

COMMUNITY VIBRANCY FUND AGREEMENT

THIS COMMUNITY VIBRANCY FUND AGREEMENT (this “**Agreement**”) made as of the ___ day of _____, 20__.

BETWEEN:

RENEWABLE ENERGY SYSTEMS CANADA INC.,
a corporation having its head office and principal place of
business at 300 Léo-Pariseau, Suite 2516, Montréal,
Québec, Canada, H2X 4B3. (the “**Proponent**”)

AND

THE CORPORATION OF BRANT COUNTY
[Address]
(the “**County**”)

WHEREAS the Proponent intends to bid projects within Brant County with the goal to enter into a Power Purchase Agreement (the “**Supply Contract**”) with the Independent Electricity System Operator for the supply of electricity from a commercial Solar energy generating facility (the “**Solar Project**”) located in part on lands and premises within the County of Brant (“**Brant County**”); and

WHEREAS the Solar Project is expected to include Solar energy generating facility with an aggregate rated nameplate capacity of approximately 12 megawatts (to be formalized in the executed Supply Contract with the IESO) installed within Brant County, together with appurtenant equipment, buildings, collection systems, transmission facilities, transformer stations, switchyards, access roads and owned and leased real property; and

WHEREAS the Proponent has agreed to provide certain Community Vibrancy Fund Contributions (as defined herein) for the benefit of the residents of Brant County; and

WHEREAS the Proponent and the County have agreed to enter into this Agreement and a Road Use Agreement as separate and distinct agreements.

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, and under legal seal, the parties agree with each other as follows:

PART I – DEFINITIONS

1. In this Agreement:

“**Commercial Operation Date**” means the date on which commercial operation of the Solar Project is attained within the meaning of the Supply Contract;

“**Community Vibrancy Fund**” shall have the meaning set forth in Section 15 of this Agreement;

“**Community Vibrancy Fund Contribution**” means the monies payable by the Proponent to the County in accordance with Part III of this Agreement;

“**Council**” means the elected municipal council of the County;

“**Road Use Agreement**” means an agreement or agreements (including any transmission easements) to be entered into between the affiliate of the Proponent and the County in respect of the access, travel, use and occupation over, under, in, on, and through the system of public roads and highways under the jurisdiction of the County in connection with the construction, operation and maintenance of the Solar Project, including without limitation the placement of overhead and buried electrical collector system and a transmission easement for 115 kV or greater electrical transmission wires and cables (under a separate easement agreement if requested by the Proponent) on lands comprising such public roads and highways;

“**Stub Year**” means the period of time between the Commercial Operation Date and December 31 of the same year;

“**Solar Project**” means the solar energy project described in the recitals, including, for greater certainty, the appurtenant components and property listed in the second recital;

“**Solar energy generating facility**” means a solar driven electric generator forming part of the Solar Project and located within Brant County;

“**Year**” means a calendar year.

PART II – TERM

2. (a) This Agreement shall become effective on the date first above written (the “**Effective Date**”) and, subject to Paragraph 2 (c), shall continue thereafter for a period (the “**Term**”) expiring on the earlier of (i) the date which is twenty (20) years following the Commercial Operation Date; and (ii) the date of termination of the Supply Contract (written notice of which termination of the Supply Contract shall be delivered by the Proponent to the County).
- (b) In the event that the Proponent obtains an extension of the term of the Supply Contract, the Proponent and the County shall enter into good faith negotiations regarding the extension of the Term and any appropriate amendments to this Agreement.
- (c) If the Commercial Operation Date does not occur within five (5) years of the Effective Date, this Agreement shall terminate and be deemed to be null and void and of no further force or effect.

PART III – COMMUNITY VIBRANCY FUND CONTRIBUTION

3. For the Stub Year and each following year during the remainder of the Term, the Proponent shall

pay the County the Community Vibrancy Fund Contribution.

4. Subject to Sections 5 and 6, the Community Vibrancy Fund Contribution for a given year shall be the fixed rate of One Thousand Two Hundred and Fifty Dollars (\$1,250.00) multiplied by the aggregate nameplate capacity (expressed in megawatts) of the Solar energy generating facility that were available for operation for at least 60 days during that year (as determined by the Proponent, acting reasonably).

