THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 11-128

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN OPTION TO LICENSE AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND PETERBOROUGH UTILITIES INC.

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

That the Mayor and Clerk be hereby authorized to execute an Option to License Agreement between the Corporation of the City of Peterborough and the Peterborough Utilities Inc. in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 3rd day of October, 2011.

(Sgd.) Daryl Bennett, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk
OPTION TO LICENSE AGREEMENT

(City of Peterborough Buildings Rooftop Solar Power Generation Project)

THIS AGREEMENT made effective the ___ day of October, 2011,

BETWEEN:

THE CORPORATION OF THE CITY OF PETERBOROUGH

(herein collectively referred to as “City”)

- and -

PETERBOROUGH UTILITIES INC.

(herein referred to as “PUI”)

WHEREAS City and PUI have agreed that PUI shall have the right and option to acquire and license from City a location on the rooftop and appurtenant land of City’s building known as the Kinsmen Civic Centre located at 1 Kinsmen Way in Peterborough, Ontario for PUI’s solar power generation facilities upon the terms provided herein.

AND WHEREAS the City is the sole shareholder of the City of Peterborough Holdings Inc. (“COPHI”) and whereas PUI is a wholly owned subsidiary corporation of COPHI and the parties agree that this agreement does not conflict with any of the requirements of the Shareholder Direction entered into by the City and COPHI on 8 February 2010.

NOW THEREFORE, in consideration of the premises hereto, the covenants and agreements herein and other good and valuable consideration, the receipt and sufficiency of such consideration being hereby acknowledged by each of City and PUI to the other, City and PUI hereby covenant and agree as follows:

1. Definitions

In this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words, terms and expressions shall have the following meanings:

“Agreement” means this agreement and includes all Schedules to this agreement.
“Business Day” means a day other than a Saturday, Sunday or statutory or civic holiday in the Province of Ontario or any other day when Peterborough City Hall is closed to the public.

“City Building” means the building owned by City located at 1 Kinsmen Way in Peterborough, Ontario and also known as the Kinsmen Civic Centre.

“Dispute Resolution Provisions” means the provisions of Section 10 hereof.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility or solar power generation industry, as the case may be, in North America during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in the light of facts known at the time a decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods and acts generally accepted in North America.

“License” means the License Agreement constituted subject to the provisions hereof between City and PUI relative the rooftop and appurtenant land of the City Building that is the result of the exercise by PUI of the Option in a manner satisfying the requirements of this Agreement in such regards.

“Notice of Exercise” means a written notice to City of the exercise of the Option by PUI.

“Option” means the option granted by City to PUI under this Agreement.

“Option Exercise Period” means the time from and including the date of this Agreement to and including the 1st day of September, 2013.

“Solar Power Facility” means the solar power generation facility to be installed by PUI on the rooftop and appurtenant land of the City Building that is identified in the Notice of Exercise relating to the particular City Building or, if necessary, determined and settled pursuant to the Dispute Resolution Provisions in accordance with Section 5 of this Agreement.

2. **Option**

City hereby grants to PUI an irrevocable, exclusive and unconditional option to license the rooftop and appurtenant land of the City Building from City upon the terms and conditions and for the purposes provided for in this Agreement.
3. **Time of Exercise**

    The Option may be exercised by PUI at any time prior to, but not after, the expiry of
    the Option Exercise Period.

4. **Manner of Exercise**

    The Option may be exercised by PUI giving City a Notice of Exercise. It shall be
effective and sufficient delivery of the Notice of Exercise to City for the Notice of Exercise
to be delivered by PUI to:

    Ms. Nancy Wright-Laking
    City Clerk
    City of Peterborough
    500 George St. N.
    Peterborough, ON   K9H 3R9

    Tel: 705-742-7777 Ext. 1816
    Fax: 705-742-4138
    Email: clerks@peterborough.ca

5. **Nature, Generation Capacity and Location on Rooftop of Solar Power Facility**

    (i) Prior to exercising the Option, PUI shall liaise with City staff as regards the
    location, nature and generation capacity of PUI’s Solar Power Facility to be located on the
    rooftop and appurtenant land of the City Building and endeavor to reach agreement in
    such regards. If PUI exercises the Option PUI shall have satisfied itself: (i) that the
    rooftop at the City Building and appurtenant land is suitable for the installation of a Solar
    Power Facility; and (ii) that it is feasible to operate a Solar Power Facility from the City
    Building; and (iii) as to the location of the Solar Power Facility on the rooftop and
    appurtenant land of the City Building.

    (ii) The Notice of Exercise shall identify: (1) the nature and generation capacity
    (not to exceed 500 Kilowatts) of the Solar Power Facility to be installed on the rooftop and
    appurtenant land of the City Building; and (2) the location of the Solar Power Facility on
    the rooftop and appurtenant land of the City Building. In the event there is any
    disagreement concerning the nature, location or the generation capacity of the Solar
    Power Facility proposed for the rooftop and appurtenant land of the City Building, such
    disagreement shall be determined and settled pursuant to the Dispute Resolution
    Provisions.

