

Property Owner Agreement (POA)

Property Owner Agreement ("POA"), made in this ____ day of _____, 202__ ("Effective Date").

Between:

[Insert Name of Property Owner]

and

The Corporation of the City of Peterborough
(the "City")

Recitals

1. Peterborough City Council ("Council") enacted By-law 24-065 (the "By-law"), pursuant to O.Reg. 586/06, as amended under the *Municipal Act, 2001* to authorize the undertaking of energy efficiency, water conservation and renewable energy works on private residential property as local improvements under the Better Homes Peterborough Loan Program set out in the By-law (the "Program").
2. Among other things, the By-law authorizes the City of Peterborough to negotiate and enter into POAs with consenting property owners.
3. The Property Owner owns the Property.
4. The Property Owner has submitted an Application Form and a Funding Request to participate in the Program, which the the City has reviewed and approved.

In consideration of the mutual covenants herein contained, the Parties agree as follows:

1. Definitions

In addition to the terms defined in the various sections of this POA, the following terms have the following meanings unless inconsistent with the subject matter or context:

"Actual Cost" means the invoiced cost of completion of the Actual Improvements as set out in Appendices A2 and G;

"Actual Improvements" means the Eligible Improvements undertaken to the Property under the Program as indicated in Appendices A2 and G;

"Administrative Charge" means \$450 of the Funding Amount, representing the Property Owner's share of the City's administrative costs related to the Program,;

"Amortization Schedule" is a complete table of periodic loan payments showing the loan balance, interest, and principal for each year until the loan is paid off at the end of the term.

"Applicable Laws and Requirements" means:

- (1) any statute or proclamation or any delegated or subordinate legislation, including regulations and municipal by-laws;
- (2) any lawful requirement of a Governmental Authority, including but not limited to those lawful requirements contained in POAs with the Governmental Authority or in approvals, certificates, permits and/or other authorizations issued by the Governmental Authority; or
- (3) any applicable judgment of a relevant court of law, board, arbitrator or administrative agency of competent jurisdiction,

any of which is binding and in force in the Province of Ontario;

"Approved Final Cost" has the meaning given to it in section 8, and as set out in Appendix A2;

"Application Form" means an application in the City's prescribed form that the Property Owner completed and submitted to the City's satisfaction and that confirmed the Property's eligibility to participate in the Program, which completed form is attached as Appendix E to this POA;

"Assignment, Novation, and Release" means an agreement to assign this POA to a new owner of the Property and to release the Property Owner from his or her obligations under this POA, in the form attached as Appendix C;

"Authorized Agent" means a person retained by the Property Owner to oversee the Work, and make payments to Contractors on the Property Owner's behalf;

"Business Day" means Monday to Friday inclusive, excluding statutory and other holidays, namely; New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day which the City is closed for business;

"Business Hours" means the hours between 8:30 am and 4:30 pm (Eastern time zone);

"City" means The Corporation of the City of Peterborough;

"City-Provided Material" means any written documentation or other material that the City provides or causes to be provided to the Property Owner in connection with the Program or this POA;

"Cost of Borrowing" means the City's notional cost of borrowing to fund the Program (set at the rate of foregone investment income to the City) charged to the Property by applying the Program Interest Rate to the Funding Amount over the Special Charge Term;

"Completion Date" means the date indicated in Appendix A1 by which the Work shall be completed;

"Contractor" means an insured person retained by the Property Owner to complete the Work;

"Council" means Peterborough City Council;

“Current Value Assessment” means the current value assessment of the Property as shown on the last returned assessment roll at the time of submitting the Application Form to the City;

“Eligible Improvements” means the energy efficiency, water conservation and renewable energy measures recommended in the EnerGuide audit report for the Property, as set out in Attachment 1 to Appendix F;

“Estimated Cost” means the estimated cost of completion of the Intended Improvements as set out in Appendices A1 and F;

“Estimated Lifetime” means the estimated useful life of the Intended Improvements, as set out in Appendix A1;

“Final Disbursement” means the disbursement of the remaining portion of the Funding Amount not already disbursed as the Initial Disbursement by the City to the Property Owner or an Authorized Agent, as calculated pursuant to Section 10 and set out in Appendix A2;.