5. Notwithstanding the foregoing, the Community Vibrancy Fund Contribution for a given year shall be reduced by the greater of (i) the amount that property taxes levied by the County in respect of the Solar Project in that year exceed the previous year's taxes in respect of the Solar Project by more than 50 %, and (ii) the amount that property taxes levied by the County in respect of the Solar Project in that year exceed the property taxes that would have been payable in respect of the Solar Project in 2015 (if the Solar Project as then existing had existed in 2011) by more than 150 %. The parties further agree that the Proponent may from time to time adjust or cancel any Community Vibrancy Fund Contribution if the economic return from the Solar Project is materially and adversely affected by a change in law or other circumstance beyond the control of the Proponent, and for so long as such material and adverse effect exists. Prior to making its determination of such material adverse effect, the Proponent shall:

- (a) engage in meaningful consultation with the County;
- (b) provide to the County reasonable disclosure of its reasons for considering such adjustment or cancellation; and
- (c) apply a standard of reasonableness to its determination to ensure that such determination is made in a fair, reasonable and non-arbitrary manner.

6. The Community Vibrancy Fund Contributions for the Stub Year and the final year of the Term shall be calculated in accordance with Section 4, but prorated using the percentage that the number of days in the Stub Year or the final year of the Term, as applicable, is to 365.

7. The Proponent shall pay the Community Vibrancy Fund Contribution for the Stub Year on April 30 of the first year following the Commercial Operation Date and for each year of the Term thereafter on April 30 of the following year. The obligation of the Proponent to pay the Community Vibrancy Fund Contribution for the final year of the Term shall survive the expiry or termination of this Agreement.

8. In the event that other wind or solar energy project proponents undertake projects within the County, the County shall use commercially reasonable efforts to ensure that such proponents pay equal or greater proportionate amounts into a Community Vibrancy Fund as the Proponent.

PART IV - COMMUNITY SUPPORT

9. The County and the Proponent acknowledge and agree that the support of individual residents of Brant County for the duration of the Agreement is paramount to the success of the Solar Project. The County and the Proponent shall work cooperatively throughout the Term, including meeting at least once each year, to develop and review plans for ensuring that the Proponent is appropriately recognized by the County and its residents for the significant contribution, including payment of the Community Vibrancy

Fund Contribution, that the Proponent has made and is continuing to make toward the betterment of the community. Without limiting the generality of the foregoing, the County and the Proponent shall consult and agree on specific protocols for public promotion and branding of initiatives financed in large part from the Community Vibrancy Fund which reflect the significant degree of financial benefit being afforded to the County. The County agrees that only solar proponents who enter into an agreement substantially similar to this Agreement and make Community Vibrancy Fund Contributions in amounts not less than those set forth in this Agreement shall be entitled to participate in the branding and promotional activities contemplated herein.

10. (a) In recognition of the Proponent's payments under Section 22, the County agrees to process, review and render a decision on the Proponent's permit applications and Renewable Energy Approval ("**REA**") municipal consultation submissions including, but not limited to building permits, road use agreements and severance agreements, in an expeditious manner and in no case more than the timeframe outlined in the County's ordinances or forty-five (45) days after the Proponent's application or submission has been submitted, whichever is less.

(b) The commitment by the County to expedite the processing of permit applications and REA municipal consultation submissions made by the Proponent as referenced above shall not be interpreted as implying any obligation on the part of the County to approve such applications or submissions. All permit application and submissions made by the Proponent shall be considered by Council or the appropriate administrative officer on their merits at the time the applications or submissions are made. The County and the Proponent both acknowledge that the County cannot enter into any agreement that has the effect of expressly or impliedly fettering the legislative discretion of the current or a future Council and this Agreement is not intended to have that effect.

11. The County agrees that it shall, upon request from the Proponent, engage in meaningful dialogue with any third parties who intervene, inquire or are otherwise involved or interested in issues concerning the development of the Solar Project.

12. Upon execution of this Agreement by both the Proponent and the County, the County shall withdraw any objections related to a wind energy project or Solar Project as proposed by the Proponent or its affiliate, including any objections made by the County to Ontario Energy Board Application.

13. The Parties understand that, as soon as practicable following the execution of this Agreement, and execution of a supply Contract with the IESO, the County and the affiliate of the Proponent will negotiate in good faith to reach agreement on a Road Use Agreement in respect of the Solar Project on terms and conditions that are acceptable to both parties, both acting reasonably and with reference to forms and financial conditions of similar agreements entered into between renewable energy or other industry proponents or other similar agreements from other municipalities in Ontario. Notwithstanding the other provisions of this Agreement, the County acknowledges and agrees that the obligation of the Proponent to pay the Community Vibrancy Fund Contributions to the County as provided herein shall be conditional upon the execution and delivery of a Road Use Agreement and if the Road Use Agreement has not been executed within twelve (12) months following the execution date of the Supply Contract, or such other date as agreed upon by relevant parties thereto, the Proponent may terminate this Agreement on 30 days' notice to the County unless a Road Use Agreement is executed and delivered within such 30 day notice

period. The parties agree that in the event of any breach by the County in the performance of its obligations pursuant to the Road Use Agreement which remains uncured within any applicable cure periods set out therein, the Proponent may, at its option, terminate this Agreement.

