BY-LAW NUMBER 12-171

BEING A BY-LAW TO AUTHORIZE THE MAYOR AND CLERK TO EXECUTE A MUNICIPAL COUNCIL RESOLUTION LETTER ON BEHALF OF COUNCIL FOR A BIO-GAS TO ENERGY FEED-IN-TARIFF APPLICATION FOR THE WASTE WATER TREATMENT PLANT AND BEING A BY-LAW TO AUTHORIZE THE MAYOR AND CLERK, IF THE FEED-IN-TARIFF APPLICATION IS SUCCESSFUL, TO ENTER INTO AN AGREEMENT WITH PETERBOROUGH UTILITIES INC. FOR THE PROVISION OF BIO-GAS TO ENERGY PROJECT AT THE WASTE WATER TREATMENT PLANT

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be hereby authorized to execute a municipal council resolution letter, in the form attached hereby as Schedule “A”, on behalf of council for a bio-gas to energy feed-in-tariff application for the Waste Water Treatment Plant;

2. That the Mayor and Clerk be hereby authorized to execute an agreement between the Corporation of the City of Peterborough and Peterborough Utilities Inc., in the form attached hereby as Schedule “B”, for the provision of bio-gas to energy project at the Waste Water Treatment Plant with such agreement to detail the costs (capital and operating) and revenues and that the agreement meet with the approval of the City Solicitor and the CAO.

By-law read a first, second and third time this 10th day of December, 2012.

(Sgd.) Daryl Bennett, Mayor

(Sgd.) John Kennedy, City Clerk
Capitalized terms not defined herein have the meanings ascribed thereto in the FIT Rules, Version 2.0.

Resolution NO: By-law No. 12-171
Date: 10-Dec-12

WHEREAS Peterborough Utilities Inc. (the “Applicant”) proposes to construct and operate a bioenergy (bio-gas) plant on 425 Kennedy Road, Peterborough, Ontario (the "Lands") in the City of Peterborough under the Province's FIT Program;

AND WHEREAS the Applicant has requested that Council of the City of Peterborough indicate by resolution Council's support for the construction and operation of the Project on the Property;

AND WHEREAS, pursuant to the rules governing the FIT Program (the "FIT Rules"), Applications whose Projects receive the formal support of Local Municipalities will be awarded Priority Points, which may result in the Applicant being offered a FIT Contract prior to other persons applying for FIT Contracts;

NOW THEREFORE BE IT RESOLVED THAT:

Council of the City of Peterborough supports the construction and operation of the Project on the Lands.

This resolution's sole purpose is to enable the Applicant to receive Priority Points under the FIT Program and may not be used for the purpose of any other form of municipal approval in relation to the Application or Project or any other purpose.

(Note: signature lines for councilors or other representatives, as appropriate)

FIT reference number: ____________________________
(Note: Must be inserted by Applicant to complete Application)
OPTION AGREEMENT FOR ACQUISITION OF PROJECT SITE

(City of Peterborough Kennedy Road Wastewater Treatment Facilities – Biogas Power Generation Project)

THIS AGREEMENT made effective the 12th day of December, 2012,

BETWEEN:

THE CORPORATION OF THE CITY OF PETERBOROUGH

(herein referred to as “Grantor”)

- and -

PETERBOROUGH UTILITIES INC.

(herein referred to as “Grantee”)

WHEREAS Grantor and Grantee have agreed that Grantee shall have the right and option to acquire from Grantor a site at Grantor’s Kennedy Road Wastewater Treatment Facilities in the City of Peterborough, Ontario for Grantee’s biogas power generation project upon the terms provided herein; and

WHEREAS Grantor is the sole shareholder of City of Peterborough Holdings Inc. (“COPHI”) and Grantee is a wholly owned subsidiary corporation of COPHI; and Grantor and Grantee agree that this agreement does not conflict with any of the requirements of the Shareholder Direction entered into by the City and COPHI on February 8, 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 Grantor and Grantee to the other, Grantor and Grantee 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.
“Biogas Power Facility” means the biogas power generation facility to be installed by Grantee in the Demised Premises having particulars as hereafter determined by Grantee which shall not, however, exceed a generation capacity of 500 kiloWatts in any event.

“Building” means the building that is owned by Grantor and is located on the City Lands and so identified in Schedule A hereto.

“Business Day” means a day other than a Saturday, Sunday or statutory or civic holiday in the Province of Ontario.

“City Lands” means the lands so identified in Schedule A hereto.

“Demised Premises” means:

(i) a lease of that portion of the City Lands upon and in which Grantee may install facilities that are part of the Biogas Power Facility (the “Lands Lease”);

(ii) a lease of that portion of the Building in and on which Grantee may install facilities that are part of the Biogas Power Facility (the “Building Space Lease”); and

(iii) easements and other rights upon, in and over the City Lands for those facilities that are part of the Biogas Power Facility that are routed across the City Lands (collectively, if more than one, the “Easement Agreement”),

all as selected by Grantee and identified in the Notice of Exercise or, if necessary, determined and settled pursuant to the Dispute Resolution Provisions in accordance with Section 5 of this Agreement.

“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 biogas 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.

“Normal Operation of the WWTP” means the operation of Grantor’s Kennedy Road Wastewater Treatment Facilities in accordance with: (i) applicable law (including but not limited to, its Certificate of Approval); and (ii) the policies, procedures and standards of Grantor, at the particular time.
“Notice of Exercise” means a written notice to Grantor of the exercise of the Option by Grantee.

“Option” means the option granted by Grantor to Grantee under this Agreement.

“Option Exercise Period” means the time period from and including the date of this Agreement to and including the date which is two years from the date of this Agreement and which Grantee may extend for an additional one year period by written notice given to Grantor within the two year period aforesaid.

2. **Option**

   Grantor hereby grants to Grantee an irrevocable and exclusive option to acquire the Demised Premises from Grantor upon the terms and conditions provided for in this Agreement.

3. **Time of Exercise**

   The Option may be exercised by Grantee 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 Grantee giving Grantor a Notice of Exercise. It shall be effective and sufficient delivery of the Notice of Exercise to Grantor for the Notice of Exercise to be delivered by Grantee to the City Clerk at the offices of Grantor located at 500 George Street North in Peterborough, Ontario or sent to the City Clerk by either fax to (705) 742-4138 or e-mail to clerks@peterborough.ca.

5. **Particulars of Demised Premises**

   (i) Grantor and Grantee agree that the size, configuration, location and routes of the Demised Premises shall be sufficient to accommodate the Biogas Power Facility. Further, Grantor and Grantee agree that the Demised Premises shall be located at the most practicable site in, on and over the City Lands and in and on the Building for the operation of the Biogas Power Facility. Grantor’s preference is for the electricity generator that is part of the Biogas Power Facility to be located in the Building at the site of the existing boilers (which, in such case, will be removed). Grantee estimates, and Grantor accepts, that approximately one-quarter of an acre of the City Lands and 2,500 square feet in the Building will be needed for the purposes of the Biogas Power Facility.

   (ii) Prior to exercising the Option, Grantee shall liaise with the staff of Grantor as regards: (1) the size, configuration, location and routes of the Demised Premises; and (2) the location, nature and generation capacity of the Biogas Power Facility and endeavor to reach agreement in such regards. If Grantee exercises the Option, Grantee shall have satisfied itself: (a) that the space within the Building and on the City Lands is suitable for the Biogas Power Facility; and (b) that it is feasible to operate a Biogas Power Facility from the Building and City Lands; and
(c) as to the location of the Biogas Power Facility within the Building and on the City Lands.

(iii) The Notice of Exercise shall identify: (i) the nature and generation capacity of the Biogas Power Facility; and (ii) the size, configuration, location and routes of the Demised Premises in, on and over the City Lands and in and on the Building in the Notice of Exercise. In the event that Grantor disagrees with the nature and generation capacity of the Biogas Power Facility or with the size, configuration, location and/or routes of the Demised Premises in, on and/or over the City Lands and/or in and/or on the Building identified in the Notice of Exercise, the disagreement, and consequently the nature and generation capacity of the Biogas Power Facility and the size, configuration, location and routes of the Demised Premises in, on and over the City Lands and in and on the Building, shall be determined and settled pursuant to the Dispute Resolution Provisions.

6. **Effect of Exercise of Option**

In the event that Grantee exercises the option within the time and in the manner herein stipulated therefor, then there shall be constituted thereby a firm and binding Lands Lease, Building Space Lease and Easement Agreement between Grantor and Grantee for the acquisition of the Demised Premises by Grantee from Grantor subject to the provisions hereof.

7. **Terms of Agreements**

The terms of the Lands Lease, Building Space Lease and Easement Agreement shall be as agreed Grantor and Grantee or, failing such agreement, settled pursuant to the Dispute Resolution Provisions. The terms of the Lands Lease, Building Space Lease and Easement Agreement shall include:

(i) **Term:** The term of the Lands Lease, Building Space Lease and Easement Agreement shall be for the full length of the Feed-In-Tariff Contract (the "**FIT Contract**") that Grantee has with Ontario Power Authority in relation to the Biogas Power Facility and for so long thereafter as Grantee determines that operation of the Biogas Power Facility is economic and Grantor determines that the installation and operation of the Biogas Power Facility is not interfering with the Normal Operation of the WWTP;

(ii) **Payment:** the amount payable by Grantee to Grantor under each of the Lands Lease, Building Space Lease and Easement Agreement shall be fair market value in the locale of the Demised Property (as defined in Section 7(iii) hereof) after all relevant factors are considered;

(iii) **Purpose of Use:** Grantee may use the property and rights subject to the Lands Lease, Building Space Lease and Easement Agreement (collectively, the "**Demised Property**") for any and all purposes and uses as may be necessary, useful or desirable in accordance with Good Utility Practice in connection with all operations related to the generation of electricity using biogas powered generation facilities installed on the Demised Property 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 Demised Property in
order to survey, construct, operate, maintain, inspect, control, alter, improve, reconstruct, replace, repair and remove the Biogas Power Facility and all equipment and appurtenances thereto (including, but not restricted to, foundations, transformers, all surface, overhead and underground 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 Grantee even though attached to the Building and/or City Lands; and

(iv) **General:** the terms of the Lands Lease, Building Space Lease and Easement Agreement shall be commercial and competitive in the locale of the Demised Property, after all relevant factors are considered.

8. **Non-Exercise**

In the event that the Option is not exercised within the Option Exercise Period, then the Option shall lapse, expire and terminate and be no longer exercisable by Grantee.

9. **No Obligation to Exercise**

Nothing contained in this Agreement shall obligate Grantee to exercise the Option.

10. **Dispute Resolution**

(i) **Disagreements:** Should there be any disagreement or lack of agreement between Grantor and Grantee (each a "**Party**") of any kind arise at any time with respect to:

(1) any matter for which this Agreement provides for determination, settlement or resolution pursuant to these Dispute Resolution Provisions in the event of a disagreement or lack of agreement between Grantor or Grantee; or

(2) 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 the other 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 either Party may, by written notice to the other Party, refer the disagreement 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 any Party involved in the arbitration 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 either 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 Grantor and Grantee for the acquisition by Grantee from Grantor of the Demised Premises comprises this Agreement. **Prior Agreements:** This Agreement supersedes and replaces entirely all prior agreements, understandings, proposals, quotes, warranties representations and the like between Grantor and Grantee, 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:** This Agreement may only be amended or changed by a written agreement signed by each of Grantor and Grantee. **Waivers:** 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 Grantor or Grantee except for those expressly set forth herein. **No Third Party Beneficiaries:** The provisions of this Agreement are for the sole and exclusive benefit of Grantor and Grantee and nothing in this Agreement shall confer upon anyone else any benefit, right, remedy, title or claim. **Relationship of Parties:** Grantor and Grantee 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 Grantor and Grantee as partners, principal and agent, employee and employee, agents, joint venturers or fiduciary. Neither Grantor nor Grantee 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 Grantor or Grantee provided after their respective execution hereof, and shall be effective as of the date received. **Further Assurances:** Each of Grantor and Grantee 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 reminder 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: ____________________________
    JoIn Wynsma,
    Vice President, Generation & Retail Services

