

The Corporation of the Town of Tecumseh

By-Law Number 2023-093

Being a by-law to authorize the execution of an Agreement between The Corporation of the Town of Tecumseh and Essex Energy Corporation

Whereas the Independent Electricity System Operator (IESO) is responsible for operating the electricity market and directing the operation of the bulk electrical system in Ontario;

And whereas as apart of IESO's Resource Adequacy Framework to secure electricity capacity needs on a short term basis, Capacity Auctions are held to assist in meeting the demand response, generation, storage and import of electricity resources from third party generators;

And whereas Essex Energy Corporation is a registered participant of the IESO Capacity Auction (Program) and has presented the Corporation of the Town of Tecumseh (Town) an agreement to utilize the Tecumseh Arena and Manning Road Pump Station generators to participate in the Program;

And whereas the Town is desirous of entering into an Agreement with Essex Energy Corporation to participate in the Program;

And whereas under Section 5 of the *Municipal Act 2001*, S.O. 2001 c.M.25, the powers of a municipality shall be exercised by its Council by by-law.

Now Therefore the Council of The Corporation of The Town of Tecumseh enacts as follows:

1. **That** the Mayor and the Clerk be and they are hereby authorized and empowered on behalf of The Corporation of the Town of Tecumseh, to execute an Agreement between The Corporation of the Town of Tecumseh and the Essex Energy Corporation, a copy of which Agreement is attached hereto and forms part of the by-law and to do such further and other acts which may be necessary to implement the said Agreement.
2. **And That** this by-law shall come into force and take effect upon on the date of the third and final reading thereof.

Read a first, second, third time and finally passed this 12th day of September, 2023.

Gary McNamara, Mayor

Robert Auger, Clerk

ESSEX ENERGY CORPORATION

STANDBY GENERATOR OPERATION AND MAINTENANCE AGREEMENT

1.	Host:	The Town of Tecumseh (the “ Host ”)
2.	Site:	Tecumseh Arena, and Manning Pumping Station (the “ Site ”)
3.	Generator Description:	Tecumseh Arena: Kohler 1000 REOZM Manning Pumping Station: Kohler 800 REOZDE (the “ Generator ”)
4.	Term:	The term of this Agreement shall commence on the Effective Date of this Agreement and end on April 30, 2028 (subject to any written agreement to extend or modify the term and subject to early termination as provided for in the Standard Terms and Conditions annexed hereto) (the “ Term ”)

The Host and Essex Energy Corporation (“**Essex Energy**”) agree to the foregoing and the Standard Terms and Conditions attached as Schedule “A”.

DATED as of this 12th day of day of September, 2023 (the “**Effective Date**”)

TOWN OF TECUMSEH

ESSEX ENERGY CORPORATION

Per: _____

Per: _____

Gary McNamara, Mayor

Per: _____

Robert Auger, Clerk

SCHEDULE "A"
STANDARD TERMS AND CONDITIONS

1. Commencing as at the Effective Date, Essex Energy will be entitled to access to the Site at all reasonable times to enable Essex Energy to, as it deems necessary, install all necessary electrical switchgear and components to meet the minimum requirements outlined in applicable IESO market manuals, including the wholesale revenue metering standard for the Sites' applicable metering installation configuration, to enable energy generated by the Generator to be bid into the Ontario wholesale electricity market (the "**Equipment**"). The Equipment will remain the property of Essex Energy throughout the Term. The Host will be responsible to indemnify and reimburse Essex Energy for any damage to the Equipment which occurs during the Term other than through the negligence or misconduct of Essex Energy. On completion of the Term, Essex Energy will remove the Equipment at its own cost and expense, without damage and adverse impact to Host facility backup power operations, other than normal wear and tear. The Equipment may include a remote terminal unit, wholesale compliant metering system including meter, current transformer, potential transformer and isolation blocks as well as firmware, which items are labelled as being owned by Essex Energy. The Host will fully cooperate with Essex Energy in its actions to obtain and provide all necessary permits, licenses, certificates, and/or approvals required for installation, connection and operation of all applicable Equipment at or in the Site in compliance with Applicable Laws.
2. Essex Energy will, if necessary, apply to the Ontario Energy Board on behalf of the Host for a license entitling the Host to generate electricity from the Site.
3. If necessary, Essex Energy will negotiate a connection agreement on the Host's behalf with the owner of the electricity distribution grid in whose licensed service territory the Site is located for connection of the Generator to such distribution system (the "**Connection Agreement**"). The Host will be responsible for all liabilities arising under the Connection Agreement, except to the extent attributable to Essex Energy's negligence or misconduct. The terms and conditions of the Connection Agreement shall be subject to approval by the Host, acting reasonably.
4. Once the Equipment has been installed, the Host has been issued a license to generate electricity, and the Generator has been connected to the distribution system, Essex Energy will be responsible for collecting, monitoring and analyzing data from the Generator, for interfacing with the IESO for electricity market operations and programs, and for monitoring compliance with the Connection Agreement. To enable Essex Energy to perform this function, the Host will maintain 24 hour high speed internet access at the Site throughout the Term.
5. The Host will be responsible for maintenance and routine testing of the Generator to the standards outlined below in this section 5 and will be required to provide documentation to Essex Energy on a monthly basis documenting its maintenance activities and establishing to Essex Energy's reasonable satisfaction that such standards are being met. The Host shall ensure that the Generator:
 - (a) meets all applicable requirements of the Electricity Safety Authority ("**ESA**");
 - (b) conforms to all applicable industry standards including, but not limited to, those of the Canadian Standards Association ("**CSA**"), the Institute of Electrical and Electronic Engineers, the American National Standards Institute and the International Electrotechnical Commission;
 - (c) is operated and maintained in accordance with the Connection Agreement, the requirements of the ESA, applicable IESO market standards and Good Engineering and Operating Practice and Applicable Laws, other than in respect of obligations for which Essex Energy is expressly responsible hereunder.
6. Essex Energy agrees that the Generator will be operated for the purpose of supplying the wholesale electricity market for a maximum of 250 hours per year. In exchange for making the Generator available for this purpose, Essex Energy will pay the Host a "capacity payment" of 50% of all revenues received in a calendar quarter from the IESO for ten (10) minute non-spinning operating reserve and, as an "energy payment" 50% of all revenues received in a calendar quarter from the IESO from the sale of electricity generated by the Generator and, finally, 50% of all revenues received from the IESO from other sources attributable to the operation, ownership, availability or capacity of the Generator, including the provision of capacity under the IESO's Capacity Auction (the "**CA**"), any other IESO electricity programs, and otherwise. The remainder of such revenues shall be the property of Essex Energy. Payments will be made within 45 days of the end of each quarter. In addition, Essex Energy will reimburse the Host for fuel costs incurred in running the Generator for the wholesale market. Fuel reimbursement will be based on prices published as the "quarterly average Windsor price" on the following Ontario's Ministry of Energy website:

<http://www.energy.gov.on.ca/index.cfm?fuseaction=oilandgas.fuelpricedata&fuel=dsl&year=2007>. The Host recognizes that its fees will fluctuate based on conditions in Ontario's electricity market.

7. Neither party will be liable to the other under any circumstances for any indirect, incidental, special or consequential damages, whether punitive or exemplary, including damages for loss of use or profits or revenues, business interruption losses, loss of contract or loss of goodwill or other economic benefits, howsoever caused, whether arising directly or indirectly from any breach of this Agreement.
8. The Host shall have the risk and all liability in respect of:
 - (a) all loss, damage or injury to property owned by Essex Energy, or to the property for which Essex Energy is at law responsible for located on the lands and premises owned by the Host unless due to a negligent act or omission or wilful misconduct of Essex Energy; and
 - (b) all loss, damage or injury to:
 - (i) property of the Host or property of a third person on the lands and premises owned, leased or otherwise controlled by the Host; and
 - (ii) any person or persons (including loss of life) whether on the lands or premises owned by the Host or owned or used by Essex Energy, or otherwise, resulting from the operation of the Generator, whether in accordance with this Agreement or otherwise,except to the extent that such loss, damage or injury is the result of a negligent action or wilful misconduct of Essex Energy.
9. Force majeure means any event or circumstance which is beyond the reasonable control of a party, does not result from the negligence or fault of a party, and results in or causes the inability of a party to perform any of its obligations under this Agreement. If a party is unable to carry out any of its obligations under this Agreement because of the occurrence of an event of force majeure, the obligations of the parties shall be suspended to the extent necessary by and during the continuance of such force majeure. For certainty, disconnection of the Generator from the local distribution system shall be a force majeure event only if such disconnection is not attributable to an act or omission of one of the parties.
10. For so long as this Agreement is in effect the Host will carry commercial general liability insurance for third party bodily injury, personal injury and property damages in an amount of not less than \$2,000,000 per occurrence.
11. During the Term, the Host will not allow output, capacity or availability of the Generator to be bid into any electricity market (whether wholesale, ancillary services or otherwise and whether physical or financial) other than through and under this Agreement.
12. Nothing in this Agreement shall be deemed to constitute either party hereto as partner, agent or representative of the other party or to create any fiduciary relationship between the parties, other than as expressly described in sections 2 and 3.
13. Either party may terminate this Agreement:
 - (a) if the other party becomes bankrupt or insolvent within the meaning of the *Bankruptcy and Insolvency Act* (Canada), makes a general assignment for the benefit of creditors, makes a proposal under the *Bankruptcy and Insolvency Act* (Canada) or similar law, seeks relief under the *Companies Creditors Arrangement Act* (Canada) or proceedings or commenced under any of such statutes or a similar statute and are not dismissed or stayed within thirty (30) days; or
 - (b) if the other party commits a material breach of this Agreement and does not cure such breach within thirty (30) days of being notified of same.
14. The Host agrees:
 - (a) to take all commercially reasonable measures to assist Essex Energy to be designated within the "wholesale consumer" class of "market participant" (as those terms are defined in the Market Rules) in respect of the Host and the Site;
 - (b) to take all commercially reasonable measures to assist Essex Energy to become eligible to participate in the IESO's electricity programs (as defined in the Market Rules) or any successor thereto, including the CA or any other electricity program that includes demand response, whether as part of an incremental capacity auction or

otherwise, as a “demand response market participant”, “demand response auction participant” and a “demand response aggregator” (as those terms are defined in the Market Rules), including:

- (i) development by Essex Energy of a measurement and verification plan; and
- (ii) registration by Essex Energy of the Site and the Host with the IESO for purposes of the CA; and

(c) to appoint Essex Energy as a market participant in respect of the Host and the Site. Essex Energy agrees to notify IESO promptly upon the end of the Term or such earlier date as Essex Energy shall cease to be authorized by The Host as a market participant, or in respect of any class thereof in respect of the Host or the Site

15. Subject to the obligations of the Host under the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), each party agrees to maintain in confidence and not to use for any purpose other than the performance of its obligations hereunder any non-public information relating to the other party or the Generator or the Site. The parties' obligations under this section 15 shall survive any termination of this Agreement.
16. This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. Subject to section 20 (Dispute Resolution), the courts of the Province of Ontario have jurisdiction over any action or proceeding arising under this Agreement to the fullest extent permitted by Applicable Laws. The parties waive to the fullest extent permitted by Applicable Laws any objection it may have to the laying of venue of any action or proceeding under this Agreement to any such courts.
17. The Host may not assign its rights and/or obligations under this Agreement or any portion thereof without the prior written consent of Essex Energy, which will not be unreasonably withheld or delayed. Essex Energy may assign its rights and obligations under this Agreement without the consent of the Host.
18. Any notices required or permitted to be made under this Agreement shall be given by prepaid registered mail or delivered by hand or courier to the person executing this Agreement at the address set forth on the signature page of this Agreement. If such notice is given by mail, such notice shall be deemed received on the fifth business day after the date of mailing. If such notice is delivered by hand or by courier, such notice shall be deemed to have been received on the actual date of delivery. The designation of the person to be notified or the address of such person may be changed at any time by either party hereto by notice in writing given pursuant to this section 18 and such change shall take effect from the deemed date of receipt as specified in this section 18.
19. Any waiver of any rights or interests herein must be specifically and expressly provided in writing. No inaction or failure or delay to enforce or act on any right, title, or interest herein shall be deemed or interpreted to be a waiver, and no specific waiver shall be deemed a continuing waiver.
20. Any dispute arising out of this Agreement will be referred to senior management of each respective party for 10 business days, during which each party will use commercially reasonable efforts to resolve the dispute. If not resolved within 10 business days a party may deliver a written notice to the other party requiring arbitration. Arbitration will be a single arbitrator to be mutually selected by both parties. The single arbitrator shall be an independent individual with expertise in the Ontario electricity market and shall be mutually agreed between the parties within 10 further business days after delivery of the arbitration notice. If the parties cannot agree on such individual within such period either party may apply to an Ontario Superior Court judge for the determination and appointment of a single arbitrator with such expertise and independence. Any dispute will be resolved by binding arbitration and shall not be subject to appeal or to any application or claim brought in any court. Arbitration will be by a single arbitrator pursuant to the *Arbitration Act*, 1991 (Ontario). Costs will be decided by the arbitrator. All payment obligations hereunder in respect of undisputed amounts will continue without holdback or setoff during any dispute resolution process.
21. Each party agrees to execute and deliver all such further documents, instruments and agreements and to do all such further things as may reasonably be requested from time to time, without delay, to give full force and effect to the provisions of this Agreement.
22. Notwithstanding any termination or expiry of this Agreement, the provisions of sections 7, 8, 15, 16, 18, 20 and 21, and any other section that by its terms is intended to survive termination or expiry of this Agreement, shall survive the termination or expiry of this Agreement.
23. This Agreement and the rights and obligations under this Agreement are binding upon and shall enure to the benefit of Essex Energy and the Host and their respective successors and permitted assigns.

24. This Agreement may be executed in counterparts and signatures may be exchanged by digital or facsimile means of transmission, and when taken together shall constitute one and the same agreement.
25. In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders. A reference to a statute includes all regulations and rules made pursuant to the statute and unless otherwise specified, the provisions of any statute, regulation or rule which amends, supplements or supersedes any such statute, regulation or rule.
26. In addition to terms defined elsewhere herein, in this Agreement the following terms shall have the meanings ascribed thereto:

Applicable Laws means:

- (a) applicable federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, resource optimization criteria, regulations and statutes;
- (b) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
- (c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority;
- (d) any requirements under or prescribed by applicable common law;
- (e) the Retail Settlement Code, the Distribution System Code, the Transmission System Code and any other codes issued by the OEB; and
- (f) the Market Rules, as well as any manuals or interpretation bulletins issued by the IESO from time to time that are binding on the Supplier.

Effective Date has the meaning ascribed thereto on the cover page hereof.

Equipment has the meaning ascribed thereto in section 1.

Good Engineering and Operating Practice means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building, and operation of generating facilities of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement by a prudent generator of electricity in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Applicable Laws. Good Engineering and Operation Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry.

Governmental Authority means the Crown, any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the IESO, the Ontario Energy Board, the ESA, and any person acting under the authority of any Governmental Authority.

ESA has the meaning ascribed thereto in section 5(a).

IESO means the Independent Electricity System Essex Energy of Ontario established under Part II of the *Electricity Act* or its successor.

including means including without limitation.

Market Rules means the rules made under Section 32 of the *Electricity Act*, together with all market manuals, policies, and guidelines issued by the IESO, as may be amended from time to time.

Site means the lands and premises pertaining to the address listed next to "Site" on the cover page hereof.

CA has the meaning ascribed thereto in section 6.