENT** (this “**Agreement**”) is entered into as of the 3rd day of June, 2025 (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 —

CP RENEWABLE ENERGY (KINGSBRIDGE) L.P., a
limited partnership having its registered office in the Province of
Ontario

(hereinafter referred to as “**CP Renewable**”)

WHEREAS through its predecessor, CP Renewable developed a wind energy project known as the Kingsbridge 1 Wind Project (the “**Project**” or the “**K1 Wind Project**”) in the Municipality pursuant to a Renewable Energy Supply Contract dated November 24, 2004, between the Ontario Electric Financial Corporation and CP Renewable’s predecessor, EPCOR Power Development Corporation, which contract was subsequently assigned and amended by an Assignment, Assumption, Consent and Amendment Agreement dated April 1, 2007 and a RES I Contract Amendment Agreement dated February 22, 2013 (as amended, the “**RES Contract**”);

AND WHEREAS, as the term of the RES Contract expires on March 14, 2026, CP Renewable intends to submit a bid to the IESO to supply medium-term 2 power to the IESO (the resulting power supply agreement being referred to herein as the “**MT2 Contract**”);

AND WHEREAS, CP Renewable and ACW (each a “**Party**” and collectively the “**Parties**”) wish to ensure that if CP Renewable successfully enters into the MT2 Contract, that the K1 Wind Project delivers benefits to all residents of the Municipality;

AND WHEREAS in order to further the goal of delivering K1 Wind Project benefits to the Municipality, the Parties have agreed that CP Renewables will make donations to ACW which the Municipality will spend on its projects, programs and other municipal purposes;

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

1. **Interpretation**

1.1 In this Agreement:

- (a) “**Annual Payment**” means an annual donation made by CP Renewable to ACW, as calculated pursuant to this Agreement, and “**Annual Payments**” means any one or more of them;
- (b) “**Arbitration Notice**” is defined in Section 6.1;
- (c) “**Available Nameplate Capacity**” is defined in paragraph 3.1(a);
- (d) “**Commencement Date**” means the date that CP Renewable commences supplying power to the IESO under the MT2 Contract;
- (e) “**Dispute**” is defined in Section 6.1;
- (f) “**Dollars per Megawatt Factor**” is defined in paragraph 3.1(c);
- (g) “**Effective Date**” is defined in the first line of this Agreement;
- (h) “**IESO**” means the Independent Electricity Market Operator;
- (i) “**MT2 Contract**” is defined in the second recital;
- (j) “**Municipal Projects**” is defined in Section 4.1;
- (k) “**Municipality**” means the Township of Ashfield-Colborne-Wawanosh;
- (l) “**Project**” or “**K1 Wind Project**” are defined in the first recital;
- (m) “**RES Contract**” is defined in the first recital; and
- (n) “**Term**” is defined in Section 2.2.

1.2 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.

1.3 CP Renewable may make and publish announcements from time to time concerning the existence of the Annual Payments and their features, including the projected contributions of CP Renewable.

2. Condition Precedent & Term

- 2.1 The obligations of the parties under this Agreement are subject to CP Renewable and the IESO entering into a MT2 Contract by December 31, 2026 for the supply of electricity generated from K1 Wind Project to IESO, and such condition is for the sole benefit of CP Renewable.
- 2.2 The “**Term**” of this Agreement shall be the term of the MT2 Contract, which is expected to be five (5) years, commencing on the Commencement Date. This Term shall coincide with the production term established in the MT2 Contract. If the term of the MT2 Contract is shortened or the MT2 Contract is terminated, then the Term shall be shortened to match the remaining term of the MT2 Contract. If after the Term, CP Renewable’s MT2 Contract is extended further, or CP Renewable otherwise continues to operate the K1 Wind Project after the expiration or termination of the MT2 Contract, then the Parties shall enter into good faith negotiations to extend the Term and amend this Agreement as appropriate to reflect CP Renewable’s continued operation of the Project under the circumstances then prevailing.