6. **Effect of Exercise of Option**

    In the event that PUI exercises the Option within the time and in the manner
    herein stipulated therefor, then there shall be constituted thereby a firm and binding
    License between City and PUI for a license by City to PUI of the rooftop and appurtenant
land of the City Building subject to the provisions hereof.

7. **Terms of License**

   The terms of the License shall be as agreed by City and PUI or, failing such agreement, settled pursuant to the Dispute Resolution Provisions. The terms of the License shall include:

   (i) **Term**: the term of the License shall be for the full length of the Feed-In-Tariff Contract (the “FIT Contract”) that PUI has with Ontario Power Authority in relation to the Solar Power Facility to be located on the rooftop and appurtenant land of the City Building and for so long thereafter as PUI determines that operation of the Solar Power Facility is economic;

   (ii) **License Payment**: the amount of the annual payment payable by PUI to City shall be fair market value in Peterborough, Ontario after all relevant factors are considered;

   (iii) **Purpose of License**: PUI may use the rooftop and appurtenant land of the City Building for any and all purposes and uses as may be necessary, useful or desirable in accordance with Good Industry Practice in connection with all operations related to the generation of electricity from solar panels installed on such rooftop and transmission of such electricity for use or sale. Without restricting howsoever the generality of the foregoing, these purposes and uses include the right to enter upon, use and occupy the rooftop and appurtenant land in order to survey, build, construct, operate, maintain, inspect, control, alter, improve, reconstruct, replace, repair and remove the Solar Power Facility and all equipment and appurtenances thereto (including but not restricted to bases, racks, solar panels, inverters, transformers, electrical cables and telecommunications cables), all of which, notwithstanding any rule of law or equity, shall at all times remain chattels and the property of PUI even though attached to the City Building. Solar panels shall not be installed on the land appurtenant to the City Building; and

   (iv) **General**: the terms of the License shall be commercial and competitive in the Peterborough, Ontario market, after all relevant factors are considered.

8. **Non-Exercise**

   Upon the expiry of the Option Exercise Period, the Option shall lapse, expire and terminate and be no longer exercisable by PUI.

9. **No Obligation to Exercise**

   Nothing contained in this Agreement shall obligate PUI to exercise the Option.
10. **Dispute Resolution**

(i) **Disagreements:** Should there be any disagreement between City and PUI (each a “Party”) of any kind arise at any time with respect to:

1. the nature and generation capacity of the Solar Power Facility to be installed on the City Building;
2. the location of the Solar Power Facility on the rooftop and appurtenant land of the City Building;
3. the terms of the License; or
4. the interpretation or application of this Agreement or the carrying out by a Party of its obligations hereunder,

each of the Parties agrees, upon receipt of a written request from another Party, to negotiate reasonably and in good faith in a *bona fide* attempt to resolve the disagreement. If negotiation does not resolve the disagreement within ten (10) Business Days of the Notice aforesaid, then the most senior officer of each of the Parties shall, after a ten (10) Business Day cooling-off period, meet and endeavor reasonably and in good faith to resolve the disagreement. If the senior officers of the Parties have not resolved the disagreement within the ten (10) Business Day period following the cooling-off period, then any Party may, by written notice to all other Parties, refer the disagreement to mediation and failing a mediated settlement being achieved within thirty (30) days then to binding arbitration pursuant to the Ontario *Arbitration Act, 1991* and the regulations thereunder. Within ten (10) Business Days of giving of such notice of arbitration, the Parties shall jointly select a single arbitrator who shall be independent of and acceptable to each of the Parties and qualified by education, experience and/or training to pass judgment upon the disagreement. In the event that the Parties are unable to agree upon an arbitrator within such ten (10) Business Day period, the arbitrator shall be selected by a Justice of the Ontario Superior Court of Justice upon application by either Party.

(ii) **Interest, Fees and Expenses:** The arbitrator may award interest on any award. The arbitrator may award costs, including the costs of the arbitrator, to either Party. In the absence of any award of costs by the arbitrator, each of the Parties shall bear its own costs of any arbitration and the fees and expenses of the arbitrator shall be split between, and borne equally by, the Parties.

(iii) **Procedures:** The terms under which any arbitrator is engaged shall require the arbitrator to hear all questions in dispute within twenty (20) Business Days after appointment and, subject to any reasonable delay due to
unforeseen circumstances, to render a decision within ten (10) Business Days after the hearing. In the event that the arbitrator fails to make a decision within such period, then either Party may have a new arbitrator chosen as provided herein, as if none had previously been selected. The arbitrator shall fix the procedures for the arbitration, which may include an oral hearing. The arbitrator shall be strictly bound by legal principles and the provisions and nature of this Agreement in rendering his or her decision.

(iv) **Private Arbitration:** The arbitration shall be completely private (subject to the regulatory requirements of any Party or its Affiliates [having the meaning given thereto by the Ontario *Business Corporations Act* as a public or regulated company) and shall take place in Peterborough, Ontario unless the Parties agree otherwise.

(v) **Arbitration Binding:** The Parties agree that all negotiations and arbitrations shall all be without recourse to the courts. Further, the Parties agree that the award of an arbitrator shall be final, binding and non-appealable by either Party, except that:

1. either Party may appeal an arbitration award to the courts of the Province of Ontario on a question of law; and

2. either Party may apply to the Courts of the Province of Ontario for an interim protection order which shall terminate upon the award of the arbitrator with respect to the matter in respect of which an interim protection order was awarded.

11. **Miscellaneous**

**Time of Essence:** Time shall be material and of the essence of this Agreement and of the performance of this Agreement. **Ontario Laws:** This Agreement shall be subject to, governed by and interpreted in accordance with the laws in effect in the Province of Ontario. **Entire Agreement:** The entire agreement and understanding between City and PUI for the Option and the License comprises this Agreement. **Prior Agreements:** This Agreement supersedes and replaces entirely all prior agreements, understandings, proposals, quotes, warranties representations and the like between City and PUI, whether written or oral and whether legally enforceable or not, relative to the matters provided for in this Agreement. **No Collateral Agreements:** There are no collateral agreements, representations, warranties, inducements or other entitlements relating to the transaction provided for in this Agreement. **Amendments, Changes, Waivers:** This Agreement may only be amended or changed by a written agreement signed by each of City and PUI. Waivers, in order to be effective, must be in writing and signed by the waiving party. A waiver only affects the matter identified in the waiver and does not extend to any other matter. Failure to enforce any provision of this Agreement shall not be a waiver of such provision. Failure to exercise, or to fully exercise, any right under this Agreement shall not preclude any other or future exercise of that right or of any other right. **No Representations:** There are no representations or warranties made by City or PUI except
for those expressly set forth herein. **No Third Party Beneficiaries:** The provisions of this Agreement are for the sole and exclusive benefit of City and PUI and nothing in this Agreement shall confer upon anyone else any benefit, right, remedy, title or claim. **Relationship of Parties:** City and PUI are independent contractors whose relationship is defined in and limited by the provisions of this Agreement. Neither any provision of nor any action pursuant to this Agreement shall or shall be deemed to constitute City and PUI as partners, principal and agent, employer and employee, agents, joint venturers or fiduciary. Neither City nor PUI shall have the power to represent, bind or obligate the other. **Notices:** Subject to the provisions of Section 4 of this Agreement, all notices, requests, waivers, consents and other communications which may be required or permitted hereunder shall be in writing and delivered by hand or by courier or sent by telecopier, e-mail or other electronic transmission to the address for City or PUI provided after their respective execution hereof, and shall be effective as of the date received. **Further Assurances:** Each of City and PUI shall, at its own cost and expense, from time to time and without further consideration except as expressly provided in this Agreement, execute or cause to be executed all documents and shall take all actions which are reasonably necessary or desirable to give effect to the provisions of this Agreement. **Language of Agreement:** The Parties have expressly agreed that this Agreement be drawn in the English language. Les parties aux presentes ont expressement convenu que le present contrat soit redige en anglais.

[The remainder of this page is blank.]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered on the date first above written by the signature of their proper representatives duly authorized in that regard.

PETERBOROUGH UTILITIES INC.  

By: _________________________
Name: John Stephenson
Title: President & CEO

By: _________________________
Name: John Wynsma
Title: Vice President

We have the authority to, and do hereby, bind the PUI.

Address for notices:
1867 Ashburnham Drive
P.O. Box 4125, Station Main
Peterborough, Ontario K9J 6Z5
Attention: President

E-Mail Address:
jstephenson@peterboroughutilites.ca

THE CORPORATION OF THE CITY OF PETERBOROUGH

By: _________________________
Name: Darryl Bennett
Title: Mayor

By: _________________________
Name: Nancy Wright-Laking
Title: City Clerk

We have the authority to, and do hereby, bind City.

Address for notices:
City of Peterborough
500 George St. N.
Peterborough, ON K9H 3R9
Attention: City Clerk

E-Mail Address:
clerks@peterborough.ca
THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 12-148

BEING A BY-LAW TO AMEND BY-LAW 11-128 TO CHANGE THE NAME FROM PETERBOROUGH UTILITIES INC. TO PETERBOROUGH SOLAR LP BY ITS GENERAL PARTNER, PETERBOROUGH UTILITIES SOLAR INC.

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

That the name identified in By-law 11-128, namely Peterborough Utilities Inc., be amended to read Peterborough Solar LP by its general partner, Peterborough Utilities Solar Inc.

By-law read a first, second and third time this 1st day of October, 2012.

(Sgd.) Daryl Bennett, Mayor

(Sgd.) John Kennedy, City Clerk