“Funding Amount” means the total funds provided to the Property Owner by the City under this POA, and calculated pursuant to Section 9 and set out in Appendix A2;

“Funding Request ” means a request in the City's prescribed form that the Property Owner has completed and submitted to the City's satisfaction for funding for the Work, which completed request is attached as Appendix F to this POA;

“Governmental Authority” means any federal, provincial or municipal government, parliament, legislature, or any regulatory authority, agency, ministry, department, commission or board or other representative thereof, or any political subdivision thereof, or any court or (without limitation to the foregoing) any other law, regulation or rule-making entity, having jurisdiction over the relevant circumstances, or any person acting under the authority of any of the foregoing (including, without limitation, any arbitrator);

“Incentive/Rebate” means any money received or to be received from a utility company, Governmental Authority, or Crown or municipal corporation (including the Canadian Mortgage and Housing Corporation) in respect of one or more of the Actual Improvements, but excluding any money intended to cover any portion of the cost of an energy assessment;

“Initial Disbursement” means disbursement to the Property Owner or an Authorized Agent of the portion of the Funding Amount requested in the Funding Request of up to fifty percent of the Estimated Cost in advance of completion of the Work to be determined at the sole discretion of the City of Peterborough, in accordance with Section 5;

“Intended Improvements” means the Eligible Improvements intended to be undertaken to the Property under the Program as set out in Appendix F;

“Lifetime” means the effective useful life of the Work, as set out in Appendix A2;

"Local Improvement Roll" means the local improvement roll for the Property setting out the Special Charge (Actual), as prepared and corrected by the City and certified by the City Treasurer in accordance with the Regulation;

"MFIPPA" means the *Municipal Freedom of Information and Protection of Privacy Act* R.S.O. 1990, Chapter M.56, as amended;

"Notice to Proceed" means the notice provided to the Property Owner by the City defining the maximum eligible Funding Amount, Program Interest Rate, and wherein the Property Owner can choose to work with an Authorized Agent, in the form attached as Appendix D;

"Payment Term" means the time period over which the Property Owner will pay the Special Charge (Actual) commencing on the earlier of the date of first payment of the Special Charge (Actual) and the first payment due date for the Special Charge (Actual,) and ending upon full payment of the Special Charge (Actual) (see Note 1 in Appendix B1);

"Pre-Authorized Property Tax Payment Program" means the City's payment program in which a Property Owner authorizes automatic withdrawals from his or her bank account to the City to pay property taxes and other charges collected through the tax bill as they become due and owing, such withdrawals to be made ten (10) times per calendar year;

"Program Documents" shall mean the documents comprising the Property Owners' request to participate in the Program and to obtain the requested funding, consisting of the:

- (1) Application Form, attached as Appendix E;
- (2) Funding Request, attached as Appendix F; and
- (3) Project Completion Report, attached as Appendix G;

"Program Interest Rate" means the following annual interest rates corresponding to each of the following Special Charge Terms, which interest rate will be fixed for the duration of the Special Charge Term. Interest will begin to accrue from the date of the Initial Disbursement is processed by the City and will be payable once the Special Charge (Actual) is imposed.

Special Charge Term	Effective Interest Rate (Annual)
15 years	4.50%

"Project Completion Report" means a report, in the City's prescribed form, that the Property Owner will prepare and submit to the City's satisfaction by the Property Owner to the City following completion of the Work, for determination by the City, in accordance with this POA, of any Final Disbursement for which the Property qualifies, which completed report will be attached as Appendix G to this POA;

"Property Owner-Provided Material" means any written documentation or other material that the Property Owner provides to the City, including but not limited to the Program Documents;

“Regulation” means Regulations 322/12 and 323/12, amending O.Regs. 586/06 and 596/06 under the *Municipal Act, 2001*, as amended from time to time;

"Special Charge" means a charge imposed by the City on the property pursuant to the Regulation;

"Special Charge (Actual)" means the final Special Charge for the Property based on the Actual Improvements, as set out in Appendix B2, that City Council will impose on the Property;

"Special Charge (Estimated)" means the estimated Special Charge for the Property based on the Intended Improvements, as set out in Appendix B1;

"Special Charge Term" means the time period of twenty years commencing from the first payment due date for the Special Charge (Actual);

"Substantially Performed" shall mean when the Work is ready for use or is being used for the purposes intended;

"Term" shall have the meaning ascribed to it in Section 2; and

“Work” means the Actual Improvements, collectively.