3. Financial Donations to ACW

- 3.1 CP Renewable agrees to make financial donations to ACW in annual lump-sum payments (each an “**Annual Payment**”) for each calendar year during the Term, as follows:
 - (a) 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 \$1,325 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 Commencement 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 CP Renewable under the MT2 Contract 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 2026.
- 3.2 CP Renewable shall be responsible for making Annual Payments to the ACW on the basis of the Available Nameplate Capacity of its K1 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 ACW or similar funds by the operators of such other wind farms as may be located in or operating in the Municipality.

- 3.3 CP Renewable's Annual Payment to ACW 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 Commencement 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. Liability

- 4.1 CP Renewable shall not incur any liability in any way related to the municipal projects, programs or other purposes to which any portion of the Annual Payments are used (together, 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 CP Renewable 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 Annual Payments.
- 4.2 There is no relationship between the Parties in the nature of a joint venture, partnership, co-ownership arrangement or other similar relationship.

5. Default

- 5.1 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.
- 5.2 CP Renewable shall be entitled to terminate this Agreement if ACW passes any resolution or by-law which prevents the Project from continuing substantially as it currently exists. 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.

6. Dispute Resolution

- 6.1 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.
- 6.2 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.
- 6.3 The arbitration shall be conducted in English and shall take place in Goderich, Ontario or another place mutually agreed upon by the Parties.
- 6.4 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.
- 6.5 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.

7. Further Assurances

- 7.1 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.

8. Governing Law

- 8.1 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.

9. Assignment

- 9.1 CP Renewable may not assign this Agreement without the written consent of ACW, which shall not be unreasonably withheld, except that no consent shall be required (i) for CP Renewable to assign this Agreement to an affiliated or successor entity, or to a buyer of all or part of CP Renewable'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 CP Renewable 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 CP Renewable shall not be considered an assignment of this Agreement by CP Renewable.
- 9.2 This Agreement shall not be assignable by ACW, either absolutely or as security, but shall enure to the benefit of any successor to ACW resulting from an amalgamation or other reorganization under the *Municipal Act, 2001* or similar future legislation.

10. Negotiations and Related Costs

- 10.1 Each Party shall bear its own costs and expenses in connection with the preparation, negotiation, authorization, execution and delivery of this Agreement, except that CP Renewable shall reimburse ACW for reasonable legal fees incurred in connection with the review of this Agreement up to a maximum of \$1,500.

11. Notices

- 11.1 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, facsimile or electronic mail addressed or sent as set out below or to such other address, facsimile number or email address as may from time to time be the subject of a notice:

To ACW:

The Township of Ashfield-Colborne-Wawanosh
82133 Council Line
RR #5
Goderich, ON N7A 3Y2
Attention: CAO
Facsimile: 519-524-1951
Email: cao@acwtownship.ca

To CP Renewable:

CP Renewable Energy (Kingsbridge) LP
84655 Tower Line Road
Lucknow, ON N0G 2H0

With a copy to:

Capital Power Corporation
2500, 215 2nd Street SW
Calgary, Alberta T2P 1M4

Email: notices@capitalpower.com

- 11.2 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.

12. Miscellaneous

- 12.1 No supplement, modification, amendment, or waiver of this Agreement shall be binding unless executed in writing by the Parties.
- 12.2 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.
- 12.3 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.
- 12.4 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.

[The remainder of this page is intentionally left blank. Signature page follows.]

12.5 This Agreement may be signed electronically, including through DocuSign™ and similar applications. This Agreement may be signed in any number of counterparts (including counterparts by scanned or Electronic Signature) and each counterpart will be deemed an original; taken together, all counterparts will be deemed to constitute one and the same instrument. Delivery of a printed counterpart (whether or not the counterpart was signed electronically) and electronic delivery (including by email transmission or transmission over an electronic signature platform) of an executed counterpart of this Agreement are each as valid, enforceable and binding as if the signatures were upon the same instrument and delivered in person.

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: Glen McNeil
Title: Mayor

Name: Florence Witherspoon
Title: Clerk

**CP RENEWABLE ENERGY
(KINGSBRIDGE) L.P.**

Name:
Title: