



Municipality of North Middlesex Financial Policies

Title: Community Vibrancy Funds Policy	
Section: Financial Policies	Number: FP.02
Version: 1.0	Review Frequency: Every 2 year
Approved by: Council	Approval Date: November 1, 2017
Application: 5 diverse programs subject to Annual Amenity fee of up to \$255,000	
Notes: Per agreement between North Middlesex and Bornish Wind GP	

The Municipality of North Middlesex and Bornish Wind GP, Inc. signed the Community Vibrancy Agreement in October 2013. As a result of the agreement, Bornish Wind will pay an amenity fee, otherwise known as the Community Vibrancy Fund, over a term of 20 years.

The annual amenity fee is approximately \$255,000. Part V – s. 10 to 14 of the agreement identifies the terms for the use of the funds. Section 10 specifies a number of ways expenditures can be used. As the agreement also allows for these funds to be used for other community-related activities sanctioned by the Corporation, this policy proposes five (5) strategic programs that these annual funds could be distributed.

1) Purpose

- a) The purpose of this policy is to establish consistent principles, standards and guidelines for the maintenance, management and accounting of Community Vibrancy Fund Programs funded by the annual amenity fee of approximately \$255,000 from Bornish Wind GP.
- b) The Policy identifies and builds on the following expenditure covenants proposed by Part V, s.10 of the Community Vibrancy Agreement between the Municipality of North Middlesex and Bornish Wind GP:
 - i) Expenditures relating to energy sustainability (i.e. municipal renewable energy systems; vehicle fleet upgrades; building energy-efficiency upgrades; conservation programs);
 - ii) Land stewardship initiatives (i.e. habitat creation/improvement; tree planting);
 - iii) Expenditures relating to development and construction of Corporation recreational facilities and community facilities (i.e. arenas, parks, trails);

- iv) Expenditures for improvement of community and protective services (i.e. police, fire, healthcare);
- v) Expenditures related roads, urban infrastructure and community facilities;
- vi) Expenditures related to education and job training;
- vii) Property tax relief for residents and businesses in the community; or,
- viii) Other community-related activities sanctioned by the Corporation.

2) Definitions

- a) **“Amenity Fee”** means the fee payable by Bornish to the Municipality in a given year shall be the fixed turbine rate of Three Thousand Five Hundred Dollars (\$3,500) multiplied by the aggregate nameplate capacity expressed in megawatts of up to 73.5 of the Wind-Turbines which, (i) are located within the Corporation; and (ii) were operating for at least sixty (60) days during the year, as determined by Bornish, acting reasonably.

3) Programs

- a) Community Development Fund Program (Vibrancy Portion)

TOTAL ANNUAL AVAILABLE FUNDING: \$50,000

- i) The purpose of this program is to financially assist community groups and organizations that offers programs or projects which will provide a benefit to improve the well-being of the Municipality.
- ii) By-Law xxx outlines policy, procedures and eligibility criteria to encourage community organizations to undertake these projects or programs.
- iii) The intent is for the funding to benefit the general public without a profit motive or to support specific interests of an organization.
- iv) Any funds must not be used by individuals involved in organizations for their own personal financial gain.

- b) Strathroy Middlesex General Hospital Foundation

TOTAL ANNUAL AVAILABLE FUNDING: \$40,000

- i) The Municipality of North Middlesex is committed to financially supporting the Strathroy Middlesex General Hospital Foundation through the Community Vibrancy Funds.
- ii) North Middlesex is committing to \$40,000 per year for the next 10 years, starting from 2017 to 2026, to the Foundation to support their fundraising campaign.

c) Façade Grant Program

TOTAL ANNUAL AVAILABLE FUNDING: \$15,000

The Municipality of North Middlesex has supported the revitalization of the Main Street Middlesex program. The purpose of a new Façade Grant Program would be to encourage property owners of existing street-level retail and/or commercial buildings located within the downtowns and other Council supported initiative areas to invest in the improvement of the appearance, functionality and / or accessibility of the buildings' storefronts and/or façades. Improvements would have to enhance the interface between the public pedestrian space and commercial activities to provide a positive aesthetic impact on the existing street. The program is intended to:

- i) Make streets a more inviting and interesting place to walk and shop;
- ii) Help building owners attract and retain tenants;
- iii) Build civic pride among the local business community;
- iv) Contribute to the quality of life of residents, workers and visitors; and,
- v) Improve the marketability of the local business area.

Acceptable proposals would include:

- vi) High-quality storefront and façade design;
- vii) High quality signage; and,
- viii) Preservation and enhancement of upper-storey facades
- ix) Only those properties located within recognized downtowns as identified through previous Main Street programs might be eligible.
- x) Such proposals would need to satisfy applicable by-laws along with the Ontario Building Code, where applicable.
- xi) Eligible work would include: repainting, cleaning or re-facing of facades; repair or restoration of façade masonry, brickwork or wood; replacement, repair or restoration of cornices, eaves, parapets and other architectural features; replacement or repair of windows; entranceway modifications that improve the appearance and/or access to commercial units; redesign and reconstruction of the store front; installation of appropriate new signage or improvements to existing signage; installation or repair of canopies and awnings; installation or repair of exterior lighting; and, restoration of historic features.

d) Endowment Fund Program

TOTAL ANNUAL AVAILABLE FUNDING: \$25,000 per year

- i) The purpose of this program is to create a non-expendable pool of funds that will earn investment income over the 20-year term of the agreement.
- ii) The proposed Endowment fund will be established with a contribution \$25,000 each year.
- iii) The financial objective is to accumulate a total of \$450,000 of principle amount at the end of the 20-year term.
- iv) The principle amount will remain in the pool of investment for perpetuity while the annual investment income can be used for projects and/or services
- v) To facilitate this program, a new reserve fund will be created as “Vibrancy Endowment Reserve Funds”.
- vi) Based on municipal investment guidelines, annual allocation of \$25,000 will be invested every year.

e) Annual Budget Mitigation Program

TOTAL ANNUAL AVAILABLE FUNDING: \$125,000 per year

- i) Part V – s. 10 of the agreement, (g) notes that the amenity fee can be used for “property tax relief for residents and businesses in the community”.
- ii) This program will provide support in providing financial relief to both operational and capital budget.
- iii) Each year the Director of Finance in collaboration with Senior Management will provide a list of capital projects or operational line items to be funded through this program as part of the annual budget process.

4) Consolidated Table – Programs

Program	Available Fund
Community Development Fund Program	\$50,000
SMGH Foundation Program	\$40,000
Façade Grant Program	\$15,000
Endowment Fund Program	\$25,000
Annual Tax Mitigation Fund Program	\$125,000

5) Appendices

- a) Appendix 1: Community Vibrancy Fund Agreement
- b) Appendix 2: Community Development Fund By-Law

COMMUNITY VIBRANCY AGREEMENT

THIS COMMUNITY VIBRANCY AGREEMENT ("Agreement") made this 25th day of October, 2013.

BETWEEN:

BORNISH WIND GP, INC., as general partner
for and on behalf of BORNISH WIND, LP

("Bornish")

OF THE FIRST PART

-and-

THE CORPORATION OF THE MUNICIPALITY OF NORTH MIDDLESEX

(the "Corporation")

OF THE SECOND PART

WHEREAS Bornish has entered into a Feed-In Tariff Contract dated July 5, 2011 (the "Supply Contract") with the Ontario Power Authority for the supply of electricity from renewable generating facilities; and

WHEREAS Bornish proposes to construct a renewable energy generating facility located entirely within the boundaries of Corporation to be known as the Bornish Wind Energy Centre to supply electricity in accordance with the Supply Contract; and

WHEREAS the Bornish Wind Energy Centre is expected to be rated at up to 73.5 megawatts and is expected to consist of forty-five (45) Wind Turbines, each having the design capacity to generate 1.62 megawatts of electricity, together with the appurtenant equipment, buildings, collection systems and transmission facilities; and

WHEREAS in recognition of Bornish's community relations efforts and to compensate the Corporation for any potential effect the Bornish Wind Energy Centre may have, directly or indirectly, on the Corporation's infrastructure or its ability to provide services to its residents, Bornish has agreed to provide certain amenities and other assurances to the Corporation in accordance with the terms of this agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the parties have agreed with each other as follows:

PART I - DEFINITIONS

1. In this Agreement:

- (a) "Amenity Fee" means the fee payable by Bornish to the Corporation in accordance with Part III of this Agreement;
- (b) "Anything of value" shall have the meaning set forth in Section 12;



- (c) "Bornish Wind Energy Centre" or the "Wind Project" means the renewable energy generating facility and its appurtenant Wind Turbines, equipment, buildings, collection systems and transmission facilities to be constructed by Bornish in the Corporation for the purpose of supplying electricity in accordance with the Supply Contract;
- (d) "Commercial Operation" means the point in time when the Bornish Wind Energy Centre is deemed by the terms of the Supply Contract to have achieved commercial operation;
- (e) "Commercial Operation Date" has the same meaning as in the Supply Contract and means the date on which commercial operation of the Bornish Wind Energy Centre is attained;
- (f) "Community Vibrancy Fund" shall have the meaning set forth in Section 10;
- (g) "Construction Period" means the period of time between the date of issuance of the first building permit for the Bornish Wind Energy Centre and the first anniversary of the Commercial Operation Date;
- (h) "Council" means the Council of the Corporation as elected by the community;
- (i) "Emergency" means an emergency as defined by the *Emergency Management and Civil Protection Act*, R.S.O. 1990;
- (j) "Governmental Official" shall have the meaning set forth in Section 12;
- (k) "Road Use Agreement" means the agreement between Corporation and Bornish entered into by the parties contemporaneously with the execution of this Agreement;
- (l) "Stub Year" means the period of time between the Commercial Operation Date and December 31 of the same year;
- (m) "Supply Contract" means the Feed-In Tariff Contract dated July 5, 2011 between Bornish and the Ontario Power Authority, and any amendments or renewals thereof;
- (n) "Wind Turbine" means a wind driven turbine constructed by Bornish, or any subsidiaries or affiliates of Bornish, as part of the Bornish Wind Energy Centre; and
- (o) "year" means a calendar year.

PART II - TERM

2. This Agreement shall become effective on the date hereof ("Effective Date") and shall continue for twenty (20) years or the term of the Supply Contract, whichever is less (the "Term").

PART III - AMENITY FEE



3. Commencing on the Commercial Operation Date and continuing each year during the Term, Bornish shall pay the Amenity Fee to the Corporation.

4. The Amenity Fee for a given year shall be the fixed turbine rate of Three Thousand Five Hundred Dollars (\$3,500.00) multiplied by the aggregate nameplate capacity expressed in megawatts of the Wind Turbines which, (i) are located within the Corporation; and (ii) were operating for at least sixty (60) days during the year, as determined by Bornish, acting reasonably.

4A. Notwithstanding the foregoing, the Amenity Fee for a given year shall be reduced by the amount that property taxes levied by the Corporation in respect of the Wind Project in that year exceed the previous year's taxes in respect of the Wind Project by more than 10%. The parties further agree that the Proponent may from time to time adjust or cancel any Amenity Fee if the economic return from the Wind 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 Corporation;
- (b) provide to the Corporation reasonable disclosure of its reasons for considering such adjustment or cancellation; and

apply a standard of reasonableness to its determination to ensure that such determination is made in a fair, reasonable and non-arbitrary manner.

5. The Amenity Fee for the Stub Year shall be calculated in accordance with Section 4, subject to the amount calculated in accordance with Section 4 being prorated using the percentage that the number of days in the Stub Year is to 365.

6. Bornish shall pay the Amenity Fee annually beginning on March 31 of the first year following commencement of commercial operations and each March 31st thereafter for the remainder of the Term.

7. If the parties are unable to resolve any dispute between them involving payment of any fees set forth in this Agreement, either party may request that the dispute be submitted first to mediation by an impartial third party to be agreed upon by Bornish and Corporation. If the parties are unable, in good faith, to resolve the dispute through mediation, the dispute shall be submitted to binding arbitration in accordance with the dispute resolution provisions in Part VII of this agreement.

PART IV - BUILDING PERMIT AND DEVELOPMENT FEES

8. Bornish shall pay permit fees for all components of the Bornish Wind Energy Centre, for which a building permit is required, in accordance with the Corporation's permit fee by-laws in effect as of June 4, 2013 and as set out in Schedule "A". For greater clarity, this shall include the Wind Turbines and the maintenance and administration buildings. The parties acknowledge that the amount of the permit fees pursuant to this Section are anticipated to be reasonable charges for the Corporation to administer and enforce the *Building Code Act*. Said 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*;
- (c) the cost to inspect entrance culverts to be installed by Bornish at the entrance onto the property on which the Wind Turbines will be constructed, such culverts to be of a standard specified by and installed to the satisfaction of the Corporation;
- (d) the assigning (but not the installation) of a municipal address for the Wind Turbine; and
- (e) all other efforts reasonably anticipated to be necessary for the issuance of the permit.

9. The Bornish Wind Energy Centre shall be exempt from payment of any other development charges under any by-law enacted by Council. In the event Bornish is not exempt from the payment of development charges in respect of the Bornish Wind Energy Centre or is required to pay any increased amount of property or other taxes in respect of the Bornish Wind Energy Centre, any such payments or increased amounts shall be set off against and deducted from the other payments or contributions required under this Agreement.

PART V - COMMUNITY VIBRANCY FUND

10. The expenditure of the Amenities Fee by the Corporation which forms the subject matter of this Agreement (“Community Vibrancy Fund”) shall be utilized in any lawful manner by Corporation to support the following:

- (a) Expenditures relating to energy sustainability (i.e. municipal renewable energy systems; vehicle fleet upgrades; building energy-efficiency upgrades; conservation programs);
- (b) land stewardship initiatives (i.e. habitat creation/improvement; tree planting);
- (c) expenditures relating to development and construction of Corporation recreational facilities and community facilities (i.e. arenas, parks, trails);
- (d) expenditures for improvement of community and protective services (i.e. police, fire, healthcare);
- (e) expenditures related to roads, urban infrastructure and community facilities;
- (f) expenditures related to education and job training;
- (g) property tax relief for residents and businesses in the community; or
- (h) other community-related activities sanctioned by the Corporation;

11. All proposed expenditures or application of funds from the Community Vibrancy Fund shall require approval by the Corporation in a public forum, pursuant to the *Municipal Act* and in accordance with all of the Corporation’s obligations under Sections 12 through 14.

12. Notwithstanding anything to the contrary herein, Corporation, 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 (including, without limitation, municipal, provincial or



federal), tribal 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 12, "Anything of value" shall include, but not be limited to, cash or a cash equivalent (including, a "grease", "expediting" or facilitation payment), 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, tribal, or a foreign government or any of its departments or agencies or divisions; any person acting on behalf of the Canadian, tribal, or a foreign government, including a provincial or federal agency, enterprise, or organization; any official or agent of a Canadian, tribal, or a foreign public administration or publicly funded organization; any political party or 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.

13. In regards to the receipt and administration of the Amenities Fees received from Bornish to the Community Vibrancy Fund, Corporation 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 Amenities Fees received from Bornish; and
- (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
 - (i) transactions are executed in accordance with Corporation'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 Corporation'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.

14. Upon reasonable notice to the Corporation, Bornish shall have the right to: (i) inspect and audit (at Bornish's sole cost and expense) all records created and maintained which relate to the transactions undertaken by the Corporation with regard to the Community Vibrancy Fund; and (ii) receive annual audited financial statements of the Corporation, prepared by an independent third party in accordance with the *Municipal Act*. Notwithstanding any other provision of this Agreement to the contrary, Bornish shall have the right to terminate this Agreement in the event of any breach of Sections 10 through 14 of this Agreement.



PART VI - COMMUNITY SUPPORT

15. Emergency

- (a) The Parties agree to cooperate with each other and with local emergency services and Hydro One Networks Inc. to develop and adopt protocols applicable in the event of an Emergency involving the Bornish Wind Energy Centre.
- (b) Bornish has undertaken an emergency preparedness assessment with respect to Wind Turbine emergencies and has developed an emergency action plan for its wind energy facilities in the event of blade failure, fire, structural failure of a tower or other Emergency involving the Wind Project.
- (c) The Corporation and Bornish acknowledge that Bornish shall respond to any Emergency situation involving the Bornish Wind Energy Centre, and that the Corporation's response shall be limited to establishing a safety perimeter around the affected Wind Turbine, attempting to control any ground fires and undertaking the evacuation of residents as required.

16. Permits

- (a) The Corporation agrees to process, review and render a decision on Bornish's permit applications, including, but not limited to building permits, drainage permits, road entrance permits, oversize/overweight load permits, road use agreements and severance agreements in an expeditious manner and in no case more than the earlier of (i) the timeframe outlined in the Corporation's ordinances; and (ii) thirty (30) days.
- (b) The commitment by the Corporation to expedite the processing of permit applications made by Bornish as referenced above shall not be interpreted as implying any obligation on the part of the Corporation to approve such applications or submissions. All permit application and submissions made by Bornish shall be considered by Council or the appropriate administrative officer on their merits at the time the applications or submissions are made. The Corporation and Bornish both acknowledge that the Corporation 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.

17. Community Liaison

- (a) Within one hundred and eighty (180) days following the Commercial Operation Date, Bornish will establish a Community Liaison Committee consistent with the requirements of its Renewable Energy Approval.

PART VII - DISPUTE RESOLUTION

18. 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. If the parties are unable to resolve any dispute between them, either party may request that the dispute be submitted first to mediation by

an impartial third party to be agreed upon by Bornish and Corporation. If the parties are unable, in good faith, to resolve the dispute through mediation, within sixty (60) days following receipt of the said 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.

19. This Section 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. 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.

20. 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. The arbitration shall be conducted in English and shall take place in London, Ontario.

21. 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.

22. Each party shall pay its own costs of the arbitration and shall share equally the costs of the arbitrator and any incidental expenses.

PART VIII - INDEMNITY AND INSURANCE

23. In carrying out this Agreement, Bornish shall indemnify the Corporation against all actions, causes of action, suits, claims and demands whatsoever which may arise from any action or failure to act by Bornish, its employees, servants and agents and not caused by the negligent acts of the Corporation.

24. In carrying out this Agreement, Corporation shall indemnify Bornish against all actions, causes of action, suits, claims and demands whatsoever which may arise from any action or failure to act by Corporation, its employees, servants and agents and not caused by the negligent acts of the Bornish.

25. Bornish shall, at the start of the construction period, and thereafter during the term of the Road Use Agreement, keep in force a comprehensive policy of public liability and property damage insurance as provided in the Road Use Agreement.

26. Bornish shall provide the Corporation with a certificate of insurance in a form satisfactory to the Corporation together with such proof as the Corporation may require that all premiums on the policies of insurance have been paid and that they are in full force and effect. If Bornish fails to pay premiums or otherwise keep the policies in force, the Corporation may pay premiums or take out additional policies as it considers necessary and all costs shall be paid by Bornish. The issuance of a policy of insurance shall not be construed as relieving Bornish from responsibility

for other or larger claims, if any, for which the Corporation may be held responsible.

PART IX - ASSIGNMENT

27. Assignment

- (a) If Bornish proposes to sell, convey, transfer, assign, lease or otherwise dispose of its ownership or control of the Bornish Wind Energy Centre, or to make a bulk sale of Bornish's assets within the provisions of the *Bulk Sales Act*, Bornish covenants and agrees to notify the Corporation sixty (60) days following said change.
- (b) Bornish agrees to provide, following any such change, an acknowledgement from any transferee, lessee, or assignee that it has written notice of and acknowledges this Agreement, and agrees to be fully bound by and to perform the duties and obligations of Bornish hereunder in the same manner as if such person was an original signatory to this Agreement.

PART X - GENERAL

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

Bornish Wind, LP
Attention: Business Management
390 Bay Street, Suite 1720
Toronto, ON, M5H 2Y2, Canada
Phone: (416) 364-9714

With a copy to: Bornish Wind, LP
Attention: General Counsel
700 Universe Blvd. LAW/JB
Juno Beach, Florida 33408
Phone: (561) 691-2359

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

The Corporation of the Municipality of North Middlesex
P.O. Box 9
229 Parkhill Main Street,
Parkhill ON N0M 2K0
Attention: CAO and Clerk
Telefax: (519) 294-0573
Emergency Telephone No. 519.294.6244

30. 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:

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



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

31. 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.

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

33. Except as may otherwise be expressly permitted herein, neither this Agreement nor any of the benefits or burdens hereunder shall be assigned, in whole or in part, by the either party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

34. No consent shall be required for Bornish to assign this Agreement to an affiliated or successor entity, or for purposes of securing indebtedness or other obligations respecting the Bornish Wind Energy Centre. The Corporation acknowledges that a change in control of Bornish shall not be considered an assignment of this Agreement or of any of Bornish's rights and obligations under this Agreement.

35. For greater certainty, Bornish shall be entitled to assign this Agreement and all of its rights thereunder without the consent of the Corporation to Bornish's lenders ("Secured Parties" or "Secured Party" as applicable) as security for Bornish's obligations to such Secured Parties which shall be further entitled to assign this Agreement and the Bornish's rights thereunder in connection with an enforcement of their security. The Corporation hereby agrees to execute and deliver an acknowledgement and consent agreement in favour of any applicable Secured Party or assignee thereof, granting and confirming the rights and remedies in this Agreement and to enter into any other reasonable agreements with the Secured Party, as may reasonably be required by Bornish in order to obtain financing from the Secured Party

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. Notwithstanding anything to the contrary herein, either party may, by written notice of default to the other, terminate this Agreement in whole or in part if the defaulting party violates any representation herein or fails to perform any of its responsibilities as set forth in this Agreement or any extension hereof. The non-defaulting party's right to terminate this Agreement may be exercised if the defaulting party does not cure such violation or failure (if the violation or failure is capable of cure) within thirty (30) days following receipt of the default notice from the non-defaulting party specifying the violation or failure.

39. This Agreement shall be governed by and interpreted in accordance with the laws of Canada and the Province of Ontario.

40. Time shall be of the essence in this Agreement.

41. 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.

42. 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.

43. 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.

44. Whenever in this Agreement the approval or consent of either party is required or contemplated, unless otherwise specified, such approval or consent shall not be unreasonably withheld or delayed.

45. This Agreement shall inure to the benefit of the Corporation and Bornish, and their respective successors and assigns.

46. The Parties hereby acknowledge and agree that the entering into the Road Use Agreement together with the mutual covenants and agreements contained herein, constitute good and valuable consideration for the performance and enforceability of the respective covenants and obligations of each Party contained in this Agreement.

(SIGNATURES ARE ON THE NEXT PAGE)



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



**THE CORPORATION OF THE
MUNICIPALITY OF NORTH MIDDLESEX**

Per: Don Shipway
Mayor – Don Shipway

Per: Linda Creaghe
Linda Creaghe C.A.O.

I/We have the authority to bind the corporation

**BORNISH WIND GP., INC., AS GENERAL
PARTNER
FOR AND ON BEHALF OF BORNISH
WIND, LP**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation

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

**THE CORPORATION OF THE
MUNICIPALITY OF NORTH MIDDLESEX**

Per: _____

Mayor – Don Shipway


Per: _____

Linda Creaghe C.A.O.

I/We have the authority to bind the corporation

**BORNISH WIND GP., INC., AS GENERAL
PARTNER
FOR AND ON BEHALF OF BORNISH
WIND, LP**

Per: _____


Name: F. Allen Wiley
Title: Vice President

I/We have the authority to bind the corporation

SCHEDULE "A"

PERMITS AND FEES

- Building Permit
 - Wind Turbines (free standing) flat fee \$10,000.00
- Oversize Load/Weight Permit
 - Over-dimensional loads less than 3.75 metres \$50.00
 - Over-dimensional loads in excess of 3.75 metres \$200.00
 - Overweight loads over 70,000kg G.V.W. (or more than 10% in excess of HTA legal loading per axle) \$500.00
 - Annual oversize load permit (loads and vehicles not greater than 4.27 metres) \$300.00
- Entrance Permits
 - Gravel Road \$200.00
 - Paved Road \$300.00
- Work Permit
 - Road Allowance Basic Fee \$100.00
 - Bore (\$100.00 non-refundable fee from deposit) \$500.00
 - Open Cut (\$100 non-refundable fee from deposit) \$1,000.00
 - Changing dates on permit already issued \$20.00





MUNICIPALITY OF NORTH MIDDLESEX

BY-LAW #80 OF 2015

BEING A BY-LAW TO ADOPT A COMMUNITY DEVELOPMENT FUND PROGRAM POLICY.

WHEREAS the Council for the Municipality of North Middlesex is desirous of establishing a Community Development Fund Program policy;

AND WHEREAS to ensure the Community Development Fund Program including the Community Vibrancy Fund and the Council Grant/Assistance Program funds are distributed in a fair, open and responsive manner;

NOW THEREFORE the Council of the Municipality of North Middlesex enacts as follows:

1. That the Community Development Fund Program shall be governed by the provision and regulations contained in this By-law and as attached as Schedule 'A'.
2. Schedule 'A' attached hereto, in substantially the same form, shall be part of this By-law. This By-law may be cited and referred to as the "Community Development Fund Program By-law."
3. That the total amount of Community Vibrancy Fund available towards the Community Development Fund Program be up to \$50,000 in any given year beginning in the 2016 and subject to the Community Vibrancy Agreement.
4. That the total amount of Council Grant/Assistance Fund available towards the Community Development Fund Program be up to \$48,000 in any given year beginning in the 2016.
5. That this By-law shall come into force and be effective on the date of the third and final reading thereof.

READ A FIRST AND SECOND TIME THIS 4TH DAY OF NOVEMBER, 2015.

READ A THIRD TIME AND FINALLY PASSED THIS 4th DAY OF NOVEMBER, 2015.

MAYOR

CLERK



Schedule "A" to By-law #80 of 2015

MUNICIPALITY OF NORTH MIDDLESEX
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POLICY AND PROCEDURES

Policy: COMMUNITY DEVELOPMENT FUND PROGRAM

Purpose:

The purpose of this policy is to establish a policy, procedures and criteria to handle in a fair, open and responsive manner, requests from community organizations for funding assistance from the Municipality of North Middlesex that contributes to the enjoyment, health and well-being of the communities within the Municipality.

Objective

- i) To financially assist community groups and organizations to undertake capital projects/purchases that are available for public use or will enhance public use of a space or facility.
- ii) To financially assist community groups and organizations that offer programs or projects which provide a benefit or service to improve the well-being of the Municipality and may apply to one of the following three funding categories: (1) Community Vibrancy Fund; (2) ongoing program funding; (2) multi-year project funding; (3) start up or seed funding, or (4) grant-in-kind.
- iii) To financially assist municipalities who have declared a state of emergency and who require matching funds.
- iv) To financially assist organizations with a non-profit charitable cause who visit the Municipality during a major cross-Ontario or cross-Canada fundraising effort.

Policy

- i) Prior to consideration of the budget for the following year, an ad will be prepared by the Clerk and posted in the area newspapers and on the website regarding the Community Development Funding Assistance Program.
- ii) Community groups and organizations wishing to apply for funding assistance in one of three categories, noted in Objective i) are required to apply by submitting a completed application form with all required supporting documents to the Clerk on or before November 30th of the year preceding the request for funding assistance. Receipt of all applications will be acknowledged in writing by the Clerk.

- iii) A funding Review Committee consisting of the Clerk, Treasurer and the Mayor will review the applications for conformance eligibility and supporting documentation.
- iv) Following the review, those applications considered ineligible will be returned to the organization with a letter from the Clerk noting the reason(s) the application was rejected. Those applications deemed eligible will be included in the Preliminary Budget for Council's consideration.
- v) Organizations whose applications are either approved or not approved upon Council's approval of the budget will receive a letter informing them whether the funding will be received or if not, the reason the application was not approved.
- vi) Due to budget constraints, funding assistance in any one year is not to be regarded as an ongoing funding commitment by the Municipality.
- vii) Organizations applying for the start up or seed funding may only apply once and cannot reapply for additional Municipal funding in subsequent budget years if for the same project or program.
- viii) Funds may not be provided for project activities already receiving municipal funds through other programs (i.e. Community Vibrancy Fund).
- ix) Council may authorize other funding amounts during consideration of the budget or throughout the year or reallocate funding within these policy categories depending on the implications on the budget.
- x) Grants will not be considered where a project or event has an anticipated profit being generated for the applicant or an organization.
- xi) Staff will provide a letter of support, on behalf of the Municipality, for community organizations seeking other funding provided that such funding supports the well-being of the entire municipality.

Eligibility Criteria

- i) Funding assistance is available only to non-profit community groups and organizations whose goal and purpose is to provide a service or benefit to the community and does not restrict access to membership in the organization itself or its committees.
- ii) All organizations applying for funding must meet two of the following requirements: 1) the office is located in the Municipality of North Middlesex; 2) their activities or services benefit the Municipality; or, 3) the majority of participants are residents of the Municipality.
- iii) Organizations applying for funding must provide charitable, recreational, cultural, arts, environmental, special event programs or special services to the community.
- iv) Applications for funding will only be considered when submitted by the President, Chair or Executive Director of the organization.

- v) Organizations applying must provide the following four documents: (1) the names of the Executive Members of the organization applying; (2) a copy of the previous year's financial report or audited statement; (3) an approved draft budget for the current year; and, (4) a recently approved resolution from the organization regarding the request for funding.
- vi) Organizations applying for funding must demonstrate that they are seeking and/or are receiving alternate sources of financial support on an on-going basis to achieve self-sufficiency. The Municipal funding assistance should not be the sole funding source.
- vii) Preference will be given to those applicants who demonstrate diverse sources of funding.

Fund Categories

1. Community Vibrancy Funds

This category supports the aims of the Community Vibrancy Agreement and the funds received from Bornish Wind GP, Inc. regarding the receipt, expenditure and administration of the amenities fees. The limit per any project may be \$5,000.

Total Yearly Amount Available: up to \$50,000

2. Ongoing Program Funding

This category supports programs and specific community organizations which the Municipality recognizes as of interest to receive ongoing funding. May include program support funding, tax rebate assistance etc.

Total Yearly Amount Available: up to \$15,000.00

3. Multi-Year Project Funding

This category supports projects which organizations may wish to undertake or finance over 2 or 3 years.

Total Yearly Amount Available: up to \$10,000.00

4. Start-up and/or Seed Funding

This category supports on a one-time basis, funding to establish a new project or organization. Consideration will be given to special request, projects, events, which will benefit the Municipality to promote a more active and healthy community life.

Total Yearly Amount available: up to \$5,000.00

5. Grant-in-Kind

Funding may be available through a grant-in-kind request for use of a facility or provision of a service. Any payment for rent or a reduction in rent requires full payment for use of the facility with the organization to be reimbursed for the approved amount.

Total Yearly Amount Available: up to \$15,000.00

6. Disaster Relief Funding Assistance

Funding may be approved by the North Middlesex Council and given to Disaster Relief Committees representing municipalities in Canada that have suffered severe damage due to a disaster. The following conditions would apply:

- (i) Funding assistance may be given to those areas that have been declared a Disaster Area by the Provincial or Federal Government.
- (ii) Funding awarded under this category will be a minimum of \$500.00, however, shall not exceed \$1,000 per event.
- (iii) Funding will be awarded by a resolution of Council.

Total Yearly Amount Available: up to \$2,000.00

7. Other Charitable Funding

The Mayor may authorize a donation not to exceed \$200 per event during the budget year to an outside group or organization who visits the Municipality during a major cross-province or cross-Canada fund raising effort for a non-profit charitable cause.

Total Yearly Amount Available: up to \$1,000.00

Procedure:

- i) Application forms are available on-line at www.northmiddlesex.on.ca or at the Shared Services Centre, Municipality of North Middlesex, 229 Parkhill Main Street, Parkhill, ON N0M 2K0
- ii) Completed application forms with required support documents must be submitted to the Clerk and received on or before noon on November 30th in order to be considered for the following year's budget.
- iii) Applications received on or before the deadline will be received, date stamped, scanned and initially reviewed for initial completeness by the Clerk. If incomplete, the application will be returned with a letter stating the reasons the application is incomplete. Should the organization wish to resubmit, it must do so prior to November 30th at noon.
- iv) Following the November 30th deadline, all complete applications will be reviewed by the Funding Review Committee for conformance and eligibility.

- v) If the organization is found ineligible according to the eligibility criteria outlined in this policy, upon a recommendation of the Funding Review Committee, the Clerk will send a letter to the organization outlining the reasons why the application was deemed ineligible for that funding year.
- vi) All eligible organizations' applications will be presented to Council by the Treasurer and considered during the annual budget process.
- vii) The following are the seven categories of funding and the amount to which are allocated to be funded in the upcoming year's budget;

(i)	Community Vibrancy Funds	\$50,000.00
(ii)	Ongoing Program Funding	\$15,000.00
(iii)	Multi-year Project Funding	\$10,000.00
(iv)	Start up or Seed Funding	\$ 5,000.00
(v)	Grant-in-Kind	\$15,000.00
(vi)	Disaster Relief Funding	\$ 2,000.00
(vii)	Other Charitable Funding	\$ 1,000.00
- viii) All organizations whose application has been deemed eligible and considered for budget approval by Council will be notified in writing by the Clerk of Council's decision.
- ix) Council may require a presentation at an Open Council meeting either on your application for funding assistance or at the end of the year in which funding is received to show how the funding was used.
- x) Following final approval of the budget, there may need to be an initial meeting with appropriate staff regarding requirements.
- xi) A letter of understanding or contractual funding agreement may have to be entered into with the Municipality and signed by the parties prior to receipt of funds or reimbursement of expenditures.
- xii) The community organization shall have to pay for the project or rental of a facility before applying for a reimbursement. Invoices and proof of payment for the expenditure must then be included with any claim request.
- xiii) Interim financing may be arranged following discussions with the Finance Department.

APPENDIX 1 – POLICY
Application Form

**MUNICIPALITY OF NORTH MIDDLESEX
APPLICATION FORM
COMMUNITY DEVELOPMENT FUND PROGRAM**

Date: _____

Name of Organization/Group: _____

Name of Primary Contact: _____

Telephone: _____ Fax: _____ E-mail: _____

Address: _____

_____ Postal Code: _____

Please indicate the purpose of this application:

(a) Cash Assistance

_____ Community Vibrancy Funds Requested Amount \$ _____

_____ Ongoing Program Funding Requested Amount \$ _____

_____ Multi-Year Project Funding Requested Amount \$ _____

_____ Start up or Seed Funding Requested Amount \$ _____

(b) Grant-in-Kind

_____ Facility Requested Requested Amount \$ _____ Date: _____

_____ Service Requested Requested Amount \$ _____ Date: _____

The following documentation must be provided to be eligible:

_____ The names of the Executive Members of your organization

_____ A Financial Report of your previous year's operation including investments

_____ An approved proposed budget for the year of the funding request

_____ A recently approved resolution from the applicant organization regarding request for funding

NOTE: For Start Up or Seed Funding a letter outlining the organization or project, its purpose, goals and financial request is all that is required. Completion of the full application is not required.

Have you made a request to the Municipality for a grant prior to this application?

_____ NO _____ YES (if yes, complete the following):

Year Requested	Amount Received
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_____	_____
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_____	_____
-------	-------

_____	_____
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Has your organization requested or received funding in the last twelve months from any Provincial or Federal Agency?

_____ NO _____ Yes (if yes, provide details)

Please outline briefly why you feel Public Funds should be given to your organization.

- List any expected donations, gifts, etc. that you expect to receive in the funding year.
- Briefly outline the activities provided by your organization
- For what purpose will the grant funds be used?
- Do you expect to request Municipal funding over the next five years? If so, how much each year?

_____ YES _____ NO \$ _____

Membership Information

What is your total membership? _____

Total number of Municipal Residents? _____ Total number of Non-Residents? _____

We the undersigned, certify that to the best of our knowledge, that all the information provided on this application is accurate and correct and are endorsed by resolution of the organization we represent.

Name

Title

Date

Name

Title

Date

Forward completed application form to:

Clerk
Municipality of North Middlesex
229 Parkhill Main Street
P.O. Box 9
Parkhill, ON N0M 2K0
Telephone: 519-294-6244 Fax: 519-294-0573

Application forms must be received by noon on or before November 30, 2015 to be considered for funding.

MUNICIPAL USE ONLY

Date Received: _____ Date Reviewed: _____

Meets Eligibility: ___ YES ___ NO

Recommended to Council by: _____
Mayor/Designate

CAO/Clerk/Designate

Treasurer/Designate

Date Approved by Council: _____ Amount Approved: \$ _____