2. Term

This POA commences on the Effective Date and terminates at the end of the Payment Term. As provided by Section 22, the Term continues even if ownership of the Property transfers but, upon such transfer, the prior Property Owner may become eligible for a Release.

3. Interpretation

Each of the following Appendices to this POA are incorporated by reference into this POA as if they were fully stated herein:

Appendix A1	Intended Work
Appendix A2	Actual Work
Appendix B1	Estimated Special Charge
Appendix B2	Actual Special Charge
Appendix C	Form of Assignment, Novation and Release
Appendix D	Notice to Proceed
Appendix E	Application Form
Appendix F	Funding Request
Appendix G	Project Completion Report
Appendix H	Amortization Schedule
Appendix I	POA Withdrawal Form
Appendix J	Pre-Authorized Property Tax Payment Program Application

Where there is a conflict between the language in any of the Appendices and this POA, the language of this POA shall prevail.

4. Property Owner's Initial Covenants:

The Property Owner covenants that the Property Owner:

- (1) is the lawful owner of the Property, and that if more than one person owns the Property, all Property Owners are parties to and have signed this POA;
- (2) has obtained the consent of all persons with a mortgage interest in the Property to participate in the Program, and has provided such consent to the City;
- (3) understands and agrees that:
 - (a) the Special Charge (Estimated) as set out Appendix B1 is only an estimate of the Special Charge amount based on the Estimated Cost set out in Appendix A1;
 - (b) the City shall provide the Property Owner from time to time with updated versions of Appendices A2 and B2 (as new information set forth in Appendices A2 and B2 becomes known) to which the Property Owner will then be bound except as otherwise provided in this POA;
 - (c) the sum of the maximum Funding Amount and Administrative Charge eligible for the Property to be the lesser of ten (10) percent of the Current Value Assessment or \$50,000; and
 - (d) the City will advise the Property Owner of the Special Charge (Actual) pursuant to Section 16.
- (4) understands and agrees that by entering into this POA, completing and returning to the City the Pre-Authorized Property Tax Payment Program Form attached as Appendix J, and providing a void blank cheque, the City will automatically enrol the Property Owner in the Pre-Authorized Property Tax Payment Program, which payment program will apply to payment of the Special Charge (Actual), the property taxes payable on the Property, and any other charges that are payable through the Property's tax bill.

5. Initial Disbursement

Prior to completion of the Work, the City will pay the Initial Disbursement indicated in Appendix A1 to the Property Owner.

Interest will begin to accrue from the date the initial disbursement cheque is issued payable in the Special Charge Term. Leap years are accounted for in all per diem calculations.

6. Property Owner's Responsibility

The Property Owner understands and agrees that it is the Property Owner's sole responsibility to complete the Work by retaining a qualified Contractor and to ensure that the Work is completed by the Completion Date.

The City takes no responsibility for and has no involvement in retaining a Contractor or any other person to complete the Work. The City also takes no responsibility for and has no involvement in the completion of the Work or in ensuring its completion, and the Property Owner is solely responsible for any action he or she may take that may impede or adversely affect the Contractor and the Contractor's ability to complete the Work in a timely manner. The Property Owner further understands and agrees that the City has no responsibility or liability to the Contractor or to the Property Owner for the completion of the Work including, without limitation, any delays, errors, or defects in the completion of the Work, any negligence of the Contractor in the completion of the Work, the Contractor's failure to complete the Work, any payment or failure to make payment to the Contractor or any other person in respect of completion of the Work, and the discharge of any liens on the Property.

The Property Owner is not an agent of the City.

The Property Owner understands that it is the Property Owner's sole responsibility to make payments for the completion of the Work, and that the City will make payments to the Property Owner in accordance with this POA only if all requirements for such payment have been met.

The Property Owner understands that, in the event the Property Owner chooses to complete the Work with an Authorized Agent, in accordance with Options A or Option B of Appendix B of the Notice to Proceed, the City will make payments directly to the Authorized Agent in accordance with this POA and only if all requirements for such payment have been met.

The City is not liable for any failure of the Work to achieve the expected energy savings or to qualify for a Final Disbursement under the Program. The Property Owner further understands and agrees that the maximum Funding Amount under the Program is the lesser of the three amounts set out in Section 9 of this POA, and that the Property Owner may not receive payment from the City of all, or any, costs incurred by the Property Owner to complete the Work.

7. Completion Date

Provided that the Property Owner notifies the City in writing by at least 4:30 pm on a business day that is at least 10 business days before the Completion Date that the Property Owner is unable to Substantially Perform the Work by the Completion Date, and provided further that the Property Owner indicates the reasons for the delay and makes available whatever additional written or verbal information the City requires, then the City retains the right in its discretion on a case by case basis to extend the Completion Date to a later date.

8. Approved Final Cost

Within 30 calendar days of the earlier of (a) the Work being Substantially Performed or (b) the Completion Date, the Property Owner shall provide the City with the Project Completion Report.

The City shall then verify the completeness and accuracy of the Project Completion Report, and may disqualify the Property from any funding under this POA if the Project Completion Report is incomplete or, in the City's sole opinion, provides inadequate information to qualify for funding under this POA.

The City may, in its sole discretion, (1) make any reasonable adjustments to the Actual Cost as evidenced on the Project Completion Report, and/or (2) may inspect the Work in accordance with Section 25 of this POA.

Actual Costs include equipment, materials labour and harmonized sales tax (HST), as verified and adjusted by the City in its sole discretion, will constitute the Approved Final Cost.

9. Funding Amount

The Funding Amount shall be the amount, net of any Incentives/Rebates, that is the lesser of:

- (1) the Approved Final Cost;
- (2) the Estimated Cost plus Five (5) per cent of the Estimated Cost; and
- (3) the highest dollar amount that does not cause the sum of the maximum Funding Amount and Administrative Charge to exceed the lesser of either 10 percent of Current Value Assessment for the property or \$50,000.

10. Final Disbursement

The Final Disbursement shall be the Funding Amount as determined under Section 9 of this POA, less the Initial Disbursement.

The City will pay to the Property Owner, or the Authorized Agent if applicable, the Final Disbursement within a reasonable period of time following receipt of the Project Completion Report, as determined by the City. Any City payment will be made by cheque payable to the Property Owner, or the Authorized Agent if applicable.

Interest will accrue from the date the Final Disbursement cheque is issued payable in the Special Charge Term. Leap years are accounted for in all per diem calculations.

11. Special Charge

(1) Calculating the Special Charge

After the Final Disbursement Amount is paid to the Property Owner or the Authorized Agent, the City will calculate the Special Charge (Actual) for the Property.

The Special Charge (Actual) is equal to the sum of (a) the Funding Amount, (b) the Cost of Borrowing from the date of Initial Disbursement and Final Disbursement, (c) the Cost of Borrowing for the Special Charge Term and (d) the Administrative Charge.

(2) Notice of the Special Charge

The City will advise the Property Owner of the proposed Special Charge (Actual) pursuant to Section 16.

(3) Consent to Levy of the Special Charge

The Property Owner consents to the Special Charge (Actual) being levied by the City on the Property pursuant to the Regulation, and agrees to pay the Special Charge (Actual) in equal annual amounts over the Special Charge Term under the Pre-authorized Property Tax Payment Plan when the Special Charge (Actual) appears on their tax bill. The Property Owner understands that such payments will be in an equal amounts, except for the final payment which may be greater or lower to address any remainder amounts.

(4) Early Payment of Special Charge

At any time after the Special Charge (Actual) is levied on the Property by the City, the Property Owner can discharge the Special Charge (Actual) and end the Payment Term by making a one-time single lump sum payment in an amount determined by the City. There will be no fee or penalty for early repayment in lump sum. As permitted by Section 31 of the Regulation, the amount of the payment will be the present value of the Special Charge (Actual) still outstanding, calculated by the City using the Program Interest Rate as the discount rate.

(5) Apportioning the Special Charge

The City apportions the Special Charge (Actual) on the basis of one Special Charge per property.

12. Property Owner's Additional Obligations:

The Property Owner shall:

- (1) Complete the Work by the Completion Date;
- (2) Remain enrolled and in good standing in the City's Pre-authorized Property Tax Payment Program for the duration of the Payment Term, unless otherwise approved in writing by City staff;
- (3) If the Property Owner does not complete the Work or otherwise does not put the Property in a position where the City can impose the Special Charge on the Property, repay in its entirety all funds received from the City pursuant to this POA or under the Program within ten (10) business days of receipt of a demand for payment from the City;
- (4) Provide the City access to, or copies of, all information related to energy usage and water consumption at the Property for the period commencing in the calendar year prior to the commencement of the Work through to five years following the Completion Date;

- (5) Notify any party to whom the Property Owner plans to transfer the Property, whether a buyer or otherwise, in advance of such transfer that the Special Charge (Actual) has been, or will be imposed on the Property pursuant to the Program and the Regulation.

13. Incentives/ Rebates

The Property Owner may apply for other Incentives/Rebates for which the Property may be eligible, and, if successful, then agrees to provide the City prior to submission of the Project Completion Report with information on all Incentives/Rebates which have been approved.

14. Withdrawal

The Property Owner may withdraw from this POA by completing the withdrawal form in Appendix H and submitting to the City Clerk by mail or in person so long as such submission arrives date-stamped no later than eight (8) business days from the date the Property Owner submitted the signed POA to the City by mail or in person. Upon withdrawal, the Property Owner shall repay in its entirety all funds received from the City in accordance with section 12(3) of this POA.

15. Executed POA

Once executed by the City, this POA is final and binding.

16. Special Charge (Actual) Will be Added to Local Improvement Roll

By executing this POA, the Property Owner is giving their irrevocable representation that they understand that (1) the amount of the Special Charge (Actual) being imposed and (2) that the Special Charge (Actual) will be added to the Property's Local Improvement Roll.

Within 21 business days of executing this POA, a Property Owner may provide all the particulars in the form of a written objection or proposed revision to the Special Charge (Actual) to the City Clerk.

The City's Treasurer shall consider any objections and proposed revisions made by the Property Owner, and may make any changes to the proposed Local Improvement Roll which the Treasurer considers fair and equitable. Once any such corrections are made, the Treasurer shall certify the Local Improvement Roll.

The certified Local Improvement Roll and the Special Charge (Actual) set out in it shall be final and binding on the Property, and the Work is conclusively deemed to have been lawfully undertaken in accordance with the Regulation.

17. Special Charges added to the Tax Roll

Pursuant to the *Municipal Act, 2001* and the Regulation, once levied, the Special Charge (Actual) can be added by the City to the tax roll for the Property. Once added to the tax roll the Special Charge (Actual) has the same priority to all other liens as property taxes, and will become an obligation of all subsequent owners of the Property.

The City will note the full amount of the Special Charge (Actual) on the tax roll, and this amount will appear on any tax certificates requested for the Property.

The Special Charge (Actual) will be collected through the tax bill for the Property, and payment will be due and payable at the same time as property tax payments for the Property.

The portion of the Special Charge (Actual) annually payable will be added to the tax roll for the Property and will form a priority lien on the property if not paid when due.

18. Severed Lands

Where the Property Owner seeks to sever the Property, the Special Charge (Actual) shall be:

- (1) Reapportioned among the new lots in any manner the City considers just and equitable, having regard to the relative degree of benefit received by each of the new lot, and a new special charge will be imposed on each of the new lots in the amount apportioned to each lot; or
- (2) Paid in full at the time of the City approval for the severance.

19. Corrections to Special Charges and to the Local Improvement Roll

- (1) The City may correct the Special Charge (Actual) pursuant to the Regulation, if the City Treasurer determines that the Special Charge (Actual) is incorrect due to a gross or manifest error.
- (2) The City Treasurer will make any amendments and corrections to the Local Improvement Roll to reflect any correction to the Special Charge (Actual) made pursuant to subsection (1), and any apportionment of a Special Charge (Actual) pursuant to Section 18, and shall certify the corrected Local Improvement Roll.

20. Intentionally Deleted

21. Late Payment Penalties and Events of Default

- (1) If the Property Owner fails to make any payment owing to the City under this POA on the date it becomes due, the payment is subject to late penalties and interest at a rate of 1.25% per month:
 - (a) a fee for non-sufficient funds being in the Property Owner's account under the Pre-authorized Property Tax Payment Program;
 - (b) a one-time penalty on the first day of default; and
 - (c) an additional penalty on the first day of each month thereafter that the amount remains outstanding.

- (2) The City may declare that an event of default has occurred (an “Event of Default”) if the Property Owner:
 - (a) fails to meet any of its obligations under this POA, including without limitation:
 - (i) failure to make any payment to the City as it becomes due;
 - (ii) failure to reimburse the City all portions of the Funding Amount that the City has provided to the Property Owner in accordance with Section 10 in the event that the Property Owner has not completed the Work or otherwise has not put the Property in a position for the City to apply a Special Charge; or
 - (iii) failure to adhere to its confidentiality obligations under this POA; or
 - (b) makes false or misleading representations or submits false or misleading information to the City.
- (3) In the event that the City has declared that an Event of Default has occurred, the City may immediately, in its sole discretion, exercise one or more of the following remedies:
 - (a) terminate its obligations under this POA and, if applicable, demand repayment of all monies provided under this POA to the Property Owner to date;
 - (b) pursue a court action to recover all damages and/or demand specific performance; and
 - (c) add to the property tax roll for the Property the Initial Disbursement plus the Administrative Charge as a fee owed to the City pursuant to this POA.

22. Sale and Release

The Property Owner shall have the unfettered right to sell, transfer, charge, and mortgage, encumber or otherwise deal with the Property without the prior consent of the City.

In the event the Property is transferred to a new owner, the Property Owner shall continue to be liable to the City for all Property Owner obligations and liabilities under this POA until the City signs the Assignment, Novation and Release, thereby releasing the Property Owner from obligations and liabilities under this POA.

The City shall not sign the Assignment, Novation and Release until all of the following conditions are met to the satisfaction of the City:

- (1) the Property Owner provides the City with a registered copy of the Transfer of the Property from the Property Owner to a new owner;
- (2) the Special Charge (Actual) and other amounts due and owing under this POA for the portion of the Payment Term during which the Property Owner owned the Property are fully paid; and

- (3) the Property Owner provides the City with an original Assignment, Novation and Release in the form attached as Appendix C, executed by the Property Owner and the new owner.

The Property Owner acknowledges that nothing in this POA interferes with the City's rights, benefits and powers under the Regulation and *Municipal Act, 2001* with respect to the Property or the Special Charge (Actual), and that the City shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities thereunder.

23. Ownership, Disclosure, and Confidentiality of Written Material

(1) Ownership and Compelled Disclosure of Property Owner-Provided Material

Once in the possession and/or under the control of the City, any Property Owner-Provided Material becomes the property of the City and, consequently, subject to the Municipal Freedom of Information and Protection of Privacy Act ("MFIPPA"). Pursuant to MFIPPA, the public has a right to seek access to these documents, in whole or in part, which the City must then disclose in accordance with the provisions of MFIPPA. Note that those provisions safeguard against disclosure of personal information but exceptions to such safeguards do apply.

Moreover, the City may be required to disclose these documents pursuant to other Applicable Laws and Requirements regarding disclosure of information and production of documents, including (but not limited to) the Federal Courts Rules, the Ontario Rules of Civil Procedure, the Criminal Code of Canada, subpoenas and summonses to witness, court orders, and any other federal, provincial or municipal statutory power that compels the City to disclose such information and documents.

The City reserves the right to make all final disclosure decisions including those pursuant to MFIPPA.

(2) MFIPPA Designation of Property Owner-Provided Material

If the Property Owner finds that any of the Property Owner-Provided Material, in whole or in part, contains information exempt from disclosure under MFIPPA (pursuant to Section 10 of MFIPPA or any other section) or the other disclosure obligations discussed above, then the Property Owner should clearly identify the exempted information to the City. Doing so will more easily enable the City to notify the Property Owner in advance of any disclosure the City may be compelled to undertake.