14. The Community Vibrancy Fund Contributions are made in consideration of the County's agreement to appropriately recognize the value to the community of the Solar Project and the Proponent's investment within Brant County.

PART V - COMMUNITY VIBRANCY FUND ADMINISTRATION AND EXPENDITURES

15. The County agrees to provide for the establishment of a segregated community fund ("**Community Vibrancy Fund**") financed solely by Community Vibrancy Fund Contributions made by the Proponent and similar contributions made by other proponents of renewable energy projects in Brant County. The Community Vibrancy Fund shall be utilized in any lawful manner by the County to support the following:

- (a) land stewardship initiatives (e.g., habitat creation/improvement; tree planting; shoreline rehabilitation);
- (b) expenditures relating to development and construction of County recreational facilities (e.g., arenas, parks, trails);
- (c) expenditures for improvement of community and protective services (e.g., police, fire, EMS, healthcare);
- (d) expenditures related to roads and public municipal infrastructure; or
- (e) such other community-related activities as may be agreed between the parties.

16. All proposed expenditures or application of funds from the Community Vibrancy Fund shall require (i) approval by the Council in a public forum, and (ii) consultation with the Proponent on no less than 30 day written notice to the Proponent prior to submission of any request to the Council for approval.

17. In regard to the receipt and administration of the Community Vibrancy Fund Contributions, the County shall, at a minimum, institute the following process and procedures:

- (a) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the Community Vibrancy Fund; and
- (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
 - (i) transactions are executed in accordance with the County's general or specific authorization;

- (ii) transactions are recorded as necessary (a) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (b) to maintain accountability for all payments received;
- (iii) access to the fund and all payments held therein is permitted only in accordance with County's general or specific authorization; and
- (iv) the recorded accountability for all such payments held in the fund is compared with the existing fund balance at reasonable intervals and appropriate action is taken with respect to any differences.

18. Upon reasonable notice to the County, the Proponent shall have the right to inspect all records created and maintained which relate to the transactions undertaken by the County with regard to the Community Vibrancy Fund.

19. The County shall provide a written report of monies received and expenditures made out of the Community Vibrancy Fund, including a detailed description of the projects on which funds were spent, no later than March 1 of each year of the Term following the first year that Community Vibrancy Fund Contributions are received by the County.

20. Notwithstanding anything to the contrary herein, County, in its administration of the Community Vibrancy Fund, shall refrain from offering, giving or promising, directly or indirectly, money or anything of value to a Canadian or foreign governmental official to influence the official in his or her official capacity, induce the official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person. For the purposes of this Section, "anything of value" includes, but is not limited to, cash or a cash equivalent, discounts, gifts, use of materials, facilities or equipment, entertainment, drinks, meals, transportation, lodging, insurance benefits, or promise of future employment. "Governmental official" shall mean any person holding any level of legislative, administrative, or judicial office of the Canadian or a foreign government or any of its departments or agencies or divisions; any person acting on behalf of the Canadian or a foreign government, including a local or provincial agency, enterprise, or organization; any official or agent of a Canadian or a foreign public administration or publicly funded organization; any official of a Canadian or a foreign political party; any officer or agent of a public international organization (e.g., World Bank, International Monetary Fund, World Health Organization, United Nations, World Trade Organization); or any relatives or close family/household members of any of those listed above.

PART VI – BUILDING PERMIT AND DEVELOPMENT FEES

21. The Proponent shall pay any applicable permit fees for all components of the Solar Project for which a building permit is required in accordance with the laws of the Province of Ontario, in the amounts published in the County's permit fee by-laws in effect as of ●, 201●. The parties acknowledge that such permit fees are anticipated to be reasonable charges for the County to administer and enforce the Building Code Act, 1992, similar to costs charged by other Counties in the province of Ontario for any kind of industries. Such fees shall cover the following:

- (a) the cost to review all plans and drawings in support of the application for the permit;

- (b) all inspections of the construction required by the Building Code Act, 1992;
- (c) the cost to inspect entrance culverts to be installed by the Proponent at the entrances to the properties on which the Solar energy generating facility will be constructed, such culverts to be of a standard specified by and installed to the satisfaction of the County;
- (d) the assigning of a municipal address for the Solar energy generating facility; and
- (e) all other efforts reasonably anticipated to be necessary for the issuance of the permit.

22. For a period of two (2) years commencing on the Effective Date and ending on the second anniversary thereof, the Proponent shall reimburse the County for additional administrative and staffing costs incurred by the County to facilitate the timely process of the Proponent's permit applications and submissions as contemplated in Paragraph 10(a) above, up to a maximum cost of Fifty Thousand Dollars (\$50,000.00).