I have the authority to, and do hereby, bind the corporation.

Address for notices:
2245 Keene Road
P.O. Box 4125, Station Main
Peterborough, Ontario L9J 6Z5

Attention: Vice President, Generation & Retail Services

E-Mail Address:
jwynsma@pui.ca

THE CORPORATION OF THE CITY OF PETERBOROUGH

By: ____________________________
    Daryl Bennett,
    Mayor

By: ____________________________
    Name: John Kennedy
    Title: City Clerk
We have the authority to, and do hereby, bind the City.

Address for notices:
500 George Street North
Peterborough, Ontario
K9H 3R9.

E-Mail Address:
clerks@peterborough.ca
Schedule A to an Option to Lease Agreement made the 12th day of December, 2012 amongst The Corporation of the City of Peterborough and Peterborough Utilities Inc. with respect to the Site for a Biogas Power Facility to be located at the Kennedy Road Wastewater Treatment Facilities in Peterborough, Ontario.

The “Building” is the building having the municipal address of 425 Kennedy Road, Peterborough, Ontario  K9J 6X7

The “City Lands” comprise:

Municipal address: 425 Kennedy Road, Peterborough, Ontario  K9J 6X7

Legal description: 1stly: PART LOT 25, CONCESSION 14 (TWP OF OTONABEE), AS IN S9472 LYING WEST OF PART 1 ON 45R741 EXCEPT R99703; PETERBOROUGH Being all of the PIN 28075-0002(LT)

2ndly: PART LOT 25, CONCESSION 14 (TWP OF OTONABEE), PART 1 ON 45R741; PETERBOROUGH Being all of the PIN 28075-0003(LT)

3rdly: PART LOT 25, CONCESSION 14 (TWP OF OTONABEE), AS IN S9472 LYING EAST OF PART 1 ON 45R741 EXCEPT R99703; LOTS 10 & 11, PLAN 27S, (TWP OF OTONABEE); LOTS 29, 30, 31, 32, 33, 34, 35, 36 & 37, PLAN 23S, (TWP OF OTONABEE); PETERBOROUGH Being all of the PIN 28075-0004(LT)

comprising 32.9 acres more or less.

Attachments: REFERENCE PLAN 45R741 PROPERTY INDEX MAP - BLOCK 28075 PARCEL REGISTERS 28075-0002(LT), 28075-0003(LT) and 28075-0004(LT)
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<td>123 Main St</td>
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<td><a href="mailto:john.doe@example.com">john.doe@example.com</a></td>
<td>Example.com</td>
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**Notes:**
- Contact person: Jane Smith
- Phone: 555-5678
- Email: jane.smith@example.com
- Website: Example2.com

**Location:**
- Address: 456 Market St
- Phone: 555-9876
- Email: jane.smith@example.com
- Website: Example2.com

**Property:**
- Address: 789 City St
- Phone: 555-4321
- Email: john.doe@example.com
- Website: Example.com
## The Corporation of the City of [Insert Name]

### ORARIO OF NAME-MEMBERSHIP GROUP

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- This document is for informational purposes only and should not be used as legal advice.
- Please consult with a qualified professional before making any changes or decisions based on this document.

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**For further assistance, please contact:**
ServiceOntario

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**Contact Information:**
- Telephone: [Insert Phone Number]
- Address: [Insert Address]

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- This document is subject to change without notice.

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