

**ATTACHMENT 2
COMMERCIAL TERMS OF BIOGAS UTILIZATION AGREEMENT AT
GREEN LANE LANDFILL (GLL)**

Supplier: Toronto Hydro Energy Services Inc.

Term: Twenty-five (25) years

Commencement Date: January 1, 2012

Option to Extend: Provided that Supplier is not in default under the Biogas Utilization Agreement, upon giving prior written notice not more than Eighteen (18) months and not less than Twelve (12) months before the expiry of the Term, Supplier shall have the option to extend the Biogas Utilization Agreement, subject to the Lease Agreement being concurrently extended, for one additional Ten (10) year period on the same terms and conditions, save and except that the variable royalty payment shall be renegotiated and mutually agreed upon by the parties.

Biogas Supply: The City shall deliver biogas (composed of landfill gas and digester gas, if the City builds a mixed waste facility at GLL) to the demarcation point six months prior to the commercial operation date of the Generation Plant and Supplier shall accept the biogas at the demarcation point. Title to and responsibility of the gas shall transfer from the City to Supplier at the demarcation point. Supplier shall use reasonable commercial efforts to utilize all the biogas supplied. Any biogas that Supplier cannot utilize will be flared by the City.

The biogas supplied will meet the following parameters:

- oxygen concentration between 0% to 1.5% by volume; and
- methane concentration greater than 40% by volume.

The biogas collected by the City and supplied to Supplier, including the methane concentration of the biogas, shall be measured in one or more locations for settlement purposes. Supplier shall accurately meter and record the gross electrical energy produced by the Biogas Utilization System.

Leased Premises: A portion of the buffer lands, consisting of approximately 0.5 Hectare (53,820 square feet) of land located on the south east corner of Southminster Bourne and Parson Road as illustrated in Attachment 3, described as Part of Lot 24, Concession 3, Township of Southwold, County of Elgin, being part of Part 2 on Plan 11R-7709, together with appurtenant easements as may be necessary for the construction and operation of the Generation Plant component of the Biogas Utilization System.

Biogas Utilization System: The Biogas Utilization System (BUS) will consist of (1) a Generation Plant to be located on the Leased Premises, (2) a Transformer Station to be located off the Leased Premises and at the point of connection to the electricity grid and (3) a Distribution Line between the Generation Plant and the Transformer Station. Supplier will design, construct, own, operate and maintain the BUS with an initial capacity of at least 9.5 MW. Supplier will expand the BUS in a staged approach when there is sufficient biogas from GLL and

subject to Supplier obtaining the appropriate environmental and interconnection permits. The Generation Plant will be designed with provision for future staged installation by the Supplier of a system to recover heat and to make the heat available for sale when there is sufficient thermal load in the immediate vicinity and subject to Supplier obtaining the appropriate environmental and interconnection permits. The City will have the ability to conduct tours of the Generation Plant on reasonable notice to Supplier.

Variable Royalty Payment for Biogas: From the commencement date of the BUS, as determined by the Ontario Power Authority, Supplier shall pay a variable royalty payment based on the revenue percentage multiplied by the gross electrical revenue received by the Supplier for selling the electricity generated from the biogas supplied. The revenue percentage is determined by the amount of biogas supplied to the Supplier by the City as shown on the following table:

Biogas Supplied Flowrate to Supplier (Average Monthly Flowrate)	Revenue Percentage (Average Biogas Methane Content \geq 45%)	Revenue Percentage (Average Biogas Methane Content $<$ 45%)
>100 SCMM [$>$ 3550 SCFM]	15%	14%
>65 SCMM [$>$ 2300 SCFM]	13%	12%
>40 SCMM [$>$ 1400 SCFM]	10%	9%
\leq 40 SCMM [\leq 1400 SCFM]	7%	6%

If either party believes, acting reasonably, that the economic viability of the Biogas Utilization Agreement has substantially changed due to the electrical revenue from the sale of electricity generated at the Generation Plant, which either has caused or will cause harm or provide an unfair benefit to either party, the parties can renegotiate the revenue percentage. Supplier shall provide copies of statements from the sale of electricity to verify the variable royalty payment.

Royalty Payment for Heat: If the Supplier is able to sell the heat created as a result of the generation of electricity at the Generation Plant, the Parties will negotiate a separate agreement which will stipulate the royalty payment to be paid to the City which will be a portion of the value of the heat sold by the Supplier.

Methane Concentration: If the methane concentration of the biogas supplied falls below 40% concentration over a three month period, the parties will renegotiate the Biogas Utilization Agreement.

Environmental Attributes: Supplier shall transfer and assign all environmental attributes or emission credits to the City that the Supplier is not required to provide to the OPA under the FIT Contract for the Generation Plant. Supplier shall transfer and assign all environmental attributes or emission credits to the City that Supplier is not required to provide to any third party under any sale of electricity contract the Supplier enters into for the expansion of the BUS Plant.

Permits, Licences and Approvals: Supplier shall be responsible, at its sole expense, for obtaining and maintaining any permits, licenses and approvals necessary for the BUS. The City shall be responsible for maintaining any permits and licenses necessary for the biogas collection system, flares, associated blowers and leachate/waste water treatment at GLL. If any of the work

done on the Leased Premises by Supplier requires new permits or approvals or amendments to existing permits or approvals for GLL. Supplier shall be responsible for the cost and work with the City to obtain those permits or approvals.

Disposal of Effluent: Effluent consisting of only moisture and other constituents removed from the biogas and collected by Supplier in processing the biogas shall be returned to the City, if the effluent meets proper specifications, otherwise Supplier shall have to dispose of all effluent in accordance with proper environmental laws and regulations.

Operators of the Generation Plant: Supplier will notify the City of any persons employed or retained by Supplier to operate the Generation Plant for the City's approval. The City will notify Supplier of any unacceptable behaviour at the Leased Premises and/or GLL and Supplier will take appropriate action to resolve the issue, including replacement of the person. Supplier shall be responsible for payment of all persons employed and for any and all damage caused by such persons.

Safety Protocols: The City and Supplier shall enter into operation protocols designed to coordinate the supply of the biogas with the operation of the GLL biogas collection system, the flares and Generation Plant.

Assignment:

Supplier shall not assign the Biogas Utilization Agreement, without the City's consent, which may be unreasonably withheld. A transfer of control of Supplier will constitute an assignment. Notwithstanding this, Supplier shall be allowed to assign the Biogas Utilization Agreement to an affiliate of Toronto Hydro Energy Services Inc., which is 100% owned by Toronto Hydro Corporation, without the City's consent, provided the Supplier causes the assignee to enter into an assumption agreement with the City, agreeing to be jointly and severally bound to perform the obligations of the Supplier under the Biogas Utilization Agreement, in a form satisfactory to the City Solicitor.

Insurance: Supplier shall take out liability insurance in form and content satisfactory to the City, together with such other forms of insurance required by the City's Risk Management Division.

Performance Security: Supplier shall provide a Letter of Credit, in a form satisfactory to the Treasurer, or a Certified Cheque throughout the term of the Biogas Utilization Agreement. The amount of the Letter of Credit or Certified Cheque will be as follows:

- From the issuance of the Notice to Proceed until the end of the first Operating Year, the amount of Five Hundred Thousand Dollars (\$500,000.00); and
- Commencing in the second Operating Year until the expiry of the Term or any extension thereof, the amount shall be adjusted at the beginning of each Operating Year so that the amount is equal to fifty per cent (50%) of the Variable Royalty Payment payable by Supplier during the immediately preceding Operating Year.

Release and Indemnity: The City shall not be liable whatsoever for any death, injury, loss of property, or damage to property located on the Leased Premises. Supplier shall fully indemnify and save harmless the City and shall release and forever discharge the City from any actions, claims, costs, damages, losses whatsoever, howsoever caused.

Dispute Resolution: The City and Supplier will agree to resolve disputes first by negotiation between the General Manager and senior executives of Supplier. If that fails, the dispute may be referred to arbitration on consent of all parties.

City to Investigate Alternatives to Production of Electricity for Supply to Grid: The Parties agree and acknowledge that notwithstanding the execution of the Biogas Utilization Agreement, the City shall be entitled to investigate alternative uses for the biogas and, at any time, prior to the execution by the Supplier and the Ontario Power Authority of the FIT contract. The means of investigation may include the issuance of a Request for Expressions of Interest and/or Request for Proposals prior to the execution of the FIT contract but that any such investigation will close after December 31, 2012.

Early Termination:

The Biogas Utilization Agreement is conditional upon the following, failing which the Biogas Utilization Agreement shall automatically terminate:

- 1) Execution by the Supplier and the Ontario Power Authority of the FIT Contract on or before December 31, 2012;
- 2) Issuance by Ontario Power Authority to the Supplier of the Notice to Proceed, on or before December 31, 2013;
- 3) Issuance by the Ministry of Environment to the City of new or amended approval certificates for air and noise, if required, permitting the construction and operation of the BUS, on or before December 31, 2013;
- 4) Issuance by the Ministry of Environment to the City of an amendment to the approval certificate for GLL, if required, permitting construction and operation of system associated with the BUS, on or before December 31, 2013;
- 5) Final and binding approval of the appropriate municipal authorities and/or the Ontario Municipal Board, as applicable, of any rezoning, site plan and/or minor variance applications the Supplier may require which permit the construction and operation of the BUS, on or before December 31, 2013; and
- 6) Execution (and registration on title, where applicable) by the Supplier and any necessary third parties of all leases, licenses, permits, easements, encroachment agreements, highway access or crossing agreements, and/or other agreements, as may be necessary, to permit the Supplier to construct and operate the BUS, on or before December 31, 2013.

Responsibilities upon Termination or Expiration of the Biogas Utilization Agreement:

Upon early termination of the Biogas Utilization Agreement for any reason, or termination upon expiry of the Term or any extension thereof, the City shall have the option to purchase all or part of the BUS, including associated contracts to sell electricity, required permits, agreements and easements. The purchase price for the assets to be purchased will be the fair market value of the assets, to be negotiated and agreed upon by the parties and, failing such agreement, to be determined by arbitration.

Should the City decline to exercise its option to purchase, the City, in its sole discretion, may provide written notice to the Supplier that it requires the Supplier to decommission and remove its leasehold improvements and fixtures. If the City provides such written notice to the Supplier, the Supplier shall, at its sole expense, immediately commence and diligently proceed to decommission and remove the Generation Plant and all associated above and below-ground infrastructure, in accordance with applicable laws, and to restore the Leased Premises and the easement area to a condition satisfactory to the City, all within the three hundred and sixty-five (365) day period following any early termination of the Biogas Utilization Agreement, or termination upon expiry of the Term or any extension thereof.

Documentation: The Biogas Utilization Agreement shall be on the City's standard form, to be prepared by the City Solicitor or her designate, and shall include the City's standard clauses.