PART VII – ASSIGNMENT

23. If the Proponent sells or transfers the Solar Project it shall provide notice thereof to the County and shall ensure that the transferee acknowledges this Agreement and agrees to be fully bound by and perform the duties and obligations of the Proponent hereunder in the same manner as if such person was an original signatory to this Agreement.

24. Neither this Agreement nor any of the benefits or burdens hereunder shall be assigned, in whole or in part, by the County.

PART VIII – LOCAL LABOUR

25. The Proponent will use commercially reasonable efforts to hire local suppliers of labour and materials, to the extent available and to the extent that such local suppliers are competitive in respect of the construction and operation of the Solar Project. The foregoing undertaking shall be subject to all such suppliers' compliance with the domestic content requirements set forth in the Supply Contract.

PART IX - DISPUTE RESOLUTION

- 26. (a) This Part sets out the rules and procedures that shall govern any matter that may be arbitrated between the parties in accordance with the terms of this Agreement.
- (b) Prior to submitting a dispute to arbitration in accordance with this Part, the parties shall conduct good faith negotiations with a view to resolving the outstanding issue. If these negotiations fail, the parties may by mutual agreement refer the issue to a mediator to be chosen and paid for jointly by the parties without prejudice to the rights of either party to proceed to arbitration in accordance with this Part should such mediation fail.

27. If a party has the right to request that a matter be submitted to arbitration, the party may commence the arbitration by delivering a written request to the other party setting out the issue that the party requests be submitted to arbitration and the section of this agreement that entitles the party to request that the matter be resolved by arbitration, and thereafter the matter shall be submitted to arbitration pursuant to the Arbitrations Act, or any applicable successor legislation, and the decision of the arbitrator or, if more than one, the decision of a majority shall be final and binding on the parties with no right of appeal on a question of law, fact or mixed law and fact.

28. Where a party requests a matter be submitted to arbitration, the matter shall be decided by a single arbitrator acceptable to the parties, unless either party notifies the other that the former wishes the matter be decided by a Board of Arbitration, in which case each party may appoint one member to the Board of Arbitration and the two members appointed by the parties shall appoint the third member who shall act as Chair.

29. Notwithstanding anything to the contrary herein, the arbitrator will not have any power to alter or change any provisions of this Agreement or to impose any new provisions to this Agreement or to substitute any new provisions for any existing provisions or to give any decision inconsistent with the terms and provisions of this Agreement.

30. During the pendency of negotiations pursuant to the dispute resolution process described in Part X of this Agreement, Proponent may postpone payments it is required to make pursuant to this Agreement.

PART X – GENERAL

31. All invoices, notices and communications to the Proponent in connection with this Agreement shall be addressed to the party at:

32. All invoices, notices and communications to the County in connection with this Agreement shall be addressed to:

The Corporation of Brant County

[Address]

ATTN: Clerk

Phone:

Facsimile:

33. Any invoice, notices or other communication required or permitted to be given or made under this Agreement shall be in writing, and shall be properly given or made if:

(b) delivered in person during normal business hours left with the addressee or any other responsible employee at the relevant address set out herein, or

(c) telexed, telecopied or sent by other means of recorded electronic communication provided receipt thereof is electronically confirmed.

34. Any party to this Agreement may from time to time change its address for notice by giving notice to the other party in the manner as herein provided.

35. No amendment to this Agreement shall be permitted, except by the written mutual consent of both parties, and any amendment shall be in writing.

36. The mere failure of either party to give notice to the other of the breach or non-fulfillment of any provision of this Agreement shall not constitute acceptance of the breach or non-fulfillment.

37. The acceptance of a breach or non-fulfillment of any provision of this Agreement shall not constitute acceptance of a further breach or non-fulfillment of either the same provision, or any other provision of this Agreement.

38. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario without reference to conflict of laws provisions.

39. This Agreement constitutes the entire agreement or understanding between the parties with respect to the subject matter hereof and supersedes all prior negotiations and documents in relation thereto, and each party acknowledges that there are no collateral representations or warranties made by either in respect of the subject matter of this Agreement.

40. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid, shall be enforced to the fullest extent permitted by law.

41. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

[Signatures Follow]

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IN WITNESS WHEREOF this Agreement has been executed by the parties under seal by their authorized signing officers to be effective as of the date first set out above.

THE CORPORATION OF BRANT COUNTY

Per: _____
Name:
Office: **XX**

I have the authority to bind the Proponent Corporation.

Per: _____
Name
Office: Clerk

RENEWABLE ENERGY SYSTEMS CANADA INC.

Per: _____
Name:
Office:

I have the authority to bind the Proponent Corporation.