

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 09-026

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF TWO AGREEMENTS BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH, THE CORPORATION OF THE COUNTY OF PETERBOROUGH AND PETERBOROUGH UTILITIES INC. FOR A LEASE AGREEMENT AND A OPERATIONS AGREEMENT FOR LANDFILL GAS UTILIZATION

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 two agreements between the Corporation of the City of Peterborough, the Corporation of the County of Peterborough, and Peterborough Utilities Inc. in the forms attached hereby as Schedule "A" and Schedule "B", and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 23rd day of March 2009.

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

SCHEDULE "A"

LEASE AGREEMENT

(Peterborough City/County Waste Management Facility)

THIS AGREEMENT made effective the ___ day of _____, 2009,

BETWEEN:

THE CORPORATION OF THE CITY OF PETERBOROUGH

- and -

THE CORPORATION OF THE COUNTY OF PETERBOROUGH

(herein collectively referred to as the "**Lessor**")

- and -

PETERBOROUGH UTILITIES INC.

(herein referred to as the "**Lessee**")

WHEREAS the Lessor is the registered owner of the lands identified in Schedule A hereto (the "**Lands**"); and

WHEREAS pursuant to a Generation Facility Ownership and Operation Agreement (such Generation Facility Ownership and Operation Agreement, including any and all amendments thereto, being herein referred to as the "**Operating Agreement**") amongst the Lessee and the Lessor dated _____, 2009, the Lessor has agreed to lease to the Lessee that portion of the Lands identified in Schedule B hereto (the "**Leased Lands**") for the purposes identified in the Operating Agreement and upon the terms and conditions provided for in the Operating Agreement and herein.

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 the Lessor and the Lessee to the other, the Lessor and the Lessee hereby covenant and agree as follows:

1. Grant and Purposes of Lease

The Lessor, for and in consideration of the Valuable Consideration (as defined herein), hereby leases to the Lessee all and singular those parts of the lands comprising the Leased Lands, to be held and enjoyed exclusively by the Lessee as tenant for a term (the "Term") concurrent with the term of the Operating Agreement, for any and all purposes and uses as may be necessary or useful in accordance with Good Industry Practice (as defined in the Operating Agreement) in connection with all operations related to the generation of electricity from landfill gas produced from the Lands and transmission of such electricity for use or sale. Without restricting howsoever the generality of the foregoing, these purposes and uses include the right, license, liberty and privilege to enter upon, use and occupy the Leased Lands in order to survey, construct, operate, maintain, inspect, control, alter, improve, reconstruct, replace, repair and remove the Lessee's "Gas Utilization System" (as defined in the Operating Agreement) and all equipment and appurtenances thereto (including but not restricted to foundations, all surface,

overhead and underground electrical cables, pipes and telecommunications cables), all of which, notwithstanding any rule of law or equity, shall at all times remain chattels and the property of the Lessee even though attached to the Leased Lands.

2. Consideration for Grant and Annual Rentals

The “**Valuable Consideration**” received by the Lessor represents payment in full by the Lessee to the Lessor of: (i) the aggregate of the initial consideration and all annual rentals and compensation payable with respect to the lease of the Leased Lands by the Lessor to the Lessee for the Term; and (ii) compensation for market value of rights granted, entry fee, loss of use and severance done or caused to the Leased Lands.

3. Quiet Enjoyment

The Lessor warrants to the Lessee that the Lessor has good title to the Leased Lands, that the Lessor has good right and full power to lease the Leased Lands to the Lessee in manner and for the purposes provided herein and in the Operating Agreement, and that the Lessee, upon observing and performing the covenants and conditions herein and in the Operating Agreement on the Lessee’s part to be observed and performed, shall and may peaceably possess and enjoy the Leased Lands and the rights and privileges hereby granted during the Term without any interruption or disturbance from or by the Lessor or any other person claiming by, through or under the Lessor, subject to the Lessor’s rights to access the Leased Lands: (i) to maintain proper drainage on the Leased Lands and (ii) for any other purposes as more fully set out in the Operating Agreement provided that such access shall not materially or unreasonably interfere with operations by Lessee on the Leased Lands. Lessor further warrants that there are no agreements affecting or encumbrances or other restrictions on the title to the Leased Lands that would prevent or restrict howsoever the Lessee from using the Leased Lands for the uses contemplated and intended by the Operating Agreement and this Agreement.

4. Incorporation of Operating Agreement

This Lease is made pursuant to, subject to and for the purposes of the Operating Agreement, and all terms and conditions of the Operating Agreement are by this reference incorporated herein and made a part hereof. In the event of a conflict between the provisions of the Operating Agreement and this Lease, the provisions of the Operating Agreement shall prevail and govern and the conflicting provisions of this Lease shall be deemed amended to the extent necessary to resolve the conflict.

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.

**THE CORPORATION OF THE CITY OF
PETERBOROUGH**

By: _____
Name: _____
Title: _____

By: _____
Name: Paul Ayotte
Title: Mayor

By: _____
Name: _____
Title: _____

By: _____
Name: Nancy Wright-Laking
Title: Clerk

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

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

**THE CORPORATION OF THE COUNTY
OF PETERBOROUGH**

By: _____
Name: Ronald Gerow
Title: Warden

By: _____
Name: Sally Saunders
Title: Clerk

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

Schedule A to a Lease Agreement made the ____ day of _____, 2009 amongst The Corporation of the City of Peterborough, The Corporation of the County of Peterborough and Peterborough Utilities Inc. with respect to the Site for the Waste Management Facility.

The Lands comprise:

Certificate of Title: _____

Schedule B to a Lease Agreement made the ____ day of _____,
2009 amongst The Corporation of the City of Peterborough, The
Corporation of the County of Peterborough and Peterborough
Utilities Inc. with respect to the Site for the Waste Management
Facility.

To be identified once agreed to.

SCHEDULE "B"
GENERATION FACILITY OWNERSHIP AND OPERATION AGREEMENT

BETWEEN:

THE CORPORATION OF THE CITY OF PETERBOROUGH

-AND -

THE CORPORATION OF THE COUNTY OF PETERBOROUGH

- AND -

PETERBOROUGH UTILITIES INC.

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>NAME</u>	<u>PAGE</u>
1	DEFINITIONS	
2	INTERPRETATION	
3	PROJECT	
4	CONSTRUCTION	
5	TERM	
6	COSTS	
7	REVENUE SHARING	
8	OBLIGATIONS OF PARTIES	
9	REPRESENTATIONS AND WARRANTIES	
10	EXPANSION	
11	DECOMMISSIONING	
12	MEASURING AND REPORTING	
13	INSPECTIONS	
14	WORKPLACE AND WORKER SAFETY	
15	OCCUPATIONAL HEALTH AND SAFETY	
16	INSURANCE	
17	LIABILITY AND INDEMNIFICATION	
18	LIENS	
19	DEFAULT	
20	CONFIDENTIALITY	
21	FORCE MAJEURE	
22	DISPUTE RESOLUTION	
23	NOTICES	
24	GENERAL	

SCHEDULES

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GENERATION FACILITY OWNERSHIP AND OPERATION AGREEMENT

(Peterborough County/City Waste Management Facility)

THIS AGREEMENT made this _____ day of _____, 2009,

AMONGST:

THE CORPORATION OF THE CITY OF PETERBOROUGH

- and -

THE CORPORATION OF THE COUNTY OF PETERBOROUGH

- and -

PETERBOROUGH UTILITIES INC.

WHEREAS PUI, a subsidiary of the City of Peterborough Holdings Inc., carries on the business of generating electricity; and

WHEREAS the City and County, by virtue of section 11(2) of the *Municipal Act, 2001, S.O. 2001, c.25*, as amended, have jurisdiction over waste management; and

WHEREAS the City and PUI entered into a Letter of Intent dated the 31st day of July, 2008 (the "**LOI**") that set out provisions for the development of this Agreement, and this Agreement replaces and supersedes the LOI; and

WHEREAS the Council of the City has approved a Staff Report whereby staff was authorized to develop, jointly with the County, an operating agreement with the PUI; and

WHEREAS the Council of the County has approved a Staff Report whereby staff was authorized to develop, jointly with the City, an operating agreement with the PUI; and

WHEREAS the Parties have agreed that PUI will develop, finance, construct, own and operate an electricity generating facility derived from the burning of landfill gas at the Waste Management Facility which is owned jointly by the City and County and located at 1260 Bensfort Road in the County of Peterborough, Ontario; and

WHEREAS the parties agree that the Project shall operate in accordance with the terms and conditions as set out in this agreement.

NOW THEREFORE, in consideration of the agreements herein expressed and other good and valuable consideration, the receipt and sufficiency of such consideration being acknowledged by each Party to each other Party, the Parties agree as follows:

ARTICLE 1 - DEFINITIONS

1.01 **Definitions:** In this Agreement and in the recitals, schedules and exhibits hereto, 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.

“Applicable Laws” means: (i) all applicable federal, provincial, regional, county, municipal and other governmental laws, statutes and regulations; (ii) all guidelines, ordinances, by-laws, guidelines, policies and codes having the force of law (including official plans, zoning by-laws, development and site plan agreements, building codes and Ontario Energy Board codes); and (iii) and all orders, rulings, decisions, mandates and other requirements whatsoever of courts, regulatory and administrative bodies and other authorities having jurisdiction.

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

“Capital Costs” means all actual capital costs incurred by PUI in accordance with Good Industry Practice or otherwise approved in writing by City/County in respect of the construction, ownership, demobilization and removal of the Gas Utilization System, preparation, maintenance and reclamation of the Gas Utilization System Site and any expansion of the Gas Collection System pursuant to Section 3.07 including the following costs in relation to the Gas Utilization System and any expansion of the Gas Collection System pursuant to Section 3.07:

- (i) feasibility studies;
- (ii) design and engineering;
- (iii) Gas Utilization System Site preparation and access;
- (iv) equipment and systems acquisition, installation and commissioning;
- (v) equipment enclosure building construction;
- (vi) Permits, excluding municipal planning approvals;
- (vii) interconnection of the Gas Utilization System to the local electricity distribution system including the costs (including reasonable legal costs) of preparing a site plan which verifies the placement of the Route;
- (viii) soft costs (being costs incurred prior to Commercial Operation Date that do not result in the acquisition of a tangible asset including internal staff time actually incurred on the Project and legal, accounting and financial advice expenses but excluding costs accounted for under other provisions of this definition);
- (ix) interest on borrowed funds (at the rate borrowed) and return on equity funds (at the Return Rate) utilized prior to Commercial Operations Date, with the intent that borrowed funds will be used to the maximum extent practicable;
- (x) amounts spent pursuant to Sections 3.07, 3.08 and 10.02;
- (xi) capitalized labour expense; and
- (xii) reserves on account of removal of Gas Utilization System and reclamation of the Gas Utilization System Site, adjusted to actual for the purposes of final accounting.

Any Grants received by PUI relating to the Project (including without limitation any such Grants which PUI receives from the City/County) which reduce any of the foregoing costs shall reduce the Capital Costs. Capital Costs shall be accounted for in accordance with generally acceptable accounting principles.

“Certificate of Approval” means Provisional Certificate of Approval for Waste Disposal Site No. A341508, issued by the Ontario Ministry of the Environment, as amended.

“City” means The Corporation of the City of Peterborough, an Ontario municipal corporation.

“City/County” means City and County, collectively.

“Commercial Operation Date” means the date the Gas Utilization System attains commercial operation under the terms of the RESOP Contract.

“Commercially Reasonable Efforts” means all Good Faith efforts which are designed to enable, directly or indirectly, the satisfaction, consummation, completion or achievement of a condition, transaction, activity or undertaking contemplated by this Agreement and which do not require the expenditure of any funds or assumption of any liabilities other than expenditures and liabilities which are reasonable in nature and amount in the context of the purpose of and the activities contemplated by this Agreement.

“County” means The Corporation of the County of Peterborough, an Ontario municipal corporation.

“Contracting Authority” means the agency, corporation or other entity designated by the Ontario Government or the Ministry of Energy to purchase electricity from renewable energy projects in Ontario as provided in the RESOP or other renewable energy procurement program established under the Ontario *Green Energy and Green Economy Act, 2009* and includes the Ontario Power Authority, Ontario Electricity Financial Corporation or the Ontario Ministry of Energy.

“Gas” means any and all gases resulting from the anaerobic decomposition of refuse material deposited in the WMF consisting principally of methane, carbon dioxide and traces of other constituent gases.

“Gas Collection System” means the network of recovery wells and interconnecting underground pipes together with attendant valves, pumps, monitoring devices and other extraction related equipment installed for the purpose of extracting and recovering Gas and other products from the WMF and includes the flares.

“Gas Utilization System” means: (i) facilities having a 2MW nominal capacity which will be located on the Gas Utilization System Site and which will generate electricity using as fuel landfill gas produced by the WMF; (ii) facilities which will deliver electricity generated to the local distribution system; and (iii) structures, equipment or other things used for those purposes, whether or not located within the geographical boundaries of the Waste Management Facility.

“Gas Utilization System Site” or **“GUSS”** means the land, within the geographical boundaries of the Waste Management Facility, that is identified in Schedule “A” hereto as being the site upon which the Gas Utilization System is to be located.

“Good Faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

“Good Industry Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electricity generation and distribution industry or waste management industry, as the case may be, in

Ontario 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 Industry 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 Ontario.

“**Grants**” means grants, credits or other forms of non-repayable financial assistance from federal, provincial or municipal governments or other non-governmental organizations which are made relative to the Project.

“**Lease**” means the lease between PUI and City/County identified in Section 3.09.

“**MOE**” means the Ontario Ministry of the Environment.

“**Notice**” shall have the meaning provided therefor in Section 23.01.

“**OHS Act**” means the Ontario *Occupational Health and Safety Act*.

“**Operating Costs**” means all operating and maintenance costs actually incurred by PUI in accordance with Good Industry Practice in respect of the Gas Utilization System including any such operating and maintenance costs that would have also have been incurred by a prudent operator of like facility and the costs in relation to the Gas Utilization System that are identified or are of the nature set forth below:

- (i) direct operating costs such as labour, Permits fees, capital maintenance costs, legal, audit and electricity distribution charges;
- (ii) equipment and maintenance, inventories, spare parts and building maintenance;
- (iii) additional property taxes triggered by the Project;
- (iv) utilities;
- (v) insurance;
- (vi) amounts spent pursuant to Section 3.04; and
- (vii) reasonable administrative, management and corporate overhead charges (which shall be allocated by PUI on a Project specific basis in accordance with generally accepted accounting principles).

Operating Costs shall be accounted for in accordance with generally acceptable accounting principles.

“**Parties**” means City, County and PUI collectively, and “**Party**” means any one of the Parties individually.

“**Permits**” means permits, approvals, consents, authorizations, certificates, licenses, of every nature and kind whatsoever.

“**Prime Rate**” means the rate of interest, expressed as a rate per annum, which is used by the particular bank identified for the purposes of any provision herein as a reference rate for the purposes of determining rates of interest charged by it on Canadian dollar commercial demand loans made by it in Canada and which is quoted by such bank, from time to time, as its "prime rate".

“Project” means the design, development, financing, construction, commissioning, integration, ownership and operation of the Gas Collection System and the Gas Utilization System.

“Project Schedule” means the milestones for the performance of the Project, attached hereto as Schedule “B”.

“PUI” means Peterborough Utilities Inc., an Ontario Corporation.

“Related Products” means all credits (including carbon credits and emission reduction credits), EcoEnergy payments, grants, ancillary services, environmental attributes and products awarded to PUI in relation to the Gas Utilization System and to and City/County in relation to the Gas Collection System as a result of its association with the Gas Utilization System, as well as other products and services of value attributable to the Gas Utilization System under the RESOP Contract.

“RESOP” means the Renewable Energy Standard Offer Program or other renewable energy procurement program established under the Ontario *Green Energy and Green Economy Act, 2009* for renewable energy projects pursuant to which the Contracting Authority will enter into binding agreements to purchase electricity produced by renewable energy projects.

“RESOP Contract” means the binding agreement to be entered into by and between PUI and the Contracting Authority for the sale and purchase of electricity and Related Products from the Gas Utilization System.

“Return Rate” shall have the meaning given thereto in Section 7.01.

“Route” means the route on which PUI’s infrastructure will transmit electricity from the Gas Utilization System across the Waste Management Facility to the local distribution system.

“Royalty” means payment by PUI to City/County for the delivery of Gas from the Gas Collection System to the intake pipe of the Gas Utilization System.

“Term” shall have the meaning given thereto in Article 5.

“Waste Management Committee” means the joint committee of the City and County that manages the WMF.

“Waste Management Facility” or **“WMF”** means the land and facilities comprising the Waste Management Facility that is owned jointly by the City and County and which is located at 1260 Bensfort Road in the County of Peterborough, Ontario, and includes all expansions thereof and additional refuse cells and fill areas.

“WSI Act” means the Ontario *Workplace Safety and Insurance Act*.

1.02 **Derivations:** Where a word or phrase is defined for the purposes of this Agreement, a derivative of that word or phrase shall have a corresponding meaning.

1.03 **Extended Meanings:** In this Agreement words importing the singular number only include the plural and *vice versa*, words importing any gender include all genders and words importing persons include all legal entities.

1.04 **Industry Terms:** Unless expressly defined herein, words having well known technical or trade meanings within the electricity generation, distribution and transmission industries and within the waste management industry shall be so construed.

ARTICLE 2 - INTERPRETATION

2.01 **Schedules:** The following are Schedules to this Agreement:

Schedule "A"	Waste Management Facility & Gas Utilization System Site
Schedule "B"	Project Schedule
Schedule "C"	Example of Revenue Allocation

All Schedules to this Agreement are incorporated into and as part of this Agreement by this reference as fully as though contained in the body of this Agreement.

2.02 **Schedule References:** References to a Schedule made in this Agreement or in a Schedule to this Agreement shall mean a reference to a Schedule to this Agreement.

2.03 **Interpretation of Agreement and Schedules:** The body of this Agreement and all the Schedules to this Agreement constitute one and the entire understanding between the Parties and, accordingly, the body of this Agreement and all such Schedules shall be interpreted and enforced as though the provisions of such Schedules were set forth in the body of this Agreement prior to the execution page thereof and without giving paramountcy to the provisions of the body of this Agreement or any of the Schedules to this Agreement over the provisions of the other.

2.04 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws applicable in the Province of Ontario and shall be treated in all respects as an Ontario contract.

2.05 **Legislation, Regulations and Rules:** Any reference in this Agreement to all or any part of any statute, regulation or rule shall, unless otherwise expressly stated herein, be a reference to the statute, regulation or rule, or part thereof, as amended from time to time. Reference to a statute includes all regulations, codes, policies, rules and other pronouncements whatsoever made pursuant to the statute.

2.06 **Article, Section, Subsection and Item References:** The division of this Agreement and any Schedule into Articles, Sections and Subsections are for convenience of reference only and shall not affect or be considered to affect the construction or interpretation of the provisions of this Agreement. References in this Agreement and in any Schedule to this Agreement to an Article, Section or Subsection shall mean a reference to an Article, Section or Subsection within the body of this Agreement. References in the Agreement or in any Schedule to an Item without identifying the Section in which the Item is contained shall mean a reference to the Item in the same Section or Subsection where the reference is made.

2.07 **Headings:** The headings of Articles, Sections and Subsections in this Agreement, and in the Schedules to this Agreement and any Table of Contents are inserted for convenience of reference only and shall not affect or be considered to affect the construction or interpretation of the provisions of this Agreement.

2.08 **"Hereof" Etc.:** The terms "hereof", "hereunder", "herein" and similar expressions refer to this Agreement in its entirety and not to any particular Article, Section, Subsection or other portion of the Agreement.

2.09 **Currency of Agreement:** All references in this Agreement to money shall denote the lawful currency of Canada except as may be otherwise expressly stated.

2.10 **Listings:** Listings of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

2.11 Waiver of Contra-Proferentem Rule: Each Party acknowledges and agrees that it has participated in the preparation and drafting of this Agreement and, accordingly, this Agreement shall not be interpreted either more or less favorably in favor of any Party by virtue of the fact that one Party or its counsel has been principally responsible for the preparation or drafting of all or a portion of this Agreement.

2.12 Including: The word “including” when used in this Agreement means “including, without restricting howsoever the generality of the foregoing,”.

2.13 Accounting Principles: Wherever in this Agreement reference is made to a calculation to be made or an action to be taken in accordance with generally accepted accounting principles, such reference will be deemed to be to the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation or action is made or taken or required to be made or taken in accordance with generally accepted accounting principles.

2.14 “Timely”: The word “timely” when used in this Agreement means within the time provided for a particular action by this Agreement and if no such provision is made means as quickly as circumstances reasonably allow taking into consideration, in appropriate circumstances, the time available for a decision required by an entity not controllable by the Parties, or either of them, and allowing a Party a reasonable amount of time to make any decision required of it.

ARTICLE 3 - PROJECT

3.01 Intent and Agreement: This Agreement constitutes a legally binding agreement between the Parties pursuant to which City/County shall supply and PUI shall use Gas from the WMF to generate electricity that PUI shall sell to a Contracting Authority under a RESOP Contract.

3.02 Conditions Precedent: The obligation of each Party to perform its covenants under this Agreement are subject to each Party being satisfied on or before December 31st, 2009 that:

- (i) the total amount of the Capital Costs for PUI to construct the Gas Utilization System and its share of the Gas Collection System are acceptable;
- (ii) the Project has or will be eligible to enter into a RESOP Contract with the Contracting Authority pursuant to the RESOP;
- (iii) the Project has or will be capable of connecting to a local distribution system;
- (iv) there is a Route acceptable to all Parties, acting reasonably; and
- (v) acceptable zoning, site plan and other Permits for the Project have been obtained.

In the event that either Party is not satisfied as to the matters specified in this Section it may by Notice to the other Party received on or before by December 31st, 2009 terminate this Agreement and in such event the Parties shall have no further obligation to each other in respect of the Project.

3.03 City/County Commitment re Gas Collection System: City/County shall construct, test, commission and operate a Gas Collection System within the South Fill Area of the WMF, and at future cells and fill areas of the WMF in accordance with the Project Schedule. Except as otherwise expressly provided for in Section 3.07 and elsewhere herein, all costs whatsoever associated with the construction, maintenance and operation of the Gas Collection System shall be borne by City/County. City/County shall construct, operate and maintain the Gas Collection System, including the flaring of gas

not utilized by PUI in compliance with this Agreement, Applicable Law, Good Industry Practice, the Certificate of Approval and other Permits applicable to the Gas Collection System and as required, in its sole discretion, for odour control, Gas migration control or any other purpose. Maintenance of the Gas Collection System shall include replacement of all elements of the Gas Collection System except where any particular replacement would not be consistent with Good Industry Practice.

3.04 Additional Maintenance: City/County shall keep PUI informed of its plans for maintenance and development of the WMF. In the event that PUI wishes to have the WMF developed or maintained as regards the production of Gas in a manner different from that planned by City/County, then City/County shall give Good Faith consideration to any suggestions in such regards that PUI may make to City/County and, provided that PUI and City/County can agree as to the manner and cost sharing to implement PUI's suggestions, City/County shall implement PUI's suggestions.

3.05 Provision of Gas to Gas Utilization System: City/County shall, at no cost to PUI, deliver to PUI at the Gas Utilization System Site all Gas produced by the WMF throughout the Term. City/County shall use Good Industry Practice to produce and deliver the maximum amount of Gas to PUI from the WMF for the purposes of this Agreement. The Project and this Agreement shall terminate in the event that at any time there becomes, in PUI's sole judgment, an insufficient amount of Gas to warrant the continued operation of the Gas Utilization System and:

- (i) no amount shall be payable by City/County to PUI in the event that the amount of Gas generated by the WMF is insufficient for the requirements of the Gas Utilization System notwithstanding that the WMF may have been operated in the ordinary course and in accordance with Good Industry Practice; or
- (ii) in the event that the insufficient amount of Gas is attributable to the WMF being operated outside the ordinary course or not in accordance with Good Industry Practice or in a manner changed from previous operations which results in reduced amounts of Gas available to the Gas Utilization System, then City/County shall pay PUI the amount of: (i) PUI's unrecovered Capital Cost; (ii) its rate of return (at the rate provided in the definition of "Return on Investment" in Section 7.01) on PUI's unrecovered Capital Costs; and (iii) any breakage fees and similar payments payable by PUI with respect to its financing of the Project.

3.06 PUI Commitment re Gas Utilization System: PUI shall construct, test, commission, operate and maintain a Gas Utilization System at the Gas Utilization System Site in accordance with the Project Schedule. Except as otherwise expressly provided herein, all costs associated with the construction, maintenance and operation of the Gas Utilization System shall be borne by PUI. PUI shall construct, operate and maintain the Gas Utilization System in compliance with this Agreement, Applicable Law, Good Industry Practice and all Permits applicable to the Gas Utilization System.

3.07 Expansion of GCS to Optimize Gas Collection: City/County shall, upon receipt of Notice from PUI requesting and subject to PUI and City/County agreeing as to all technical and timing matters, expand the Gas Collection System so as to optimize the collection of Gas from the WMF and delivery thereof to the Gas Utilization System Site. All costs associated with the construction, testing and commissioning of any expansion of the Gas Collection System undertaken pursuant to this Section that: (i) would not otherwise be required to be undertaken by City/County in order to comply with Applicable Law, Good Industry Practice, the Certificate of Approval and any other Permits relative to the WMF or City/County; and (ii) are not covered by any Grants shall be borne by PUI. City/County shall: (i) own and have all liability related to ownership and operation of all expansions of the Gas Collection System made pursuant to this Section; and (ii) operate and maintain the Gas Collection System, including the flaring of gas not utilized by PUI in compliance with this Agreement, Applicable Law, Good Industry Practice, the Certificate of Approval and other Permits applicable to the Gas Collection System and as required, in its sole discretion, for odour control, Gas migration

control or any other purpose and bear all expense relative to such operation and maintenance.

3.08 Second Flare: In the event that any expansion of the Gas Collection System undertaken pursuant to Section 3.07 necessitates a second flare having to be installed in the WMF, then the cost of such second flare shall constitute part of the Capital Costs for all purposes of Section 3.06 notwithstanding that the second flare will be located somewhere on the WMF other than on the GUSS. Notwithstanding that the cost of the second flare shall constitute part of the Capital Costs, the second flare shall be owned by City/County and City/County shall have all liability relative to the operation and ownership thereof with the exception of any liability relating to PUI's negligent construction of such second flare.

3.09 Rights, Lease and Route: City/County hereby grants or shall cause to be granted to PUI, at no charge to PUI, upon and subject to the terms, covenants, limitations and provisions of this Agreement, the rights:

- (i) to construct, operate and maintain a Gas Utilization System on the Gas Utilization System Site;
- (ii) of ownership of Gas at the point that Gas enters the Gas Utilization System at its intake pipe other than such Gas which requires flaring at the end of the Gas Utilization System; and
- (iii) to install overhead wires over and other facilities on and in the GUSS and on and in the WMF in the Route area.

Prior to the commencement of construction of the Gas Utilization System, PUI shall have a site plan prepared which verifies the location of the Route (in accordance with Section 4.02 hereof) and PUI and City/County shall have entered into a formal lease of the Gas Utilization System Site affording PUI access to the Gas Utilization System Site and allowing PUI to operate and maintain the Gas Utilization System in accordance with the terms of this Agreement (the "Lease"). In the event that it is necessary or reasonably desirable for the purposes PUI satisfying the requirements of its lenders or regulating authorities or for other sufficient reasons, City/County agrees to record PUI's right to install and maintain its facilities on and in the GUSS and on and in the Route area in a formal easement or other appropriate form of document that is separate from this Agreement.

3.10 Rights and Liabilities of City/County: City/County retains all ownership, rights and liabilities with respect to the WMF except as provided otherwise in this Agreement. City/County retains all rights, title and interest in all land, materials, refuse, minerals, water, natural gas, Gas and other items situated and existing in, under and upon the WMF, including cell liners, leachate, the leachate collection system, condensate, and all materials removed from the WMF during construction of the Gas Utilization System and shall remain fully liable for compliance with all Applicable Laws related to the WMF, including environmental laws, and for all environmental conditions, discharges or releases from the WMF except as otherwise expressly set out herein. The Parties shall agree on the location of the Gas Utilization System Site and City/County shall retain all liabilities under Applicable Laws including environmental laws and otherwise, in respect of the condition of the Gas Utilization System Site prior to the commencement of the construction of the Gas Utilization System. Following the commencement of the construction of the Gas Utilization System, PUI shall be responsible for any environmental contaminants or hazardous waste which PUI has released or caused as a result of its operations on the Gas Utilization System Site, however City/County shall remain fully liable for all pre-existing conditions, discharges or releases from WMF which affect the Waste Management Facility.

3.11 Rights and Liabilities of PUI: PUI shall retain all rights and liabilities with respect to the Gas Utilization System and the Gas Utilization System Site except as otherwise specifically provided in this Agreement. Following the commencement of the construction of the Gas Utilization System, PUI shall be fully liable for compliance with all Applicable Laws related to the Gas Utilization System, including environmental laws,

and for all environmental conditions, discharges or releases from the Gas Utilization System excepting pre-existing conditions relating to the period prior to PUI's occupancy of or operations on the Gas Utilization System Site. PUI shall be responsible for any environmental contaminants or hazardous waste which PUI has released or caused as a result of its operations on the Gas Utilization System Site, however City/County shall remain fully liable for all pre-existing conditions, discharges or releases from WMF which affect the Waste Management Facility. PUI shall own all fixtures, fittings, machinery and equipment on the Waste Management Facility used in connection with the Gas Utilization System.

3.12 Access: City/County shall allow PUI, its servants, employees and agents access to the WMF twenty-four hours per day, seven days per week, throughout the Term for the purpose of enabling PUI to exercise its rights and perform its obligations under this Agreement, subject to reasonable restrictions to ensure the security and integrity of the WMF and public safety.

3.13 Change in Applicable Laws: In the event that a change of Applicable Laws after the date of this Agreement imposes additional unforeseen obligations or costs on a Party, or restricts the sale or price of electricity, the Parties agree to negotiate in Good Faith, an amendment to this Agreement which would attempt to maintain the economic benefits of this Agreement for each Party.

ARTICLE 4 - CONSTRUCTION

4.01 Right to Monitor and to Copies: Each Party shall be entitled to monitor progress of the Project and for this purpose, each Party shall:

- (i) make available for inspection at the WMF copies of all plans and designs for the Gas Collection System and the Gas Utilization System, respectively; and
- (ii) provide, as soon as reasonably practicable following completion of construction of either the Gas Collection System or the Gas Utilization System, as the case may be, a complete set of "as built" plans and drawings.

4.02 Pre-Approval Rights of City/County: Notwithstanding anything to the contrary set out herein, PUI will not make any repairs, alterations, replacements, decorations or improvements ("**Alterations**") to any part of the WMF without first obtaining the City/County's written approval. Prior to commencing any work, PUI will submit: (a) details of the proposed work including professionally prepared drawings and specifications; and (b) evidence satisfactory to the City/County that PUI has obtained any necessary Permits. All Alterations will be performed:

- (i) in accordance with Good Industry Practice;
- (ii) in accordance with the drawings and specifications approved by the City/County; and
- (iii) subject to the reasonable regulations, controls and inspection of the City/County.

Any Alterations made by PUI without the prior consent of the City/County or not made in accordance with the drawings and specifications approved by the City/County will, if requested by the City/County, acting reasonably, be promptly removed by PUI at PUI's expense.

4.03 Selection of Contractors: PUI shall solely decide upon the selection of the contractor for the Gas Utilization System. The right to select the contractor for the Gas Collection System shall be allocated as follows:

- (i) by the City/County when the expansion or rehabilitation of the Gas Collection System is required to be undertaken by City/County in compliance with Applicable Law, Good Industry Practice and the

Certificate of Approval or as required in its sole discretion, for odour control, Gas migration control or any other purpose except pursuant to Section 3.07; or

- (ii) by PUI and City/County jointly when the expansion or rehabilitation of the Gas Collection System is required solely to optimize the Gas collection for the Gas Utilization System pursuant to Section 3.07. Notwithstanding the foregoing, PUI acknowledges and agrees that in choosing such contractors, the City/County shall have the right to award the contracting work through a competitive tendering system.

4.04 Responsibility for Contractors: PUI shall be solely responsible for all payments to the contractor selected by it for the Gas Utilization System. The liability for payments to the contractor selected for the Gas Collection System shall be allocated as follows:

- (i) PUI for contractors selected by it for the Gas Utilization System;
- (ii) City/County for contractors selected by it pursuant to Section 4.03(i); and
- (iii) PUI for contractors selected pursuant to Section 4.03(ii).

4.05 Joint Selection: Notwithstanding Sections 4.03 and 4.04, PUI and City/County may agree to jointly select the contractor for the Gas Collection System and share in responsibility for issues and payments related to the Gas Collection System under mutually agreeable terms.

ARTICLE 5 - TERM

5.01 Initial Term: The “**Initial Term**” of this Agreement shall commence upon the date that this Agreement is executed by all Parties and shall continue thereafter and shall terminate on the twentieth anniversary of the Commercial Operation Date unless extended in accordance with the provisions of Section 5.02 or terminated in accordance with the provisions of Sections 3.02, 3.05, 5.04, 19.02 or 24.03.

5.02 Renewal Terms: The Parties may extend the Initial Term for additional five-year terms (each such renewal being a “**Renewal Term**”) following expiry of the Initial Term or any subsequent Renewal Term by written agreement. The Initial Term shall automatically extend and continue in the event that PUI gives City/County Notice (an “**Extension Notice**”) six months before the expiry of the Initial Term advising that PUI will not have recovered all of the Capital Costs, Operating Costs and the Return on Investment (collectively, the “**Project Amount**”) by the end of the Initial Term. In the event that PUI gives City/County an Extension Notice which has been verified by the financial disclosure of PUI required by Section 7.06 hereof and by the audit procedures set out in Section 12.02, if applicable, then the Initial Term shall be extended and shall continue for the period of time (also a “**Renewal Term**”) until PUI has received the full Project Amount pursuant to this Agreement. All terms and conditions of this Agreement shall apply throughout all Renewal Terms.

5.03 Term: The “**Term**” of this Agreement includes the Initial Term and all Renewal Terms.

5.04 Termination: The Term of this Agreement may be terminated:

- (i) by written agreement of the Parties; or
- (ii) pursuant to Article 19.

5.05 Consequences of Termination: Notwithstanding termination of this Agreement pursuant and in accordance with the provisions hereof, this Agreement shall remain in full force and effect until final settlement amongst the Parties of all rights and liabilities which have accrued or arisen hereunder prior to the time of such termination or which directly result from such termination, and all such rights and liabilities, including

the indemnity provisions of this Agreement, shall not be affected or prejudiced by such termination and shall survive such termination.

ARTICLE 6 - COSTS

6.01 Project Except Gas Collection System: Subject to Section 6.02 relating to the costs of Gas Collection System, PUI shall develop, finance, construct, own operate and maintain the Gas Utilization System at its cost. City/County shall bear no financial or operational risks associated with the Gas Utilization System, and all financial or operational risks associated with the Gas Utilization System shall be borne by PUI except as provided herein with respect to the Gas Collection System.

6.02 Gas Collection System: City/County shall bear the costs of the design, construction, operation, maintenance and ownership of the Gas Collection System and other parts of the WMF provided, however, and notwithstanding the foregoing, PUI shall be responsible for any costs in relation to the Gas Collection System that are the responsibility of PUI pursuant to Sections 3.07 and 3.08.

ARTICLE 7 – REVENUE SHARING

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

“**Amortization Amount**” means the annual amount necessary to amortize the unrecovered Capital Cost over the remainder of a twenty year amortization period that commences on the Commercial Operation Date.

“**Gross Revenue**” for any calendar year means the sum of all payments received by the Parties during such year on account of: (i) electricity sold pursuant to the RESOP Contract; plus (ii) Grants relating howsoever to the Gas Utilization System except to the extent that they are used to reduce the Capital Costs; plus (iii) Related Products relating howsoever to the Gas Utilization System.

“**Royalty**” means eight percent (8%) of Gross Revenue for the particular year.

“**Return on Investment**” for any calendar year means an “after tax” percentage of the Capital Cost which for any calendar year shall be equal to the sum of: (i) an amount which is equal to fifteen percent (15%) (the “**Return Rate**”) of the amount of the unrecovered cumulative Capital Costs at the end of the particular year plus (ii) an amount equal to the combined federal and provincial income taxes that would have been payable by a taxable Ontario corporation were the conduct of the Gas Utilization Project the sole business of such corporation during the particular year.

7.02 Entitlements: With respect to each calendar year throughout the Term:

- (i) City/County shall be entitled to the Royalty;
- (ii) PUI shall be entitled to the Return on Investment; and
- (iii) PUI shall be entitled to the Amortization Amount.

7.03 Precedence of Payments: All Gross Revenue related to the Project shall be received by PUI (or if received by City or County shall be paid or assigned by them to PUI) and applied by PUI in the following order:

- (i) first, to pay the Operating Costs of the Gas Utilization System;
- (ii) second, to pay principal and interest on loans taken by PUI in relation to the Project;

- (iii) third, to pay the Royalty to City/County;
- (iv) fourth, to pay PUI the Amortization Amount (one twelfth of the Amortization Amount in respect of each calendar month);
- (v) fifth, to pay PUI the Return on Investment; and
- (vi) sixth, to pay fifty percent of the balance to each of PUI and City/County.

7.04 **Example:** For greater clarity, Schedule C provides an example of the application of Sections 7.01, 7.02 and 7.03. Schedule C is intended to provide an illustration only, and the numbers in Schedule C are used for the purposes of illustration only and do not constitute any sort of representation or warranty relative to the revenues and expenses of the Project.

7.05 **Payments Monthly:** Payment of Royalty to City/County and of the Amortization Amount and Return on Investment to PUI pursuant to this Article shall, to the extent only that there is Gross Revenue available for such purposes pursuant to Sections 7.03 and 7.07, be made within forty-five days of the end of each calendar month with respect to operations of the Project during the preceding calendar month. Payments with respect to any calendar month shall be made without regard to the shortfall or surplus for any preceding month, without carryforward or carryback adjustments. To the extent necessary in order to give effect to the provisions of this Section, Good Faith estimates of numbers shall be used where actual numbers are not available.

7.06 **Audited Statements, Annual Reconciliation:** Within 90 days following the end of the first calendar year following the Commercial Operation Date and of each subsequent calendar year throughout the Term, PUI shall cause to be prepared, in a manner consistent with Canadian generally accepted accounting practices, and shall provide to City/County: (i) an audited annual statement for the Project including a detailed statement of all Gross Revenues and expenses during the preceding year ; (ii) a calculation of the amounts receivable by City/County and PUI pursuant to Sections 7.01, 7.02 and 7.03 and the other provisions of this Agreement; (iii) a reconciliation (the “**Reconciliation**”) of the payments that were and that should have been received by City/County and PUI pursuant to this Article during and with respect to the particular calendar year and (iv) a copy of any supporting calculations relating to any of the foregoing. Each Party shall make payment of any amount payable by it in accordance with the Reconciliation within thirty (30) days of the receipt by the Parties of the Reconciliation. The City/County shall have the right to have the Reconciliation and all other disclosure statements referenced in this Section 7.06 audited at any time pursuant to its rights set out in Section 12.02.

7.07 **Annual Carryforward Adjustment:** In the event that there is not sufficient Gross Revenue received in a particular calendar year in order to fully pay all Royalty, Amortization Amount and Return on Investment payable with respect to that particular calendar year, then any amount thereof remaining unpaid with respect to that particular calendar year shall be added to the amount thereof payable with respect to the following calendar year.

7.08 **Manner of Payment:** Payments pursuant to this Agreement shall be made in cash, money order, bank draft, certified cheque or direct deposit, in case in Canadian funds.

7.09 **Default Interest:** Any amount not paid when due shall bear interest at a rate which is, from time to time, the sum of the Prime Rate, from time to time throughout the period of default in payment, plus 5% from the due date for the payment until actual payment, which shall be due and paid by the Party defaulting in making the particular payment upon demand by the Party entitled to receive payment. For the purposes of this Section the Prime Rate shall be the Prime Rate charged by the bank of the Party entitled to receive the payment in respect of which default of payment was made.

ARTICLE 8 – OBLIGATIONS OF PARTIES

8.01 City/County Obligations: City/County shall:

- (i) obtain at their own expense and remain in compliance with all Permits necessary for the completion of the Gas Collection System, including all required environmental and municipal planning approvals of the WMF and provide PUI with proof thereof;
- (ii) obtain at their own expense all municipal planning approvals, including rezoning, required for the Gas Utilization System and provide PUI with proof thereof;
- (iii) develop, continuously operate, maintain, repair, update and replace the Gas Collection System throughout the Term in a good and workmanlike manner, in accordance with Good Industry Practice, all Applicable Laws, the Certificate of Approval and this Agreement;
- (iv) coordinate its activities on the Waste Management Facility with PUI in Good Faith so as to eliminate or minimize any disruption to the operations of the Gas Utilization System;
- (v) develop, continuously operate, maintain, repair and update the WMF in good and substantial repair and condition throughout the Term and in compliance with Good Industry Practice, all Applicable Laws, the Certificate of Approval and this Agreement. Nothing in this Agreement shall prevent City/County from engaging in waste reduction or recycling strategies or in source separated organics programs;
- (vi) invest sufficient capital to permit uninterrupted operation of the Gas Collection System at all times throughout the Term in accordance with Good Industry Practice;
- (vii) use Commercially Reasonable Efforts to complete the expansion of the Gas Collection System as expeditiously as possible in accordance with the Project Schedule and subject to the terms and conditions of Section 3.07 hereof;
- (viii) not unreasonably interfere with PUI's use of the Gas Utilization System Site, including construction, operation or maintenance of the Gas Utilization System so long as PUI complies with this Agreement and all Applicable Laws;
- (ix) City/County shall conduct air emission tests as are required for the WMF by Applicable Laws. City/County shall retain at all times the full right to control odour and gas migration from the WMF as required in the discretion of City/County, regardless of impact on Gas volumes, methane content, contaminants or other variables of any kind. Nothing in this provision shall affect any right or obligation of PUI to conduct air emissions tests in conjunction with the Gas Utilization System. Copies of all air emission tests conducted by a Party shall be promptly provided after completion to the other Party; and
- (x) City/County shall share with PUI available utility services, including electricity and telephone, and each Party shall pay its proportionate share thereof. City/County shall not be liable for any interruption or failure in supply or service of utility services under any circumstances.

8.02 PUI's Obligations: PUI shall:

- (i) obtain at its own expense and remain in compliance with all Permits necessary for the completion of the Gas Utilization System [excluding municipal planning approvals which shall be obtained by City/County in accordance with Section 8.01(ii)] and provide City/County with proof thereof;

- (ii) develop, continuously operate, maintain, repair, update and replace the Gas Utilization System throughout the Term in a good and workmanlike manner, in accordance with Good Industry Practice, all Applicable Laws and this Agreement;
- (iii) coordinate its activities on Gas Utilization System Site with City/County in Good Faith so as to eliminate or minimize any disruption to the operations of the WMF;
- (iv) maintain the Gas Utilization System Site in good and substantial repair and condition;
- (v) invest sufficient capital to permit uninterrupted operation of the Gas Utilization System at all times throughout the Term in accordance with Good Industry Practice;
- (vi) use Commercially Reasonable Efforts to complete the construction of the Gas Utilization System as expeditiously as possible in accordance with the Project Schedule;
- (vii) construct the Gas Utilization System so as to cause the WMF the least inconvenience practicable;
- (viii) cause a representative of PUI to attend at the Waste Management Committee at the request of City/County and with reasonable notice in the circumstances; and

8.03 Mutual Obligations: Each of the Parties shall:

- (i) exchange information on a continuing basis, co-operate in planning and co-coordinating their activities under this Agreement and in carrying out their respective obligations under all Applicable Laws and this Agreement;
- (ii) co-operate with each other in applying for and obtaining any Permits required by any other Party to perform its obligations under this Agreement including co-operating and working together in the event that any public meetings are required in conjunction with the Project and as a result of any Applicable Laws;
- (iii) use Commercially Reasonable Efforts to fulfill its obligations hereunder in order that PUI shall be able to perform its obligations under any RESOP Contract entered into by PUI.

ARTICLE 9 – REPRESENTATIONS AND WARRANTIES

9.01 Mutual Representations: Each Party hereby represents and warrants to the other Party that:

- (i) it is duly incorporated and organized, validly subsisting and in good standing under Applicable Laws and has the authority and holds all Permits necessary for it to carry on its business as now carried on by it and to carry out its obligations under this Agreement, and all of such Permits are in good standing; and
- (ii) it has the power and authority to enter into and to perform its obligations under this Agreement and this Agreement constitutes a valid and binding obligation enforceable against it in accordance with its terms.

9.02 City/County Representations: Each of City and County separately represents and warrants to PUI that:

- (i) City/County is the registered and beneficial owner of the WMF and of all rights to the Gas. No person has any property or other interest that may

derogate from the full use, exercise and enjoyment of PUI of the rights granted under this Agreement.

9.03 **Disclaimer by City/County:** Notwithstanding anything contained herein to the contrary, City/County does not represent or warrant the composition, quality, quantity or merchantability of the Gas or its fitness for any particular purpose. PUI shall assume all risks associated therewith.

9.04 **PUI Representations:** PUI hereby represents and warrants to City/County that:

- (i) prior to commencement of operation of the Gas Utilization Facility, PUI will be licensed pursuant to the requirements of the *Ontario Energy Board Act, 1998* or any successor legislation to generate electricity in Ontario.

ARTICLE 10 – EXPANSION

10.01 **City/County Right to Expand:** City/County reserves the right to expand at its cost the facilities at the WMF subject to its Certificate of Approval. City/County may at its sole discretion, expand the Gas Collection System, to collect Gas created as a result of this expansion.

10.02 **PUI Right to Expand:** In the event that City/County expands the Gas Collection System to additional cells or locations or to accommodate other types of waste, then PUI shall have the right by Notice to City/Council, but not an obligation, to modify the Gas Utilization System in order to generate electricity from the expanded capacity of the Gas Collection System, and the costs thereof shall be costs related to the Gas Utilization System for all purposes of this Agreement.

ARTICLE 11 - DECOMMISSIONING

11.01 **Decommissioning:** Within six (6) months after the end of the Term PUI shall, at its cost, remove all parts of the Gas Utilization System from the Gas Utilization System Site and forthwith after such removal PUI shall restore the surface of the Gas Utilization System Site that was affected by its activities to the same condition it was in at the commencement of the Term, to current federal, provincial and/or local standards as may apply. Any parts of the Gas Utilization System that are left in place with the consent of City/County shall become the property of City/County and PUI shall have no further responsibility therefor.

11.02 **Certification:** In conjunction with the obligations set out in Section 11.01, PUI shall retain at its expense a professional engineer who shall assess, analyze and test the Gas Utilization System Site and determine whether PUI or its agents deposited hazardous substances on the Gas Utilization System Site during PUI's occupation of it. A copy of the engineer's report shall be issued to the City/County within 30 days of its preparation. In the event that the professional engineer determines that hazardous substances were deposited on the Gas Utilization System Site by PUI or its agents, PUI shall, at its cost, take all necessary steps to remove the hazardous substances and remediate the Gas Utilization System Site.

ARTICLE 12 – MEASURING AND REPORTING

12.01 **Annual Statement:** Within 90 days following the end of the first calendar year following the Commercial Operation Date and of each subsequent calendar year throughout the Term, PUI shall submit to City/County the financial disclosure set out in Section 7.06 which shall be signed by PUI and certified to be true and correct.

12.02 Audit of Project: The City/County may, at any time to time and from time to time but on thirty days prior Notice, perform audits or other examinations of all of PUI's books and records to confirm all calculations made by PUI in compliance with the terms of this Agreement, including without limitation, calculations of all amounts payable to the City/County hereunder upon Notice to PUI. All audits pursuant to this Section shall be prepared in accordance with Canadian generally accepted accounting practices. All Parties shall co-operate with the Auditor and shall provide access to work sites and records as the Auditor requires. The Auditor shall prepare a report that will be provided to the Parties at the conclusion of each Audit. If the Auditor determines that a Party has failed to comply with any provision of this Agreement, the Party in default shall immediately remedy the non-compliance. The reasonable expenses (the "**Audit Expenses**") of any audit or other examination permitted hereunder shall be borne by PUI as part of its Operating Costs unless otherwise agreed to in writing by the City/County and PUI. Notwithstanding the foregoing, in the event the results of any audit or other examination permitted hereunder disclose a deficiency in respect of the amounts due to the City/ County hereunder in an amount greater than two percent (2%) of the amounts properly payable, then: (i) PUI shall within thirty (30) days of Notice of such overpayment remit the full amount owed with interest at an additional rate of five percent (5%) plus the Prime Rate per year from the date owed; and (ii) the Audit Expenses relative to such audit shall not be included as part of Operating Costs.

12.03 Audit of Parties: Each Party shall maintain full and complete records with respect to this Agreement and shall allow each other Party to audit such records for the purposes of this Agreement at all times throughout the Term and for a period of one year thereafter.

12.04 Operations Reports: The Parties shall develop sufficient and appropriate operations reports to ensure that timely, comprehensive and reliable decision support is available. The Parties shall prepare these reports regularly and share them to facilitate the achievement of the Parties' obligations under this Agreement.

ARTICLE 13 - INSPECTIONS

13.01 Co-operation: The Parties shall allow and assist with inspections of the WMF, including the Gas Utilization System Site, by the MOE and any other provincial, federal or municipal body or agency, and where such an inspection results in a control order or a stop order, the Parties, where necessary, shall work together to clear the order.

ARTICLE 14 - WORKPLACE AND WORKER SAFETY

14.01 Independence of Parties under Act: Each Party acknowledges and agrees that it is not, nor is anyone hired by it, covered by the other Party under the WSI Act and each Party shall be responsible for and shall pay all dues and assessments payable under the WSI Act, the federal *Employment Insurance Act* or any act, whether Provincial or Federal, in respect of itself, its employees and operations, and shall furnish the other Party, if requested, with such satisfactory evidence that it has complied with the provisions of any such Acts. No Party is the employer of the other Party or its personnel under any circumstances whatsoever.

14.02 Certificate of Good Standing: Each Party shall obtain an up-to-date Workplace Safety and Insurance Board certificate of good standing in respect of the work that is the subject of this Agreement. The certificate shall be provided to the other Party on request. In the event that a Party is unable to produce a certificate of good standing then that party is in non-compliance with this Agreement and the Party not in default may invoke any of the provisions of this Agreement respecting non-compliance.

14.03 Payments: Each Party shall at all times pay, or cause to be paid, any assessment or compensation required to be paid pursuant to the WSI Act, and upon failure to do so, the other Party may pay such assessment or compensation to the

Workplace Safety and Insurance Board, and shall deduct or collect such expenses under the provisions of the WSI Act.

ARTICLE 15 - OCCUPATIONAL HEALTH AND SAFETY

15.01 **Commitment:** Each of PUI and City/County is committed to promoting health and safety in the workplace by preventing accidents, injuries and occupational illness.

15.02 **Compliance with Act:** All work on the Project shall conform to the OHS Act. Each Party shall at all times comply with the legislation, regulations, industry standards and guidelines and shall be responsible for and take every precaution reasonable in the circumstances for the protection of all workers associated with the Project, whether employed by City/County, PUI or a third party and for the protection of the third parties.

15.03 **Specific Indemnity:** Each Party agrees to indemnify and save the other Party harmless for damages or fines arising from its breach or breaches of the OHS Act.

15.04 **Division of Responsibility:** PUI agrees to assume full responsibility for the compliance with the OHS Act as related to the Gas Utilization System. City/County agrees to assume full responsibility for the compliance with the OHS Act as related to the Gas Collection System.

15.05 **Set-Off:** Each Party agrees that any damages or fines that may be assessed against the other Party by reason of a breach or breaches of the OHS Act by that Party or any of its subcontractors will entitle the other Party to set-off damages so assessed against any monies that the other Party may from time to time owe the defaulting Party under this Agreement.

15.07 **Compliance re Controlled Substances:** Where hazardous materials, physical agents and/or designated substances are used in the performance of the required work, each Party shall comply with the specific requirements of the OHS Act and associated regulations.

15.08 **Remedial Action:** In the event any Party deems any of its material and/or equipment to be unsafe, it shall take remedial action and immediately notify the other Party.

ARTICLE 16 - INSURANCE

16.01 **Insurance Requirements:** Prior to any of PUI's equipment entering the Gas Utilization System Site (the "**Insurance Date**") and until all PUI's Equipment is removed from the Gas Utilization System Site, each Party (the "**Insuring Party**") shall maintain at its sole cost with an insurer acceptable to the other Party (the "**Beneficiary Party**"):

- (i) full replacement value all risks property insurance for an amount of at least \$5,000,000.00 per occurrence;
- (ii) comprehensive general commercial liability insurance insuring against claims for personal injury, death or property damage arising out of an accident or occurrence during the operation and maintenance of the Insuring Party's facilities, including non owned automobile and blanket contractual liability, for an amount of at least \$5,000,000.00 per occurrence; and
- (iii) non-owned automobile insurance.
- (iv) contractor's contingency liability with respect to the operations of Insuring Party's subcontractors.

Such insurance shall: (1) name the Beneficiary Party as an additional insured; (2) contain a severability of interest and cross liability clauses; (3) provide that such insurance is primary as regards the Parties, with any other insurance maintained by the Beneficiary Party being excess and non-contributing with the insurance of the insuring Party required hereunder; (4) contain a prohibition against cancellation or material change that reduces or restricts the insurance except on 30 days prior written notice to the Beneficiary Party; (5) provide coverage for the contractual liability of the Insuring Party to indemnify the Beneficiary Party pursuant to this Agreement. Evidence of such insurance shall be provided by the Insuring Party to the Beneficiary Party prior to the Insurance Date and upon request, from time to time, by the Beneficiary Party; and (6) have a deductible not exceeding five percent (5%) of the coverage amount.

PUI acknowledges and agrees that the obligations of City and County as an Insuring Party set out above shall be satisfied by the appropriate insurance coverage of one of the City or the County and shall not require both such Parties to hold such coverage.

16.02 Deductible Amounts: Each Party shall be responsible for deductible amounts under its insurance policies.

ARTICLE 17 - LIABILITY AND INDEMNIFICATION

17.01 Indemnity: To the fullest extent permitted by law but subject to Sections 17.02 and 17.03, each Party (the "**Indemnitor**") shall be liable for and shall defend, indemnify and save harmless the other Party and the other Party's successors and permitted assigns, directors, officers, employees and authorized representatives from and against any and all loss, damage or injury to persons or property and all liabilities, costs, suits, charges, expenses (including reasonable legal fees and expenses), claims, losses, fines, taxes, damages and causes of action in connection therewith and of any nature or kind whatsoever, resulting directly from the Indemnitor's negligent acts, omissions, deliberate acts or in connection with the Indemnitor's breach of this Agreement and the negligent acts, omissions, deliberate acts or breach of this Agreement by those for whom the Indemnitor is in law responsible.

17.02 Limitations: Notwithstanding anything to the contrary in this Agreement, neither Party shall be liable to the other Party for: (i) any indirect, special, incidental, consequential, punitive or exemplary damages howsoever caused; (ii) any damages for any anticipated or lost profit, revenue or any expense reduction, business interruption loss, loss of contract or goodwill, loss of customers, loss of data, loss of use of any information, software or system, failure to realize expected savings or other business, commercial or economic loss whatsoever and howsoever caused, whether arising in negligence, tort, statute, equity, contract, common law or any other cause of action or legal theory even if the Party has been advised or could foresee of the possibility; (iii) where a specific remedy or credit is provided to a Party under this Agreement in respect to any circumstance, the Party shall not have any liability to the other Party beyond the specific remedy or credit provided for the Party for such particular circumstance and (iv) any liability whatsoever unless a Party receives from the other Party a written claim in respect thereof within two years of the basis for the claim, or any part thereof, first arising. Each Party agrees that the limitations on liability contained in this Section and elsewhere in this Agreement are fair and reasonable in the circumstances of this Agreement and that such Party would not have entered into this Agreement unless the other Party agreed to limit the liability to such other Party in the manner and to the extent provided herein.

17.03 Exception re Gas Quality and Quantity: Notwithstanding anything to the contrary contained in this Agreement, City/County shall not be liable to PUI for any claim by PUI by reason of and resulting from or arising in any manner whatsoever out of the present condition of the WMF or for any direct claims by PUI based on the quantity or quality of the Gas or related to the environment from which it is extracted, but City/County shall fully indemnify and save harmless PUI pursuant to this Article for any claims by any other person against PUI related to the release or discharge of Gas save for any claims arising as a result of PUI's negligence.

17.04 **Survival:** The provisions of this Article shall survive the expiry or termination of this Agreement.

ARTICLE 18 - LIENS

18.01 **No Liens Permitted:** A Party shall not suffer or permit any construction or other liens (“**Liens”**) to be filed or placed or to exist against the title to the real or personal property comprising part of or located on the Gas Utilization System Site or the Waste Management Facility by reason of work, labour, services or materials supplied to such Party or the activities of such Party. If any such Lien shall at any time be filed, the Party responsible for such Lien being filed shall cause the same to be discharged from title within twenty (20) days after the date such Party is notified of the filing. If such Party fails to discharge any such Lien within such period then, in addition to any other right or remedy of the other Parties, any such other Party may, but shall not be obligated to, discharge such Lien by deposit in court or bonding. Any amount paid by such other Party for the purposes aforesaid and all reasonable legal and other expenses of such other Party in defending any such action or in or about procuring the discharge of such Lien together with interest thereon at a rate which is, from time to time, the sum of the then current Prime Rate, from time to time throughout the period default in payment, plus 5% from the due date for the payment until actual payment, which shall be due and paid by the Party obliged hereby to make payment upon demand by the Party entitled to receive payment. For the purposes of this Section the Prime Rate shall be the Prime Rate charged by the bank of the Party entitled to receive the payment pursuant to this Section.

18.02 **Exception:** Notwithstanding any other provision herein, PUI may grant security interests in and otherwise encumber its interest in the Project for the purposes of financing its investment in the Project.

ARTICLE 19 - DEFAULT

19.01 **Events of Default:** Each of the following events shall be an “**Event of Default”** by a Party under this Agreement:

- (i) if the Party shall default in the payment of any money due to the other Party and such default shall continue for a period of fifteen (15) days after receipt of Notice of such default;
- (ii) if the Party shall default in the observance or performance of any of its material non-monetary obligations under this Agreement and such default shall continue for more than thirty (30) days after receipt of Notice of such default (unless such default cannot reasonably be cured within such thirty (30) day period, in which case such cure period shall be extended for the minimum period of time reasonably required to effect such cure provided that work to cure the default is promptly commenced and continually prosecuted to completion with reasonable diligence);
- (iii) if the Party makes an assignment for the benefit of creditors or becomes bankrupt or insolvent or takes the benefit of any law for bankrupt or insolvent debtors or makes any proposal or arrangement with creditors, or steps are taken for the winding up or other termination of its existence or liquidation of its assets; or
- (iv) if a trustee, receiver, receiver-manager or similar person is appointed in respect of the assets or business of the Party.

19.02 **Termination/Remedies:** Upon or after the occurrence of an Event of Default, the non-defaulting Party may give Notice (“**Notice of Default”**) to the defaulting Party, setting forth the nature of the Event of Default. If the defaulting Party fails to demonstrate within thirty (30) days after receipt of the Notice of Default that all necessary and reasonable actions to remedy the Event of Default have been taken (unless

such default cannot reasonably be cured within such thirty (30) day period, in which case such cure period shall be extended for the minimum period of time reasonably required to effect such cure provided that work to cure the default is promptly commenced and continually prosecuted to completion with reasonable diligence), then the non-defaulting Party may by Notice to the defaulting Party terminate this Agreement and shall, subject to the other provisions of this Agreement, have the right to sue for any other damages to which it may be entitled at law or in equity.

ARTICLE 20 - CONFIDENTIALITY

20.01 **Obligation:** Each Party (the “**Receiving Party**”) shall maintain this Agreement and the existence and provisions hereof and all information received, directly or indirectly, from the other Party (the “**Disclosing Party**”) pursuant to or for purposes of fulfilling its obligations under this Agreement (“collectively the “**Confidential Information**”) in strict confidence. The Receiving Party shall protect the confidentiality of such Confidential Information to the same extent as it protects the confidentiality of its own confidential information and in no event shall that be less than reasonable and prudent protection. The Receiving Party shall not in any manner disclose any Confidential Information. The Receiving Party shall return all Confidential Information received from the Disclosing Party and copies thereof to the Disclosing Party upon expiry or termination of this Agreement. The Receiving Party shall not use any Confidential Information of the Disclosing Party for any purpose other than fulfilling its obligations under this Agreement. Confidential Information shall not include information which the Receiving Party can demonstrate:

- (i) is previously known to or lawfully in the possession of the Receiving Party prior to disclosure by the Disclosing Party;
- (ii) is independently known to, discovered by or developed by the Receiving Party without any reference to the Confidential Information;
- (iii) is obtained by the Receiving Party from an arm's length Person having a *bona fide* right to disclose same; or
- (iv) is or becomes public knowledge through no fault or omission of, or breach of this Agreement by, the Receiving Party or its representatives.

20.02 **Press Releases, Announcements Etc.:** A Receiving Party shall not make or allow any public announcements, press releases, sales brochures, advertising or other publicity materials, or other public disclosure (a “**Public Statement**”): (i) in which the name or logo of a Disclosing Party is used; or (ii) that relates to this Agreement or the transactions contemplated in this Agreement except with the prior written consent of all Parties which may, having regard to the nature of the relationship of the Parties and the transaction provided for herein, be arbitrarily or unreasonably withheld or subjected to any conditions solely determined by the Party granting the consent. Where the Public Statement is required by Applicable Laws, the Party required to make the Public Statement will use Commercially Reasonable Efforts to obtain the approval of the other Parties as to the form, nature and extent of the disclosure. Notwithstanding the foregoing, City and County shall, without the consent of PUI, be permitted to make public announcements and press releases of a type commonly made by municipal governments with respect to community developments provided that any such public announcement or press release does not disclose any information of PUI that would be of competitive advantage to PUI’s competitors.

20.03 **Exception:** Notwithstanding the other provisions of this Article, the Receiving Party may disclose Confidential Information without the prior written consent of the Disclosing Party to: (i) its directors, officers, advisors, employees, agents, customers, business partners, contractors and representatives who are bound by terms and conditions consistent with the provisions of Section 20.01 and who need to know the Confidential Information for the purposes of this Agreement or operations pursuant to this Agreement; (ii) obtain financing; (iii) comply with federal, provincial, regional, municipal or other governmental or other regulatory or administrative requirement, including disclosure requirements of public corporations; and (iv) comply with orders of

a court or other regulatory or administrative body having jurisdiction including disclosure required pursuant to Section 20.04 hereof.

20.04 Municipal Freedom of Information and Protection of Privacy Act:

Each Party acknowledges that each other Party is or may be subject to, and must comply with, the provisions of the Ontario *Municipal Freedom of Information and Protection of Privacy Act*. Each Party shall only disclose information to the extent required by such Act or any other Applicable Laws.

20.05 Survival: The provisions of this Article shall survive the expiry or termination of this Agreement.

ARTICLE 21 - FORCE MAJEURE

21.01 Force Majeure Events: No Party shall be or shall be deemed to be in default of this Agreement where the failure to perform or the delay in performing any obligation is due to a cause beyond its reasonable control. Causes beyond the reasonable control of a Party ("**Force Majeure Events**") include an act of God, an act of any federal, provincial, regional, municipal or other government, an order of any court or administrative or regulatory authority, civil commotion, strikes, lockouts and other labour disputes, shortages of materials, equipment or labour, fires, floods, sabotage, earthquakes, windstorms, ice storms, snow storms and other storms and epidemics. In no event shall insolvency, bankruptcy or lack of money constitute a Force Majeure Event.

21.02 Procedure: A Party subject to a Force Majeure Event must: (i) give each other Party Notice immediately upon the occurrence thereof providing detailed particulars thereof, the anticipated or actual commencement of a Force Majeure Event, the cause thereof and the anticipated or actual postponement of performance or inability to perform and the anticipated length of the Force Majeure Event; (ii) give each other Party prompt Notice of any material changes in the Force Majeure Event, including when the Force Majeure Event is at an end; and (iii) use diligent efforts to avoid, minimize and remove the cause of the Force Majeure Event and to eliminate or minimize the consequences thereof, including utilizing all resources reasonably required in the circumstances including obtaining supplies or services from other resources if they are reasonably available.

21.03 Time: The time for performing any obligation affected by a Force Majeure Event shall be extended for a period equal to the time during which the Party was subject to the Force Majeure Event. The Parties not subject to the Force Majeure Event shall be excused from any of their obligations that are dependent or consequent upon the performance by any other Party of any obligation that is subject to the Force Majeure Event.

21.04 Labour Difficulties Exception: Notwithstanding the other provisions of this Article, the settlement of any strike, lockout, restrictive work practice or other labour disturbance constituting a Force Majeure Event shall be within the sole discretion of the Party involved in such strike, lockout, restrictive work practice or other labour disturbance and nothing in this Article shall require such Party to mitigate or alleviate the effects of such strike, lockout, restrictive work practice or other labour disturbance.

ARTICLE 22 – DISPUTE RESOLUTION

22.01 Generally: Should any disagreement of any kind arise at any time with respect to 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 request Notice 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 Notice to all other Parties, refer

the disagreement to binding arbitration pursuant to the Ontario *Arbitration Act, 1991* and the regulations thereunder. For the purposes of any such arbitration involving PUI, City and County, PUI shall be one party to the arbitration and both City and County collectively, i.e. City/County, shall be the other party to the arbitration. Within ten (10) Business Days of giving of such Notice of arbitration, the Parties involved 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 involved 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.

22.02 Interest, Fees and Expenses: The arbitrator may award interest on any award. The arbitrator may award costs, including the costs of the arbitrator, to any 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 involved in the arbitration.

22.03 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.

22.04 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.

22.05 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:

- (i) either Party may appeal an arbitration award to the courts of the Province of Ontario on a question of law; and
- (ii) 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.

ARTICLE 23 – NOTICES

23.01 Addresses: All notices and other communications from one Party to another (a “**Notice**”) for the purposes of this Agreement shall be in writing and shall be delivered by hand or by courier, transmitted by telefacsimile, sent by mail or sent by e-mail to the Party to whom it is to be given at the address for such Party set forth below:

To PUI:

Peterborough Utilities Inc.
PO Box 4125, Station Main
Peterborough ON K9J 6Z5

Fax: 705-743-5988

E-Mail: jwynsma@pui.ca

Attention: Vice President Generation and Retail Services

To City:

City of Peterborough
500 George Street North
Peterborough, ON K9H 3R9

Fax: 705-742-4138

E-Mail: nwright-laking@peterborough.ca

Attention: Clerk

To County:

County of Peterborough
470 Water Street
Peterborough, ON K9H 3M3

Fax: 705-876-1730

E-Mail: ssaunders@county.peterborough.on.ca

Attention: Clerk

To City/County:

to each of City and County

23.02 **Time of Receipt of Notices:** A Notice will be received for the purposes of this Agreement when actually received by intended recipient thereof. A Notice shall be deemed to have been received for the purposes of this Agreement in the following circumstances:

- (i) when transmitted by telefacsimile or e-mail transmission: at 10:00 in the forenoon (local time of the recipient) on the first Business Day following the day upon which the Notice is transmitted provided that another copy of the Notice is received or deemed received by the recipient by delivery, courier or post within seven days of the date of deemed receipt of the Notice by telefacsimile or e-mail transmission; and
- (ii) by mail, on the fifth Business Day (days upon which there is an interruption of postal service in Canada excepted) following the day on which the Notice was mailed.

23.03 **Change of Address:** A Party may, from time to time, change its address for the purposes of this Article by giving Notice to the other Party and in such event all Notices thereafter given to that Party shall be to such changed address.

ARTICLE 24 - GENERAL

24.01 **Compliance With Applicable Laws:** Each Party agrees that it and its employees and other representatives in the performance of its obligations and the exercise of its rights under this Agreement shall at all times comply with all Applicable Laws.

24.02 **No Third Party Beneficiaries:** Nothing herein expressed or implied shall, is intended or shall be construed to confer on or give to any entity other than the Parties and their respective successors and permitted assigns any rights or remedies under or by reason of this Agreement.

24.03 **Severability:** If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision shall be deemed severed from this Agreement and shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement, unless such invalidity or unenforceability frustrates the fundamental operation of this Agreement and in such case this Agreement shall terminate unless such invalidity or unenforceability

frustrates the fundamental operation of this Agreement and in such case this Agreement shall terminate.

24.04 **Previous, Entire and Binding Agreement:** This Agreement constitutes the entire understanding between the Parties with respect to the subject matter of this Agreement and supersedes and replaces all purchase orders that have been or may hereafter be issued by either Party to the other Party and all prior agreements, understandings, warranties and representations between the Parties and their predecessors, whether written or oral and whether legally enforceable or not, relative to the matters provided for herein. There are no collateral agreements, representations, warranties, inducements or other entitlements relating to the transaction provided for in this Agreement, or any part thereof, except as expressly provided for in this Agreement. This Agreement shall be binding upon the Parties only when signed by an authorized representative of each of the Parties.

24.05 **Amendments:** This Agreement may be modified, changed or amended only by a written agreement signed by all Parties. No modification, amendment or supplement to this Agreement shall be binding upon the Parties unless made in writing and duly signed by the authorized representatives of all Parties.

24.06 **Assignment and Sale:** Except as otherwise provided in this Agreement, neither this Agreement nor any rights, remedies, liabilities or obligations arising under or by reason of this Agreement shall be assignable or assigned by a Party without the prior written consent of each other Party, which, having regard to the nature of the relationship of the Parties and the transaction provided for herein, may be arbitrarily or unreasonably withheld or subjected to any conditions solely determined by the Party granting the consent. Notwithstanding the foregoing, a Party may, without the prior consent of the other Parties, assign this Agreement and any of its rights, remedies, liabilities or obligations to: (i) any corporation or partnership which is on the effective date of the assignment and is intended to continue thereafter to be, controlled by, under the control of or under common control with the assigning Party; or (ii) a financial institution for purposes of obtaining financing; or (iii) a Person to which the assigning party sold substantially all of its assets. A Party making an assignment permitted by this Section shall provide the other Parties with prompt Notice of such assignment. An assignment shall not release the assigning Party from any liability or obligation under this Agreement to the other Parties, unless and until such a Party provides such release in writing.

24.07 **Inurement:** Subject to the preceding Section, this Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns.

24.08 **Time for Performance:** Except where a time period is specified in this Agreement, in which case time and timely performance shall be of the essence, all actions, activities, consents, approvals and other undertakings of the Parties in this Agreement shall be performed within a reasonable time.

24.09 **Relationship of Parties:** Neither anything herein nor any action pursuant hereto shall constitute the Parties, or any of them, as partners or shall create the relationship of principal and agent, employer and employee, agency, partnership, joint venture or fiduciary amongst the Parties, or any of them, and no Party shall represent otherwise. Each Party is, and will at all times remain, an independent contracting party and is not and shall not present itself to be the agent, partner, joint venturer or fiduciary of the other.

24.10 **Further Assurances:** Each of the Parties shall act in Good Faith and, in a timely manner, take such actions and execute and deliver such documents as shall be reasonably necessary or appropriate to confirm or to implement the terms and intent of this Agreement. Each of the Parties shall use Commercially Reasonable Efforts to obtain and continue any approvals, consents, authorizations, licenses and permits reasonably necessary or desirable to give effect to the spirit, intent and terms of this Agreement.

24.11 **Counterparts:** This Agreement may be executed in counterparts and the

Parties shall be bound by this Agreement upon a counterpart of this Agreement having been executed by all Parties. All counterparts together shall constitute one and the same agreement. Counterparts may be executed either in original, faxed or e-mail form and the Parties adopt any signatures received by a receiving telefacsimile machine or by e-mail as original signatures of the Parties provided, however, that any Party providing its signature in such manner shall promptly forward to all other Parties an original signed copy of this Agreement which was so faxed or e-mailed.

24.12 **Waiver:** The failure of a Party to exercise any right, power or option or to enforce any remedy or to insist upon the strict compliance with the terms, conditions and covenants under this Agreement shall not constitute a waiver of the terms, conditions and covenants herein with respect to that or any other or subsequent breach thereof nor a waiver by the Party at any time thereafter to require strict compliance with all terms, conditions and covenants hereof, including the terms, conditions and covenants with respect to which the Party has failed to exercise such right, power or option. Nothing shall be construed or have the effect of a waiver except a document in writing signed by the Party which expressly waives a right, power or option under this Agreement. Acceptance of payment by a Party after a breach or non-fulfillment of any provision of this Agreement by another Party shall not constitute a waiver of the provisions of this Agreement, other than any breach cured by such payment.

24.13 **Waiver of Relief:** Each Party acknowledges that any default, forfeiture or assignment provisions contained in this Agreement are, in view of the risks inherent in the business to be conducted by Parties, reasonable and equitable. Each Party waives any and all rights which it may have at law or in equity against default, forfeiture or penalty if such provisions herein are invoked.

24.14 **Survival of Obligations:** Subject to any express terms and conditions in this Agreement to the contrary, all obligations of a Party hereunder which, by their nature or by virtue of express provisions herein, require performance after the expiry or termination of this Agreement, including any obligations relating to monies owed and provisions relating to limitations on liability and actions, shall survive the expiry or termination of this Agreement.

24.15 **Attornment:** Subject to the terms and conditions of Article 22, the Parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts of appeal therefrom in the event of a dispute in relation to this Agreement.

24.16 **No Representations or Warranties:** Except as expressly provided for in this Agreement, neither Party makes any representation or warranty, express or implied, collateral, statutory or otherwise, including any representation or warranty as to the merchantability or fitness for a particular purpose, including the performance, operation, condition, design, capabilities, suitability, durability, quality or as to any other matter, and all of such representations and warranties are, to the extent permitted by applicable law, excluded, disclaimed by the Party and waived by the other Party.

24.17 **Language:** The Parties have requested and agreed that this Agreement and all documents, instruments and written communications relating thereto be expressed in the English language. Les Parties ont exigé que la présente convention, les conventions auxiliaires ainsi que tous documents, instruments, et communications écrites s'y rattachant soient rédigés dans la langue anglaise.

[Reminder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties 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.

**THE CORPORATION OF THE CITY OF
PETERBOROUGH**

By: _____
Name: _____
Title: _____

By: _____
Name: Paul Ayotte
Title: Mayor

By: _____
Name: _____
Title: _____

By: _____
Name: Nancy Wright-Laking
Title: Clerk

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

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

**THE CORPORATION OF THE COUNTY
OF PETERBOROUGH**

By: _____
Name: Ronald Gerow
Title: Warden

By: _____
Name: Sally Saunders
Title: Clerk

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

Schedule A – Waste Management Facility and Gas Utilization System Site

The “Waste Management Facility” is:

The “Gas Utilization System Site” is:

Schedule B – Project Schedule

Major Project Activity	Lead Responsibility	Milestone Completion Date
Lease and Easement Agreements	PUI and City/County	June 30, 2009
Connection Impact Assessment	PUI	June 30, 2009
RESOP Contract for the GUS	PUI	Aug. 31, 2009
Environmental Permits & Approvals for the GUS	PUI	Aug. 31, 2009
Detailed Engineering and Design of the GUS	PUI	Aug. 31, 2009
Municipal Planning Approvals for the GUS	City/County	Sept. 30, 2009
Major Equipment Procurement & Construction Contracts for the GUS	PUI	Nov. 30, 2009
Financial Closing on Funding required to Commence Construction of the GUS	PUI	Dec. 31, 2009
Start of Construction of the GUS	PUI	Jan. 01, 2010
Opening of the North Fill Area of the WMF	City/County	Aug. 31, 2010
Commissioning of the Gas Utilization System	PUI	Dec. 31, 2010
Closure of the South Fill Area of the WMF	City/County	Dec. 31, 2011
Expansion of Gas Collection System in the South Fill Area of the WMF	City/County and PUI (in accordance with Section 3.07)	Mar. 31, 2012
Expansion of the Gas Collection System in the North Fill Area of the WMF	City/County and PUI in accordance with Section 3.07)	In accordance with WMF Plans
Closure of the North Fill Area of the WMF	City/County	In accordance with WMF Plans
Decommissioning of the Gas Utilization System	PUI	Dec. 31, 2030

Note to Draft: The foregoing is intended for the purposes of discussion which will ultimately lead to a form agreeable to all Parties.

Schedule C – Example of Revenue Allocation

Note: Schedule C is intended to provide an illustration only, and the numbers in Schedule C are used for the purposes of illustration only and do not constitute any sort of representation or warranty relative to the revenues and expenses of the Project.

(1) <u>Calculation of Gross Revenues:</u>			
Energy Sales under RESOP		\$1,700,000	
Other Income (Grants, Related Products, etc.)		<u>\$50,000</u>	
Gross Revenue			\$1,750,000
(2) <u>Calculation of Royalty Payment:</u>			
Gross Revenue		\$1,750,000	
Royalty Rate as Percent of Gross Revenue		<u>8%</u>	
Royalty Payment			\$140,000
(3) <u>Calculation of PUI's Effective Tax Amount:</u>			
Gross Revenue		\$1,750,000	
<u>Deductions:</u>			
(a) Operating Costs	\$300,000		
(b) Royalty Payment	\$140,000		
(d) Interest on Project Funding	\$150,000		
(e) Capital Cost Allowance	<u>\$300,000</u>		
Total Deductions		<u>\$890,000</u>	
Taxable Income		\$860,000	
Effective Tax Rate Percentage		<u>30%</u>	
Effective Tax Amount			\$258,000
(4) <u>Calculation of PUI's Return on Investment & Amortization Amount:</u>			
PUI Capital Investment in Project		\$6,000,000	
Return on Investment Rate (after-tax)		<u>15%</u>	
Annual Amortization Amount & After-Tax Return on Investment		\$958,569	
Amortization Amount (<i>Year 1 – varies per amortization schedule</i>)		<u>\$58,569</u>	
After-Tax Return on Investment (<i>Year 1 –varies per amortization schedule</i>)		\$900,000	
Effective Tax Amount		<u>\$258,000</u>	
PUI's Return on Investment			\$1,158,000
(5) <u>Calculation of Revenue Sharing with City/County</u>			
Gross Revenue		\$1,750,000	
<u>Allocation of Revenues:</u>			
(i) Operating Costs	\$300,000		
(ii) Loan Principal & Interest	\$300,000		
(iii) Royalty Payment	\$140,000		
(iv) Amortization Amount	<u>\$58,569</u>		
(v) PUI's ROI less Loan Principal & Interest	<u>\$858,000</u>		
Total Allocation of Revenues		<u>\$1,656,569</u>	
Remaining Revenue for Sharing		\$93,431	
Allocation to City/County		<u>50%</u>	
Revenue Sharing with City/County			\$46,715