The City shall assume no liability that may arise from a Property Owner failing to identify information to which any of these disclosure obligations stated above applies and to provide the necessary information in support thereof.

(3) Ownership and Confidentiality of City-Provided Materials

All City-Provided Material in connection with, or arising out of, the Program or this POA:

- (a) is and shall remain the property of the City;

(b) must be treated by the Property Owner as confidential and not disclosed to anyone other than the Property Owner or City of Peterborough staff (which does not include City Council Members or their staff) without written consent from the City unless such City-Provided Material was obtained in a manner available generally to the public (such as from the City's website); and

(c) other than in connection with the Program, must not be used or disseminated by the Property Owner for any purpose, including (but not limited to) for purposes of lobbying on this or related matters without the express written permission of the City.

This provision survives the termination of the POA for five (5) years, beginning with the date on which the POA terminates.

24. Audit

The City may audit this POA and related records. The Property Owner shall at all times during the term of the POA, and for a period of two (2) years following the Payment Term, keep and maintain records of the Work performed pursuant to this POA. This shall include proper records of invoices, vouchers, Incentives/Rebates, timesheets, and other documents that support actions taken by the Property Owner. The Property Owner shall at its own expense make such records available for inspection and audit by the City at all reasonable times.

25. Inspection

The Property Owner acknowledges that any portion of the Work which required a building permit is subject to inspection under Building Code.

Concerning Work related to energy efficiency, water conservation and renewable energy, the City reserves the right to inspect the Work for a period of three (3) years from the Completion Date. If the City exercise this right it shall provide the Property Owner with 14 calendar days written notice to before a City Official or third-party contractor retained by the City inspects the Work. Such inspection is solely for the purpose of verifying the Work stated in the Project Completion Report. By conducting such inspection, the City is not making any representations or warranties with respect to quality of the Work and is not liable for any aspect of the Work.

26. Indemnities

The Property Owner indemnifies and saves harmless the City, its Mayor, Members of Council, officers, employees, and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgements (including legal fees and costs) arising from or related to the Property Owner's performance or non-performance of its obligations, including breach of any confidentiality obligations under the POA or infringement, actual or alleged of any Canadian, American or other copyright, moral right, trade-mark, patent, trade secret or other thing with respect to which a right in the nature of intellectual/industrial property exists.

Upon assuming the defence of any action covered under this section the Property Owner shall keep the City reasonably informed of the status of the matter, and the Property Owner shall make no admission of liability or fault on the City's part without the City's written permission.

27. Survival

In addition to any obligations set forth in this POA that by their nature survive the completion of the Work or termination of this POA or otherwise expressly survive, those obligations set forth in Sections 23 (Ownership and Confidentiality of City-Provided Material), 24 (Audit), and 26 (Indemnities) shall continue to bind the Property Owner notwithstanding the completion of the Payment Term, the release by the City of the Property Owner of its obligations under this POA, or the termination of this POA.

28. Severability

If any provision of this POA or the application thereof to any person or circumstances is found to be invalid, unenforceable or void by any court or tribunal of competent jurisdiction, such provision shall be deemed severable and all other provisions of this POA shall be deemed to be separate and independent therefrom and continue in full force and effect.

29. Further Assurances

The Property Owner agrees that it will do all such acts and execute all such further documents, conveyances, deeds, assignments, transfers and the like, and will cause the doing of all such acts and the execution of all such further documents (including waivers of moral rights) as are within its power to cause the doing or execution of, as the City may from time to time reasonably request, in writing, and as may be necessary or desirable to give full effect to this POA.

30. Notices

Any demand or notice to be given pursuant to this POA shall be duly and properly made and given if made in writing and either delivered to the party for whom it is intended to the address as set out below or sent by prepaid registered mail addressed to such party as follows:

in the case of the City:

- (1) City Clerk
City Hall, 500 George Street North
Peterborough, ON K9H 3R9

With a copy to:

Climate Change Project Manager
City Hall, 500 George Street North
Peterborough, ON K9H 3R9

- (2) In the case of the Property Owner, to the Primary Contact indicated in the

Application Form or to such other addresses as the Parties may from time to time notify in writing, and any demand or notice so made or given shall be deemed to have been duly and properly made or given and received on the day on which it shall have been so delivered or, if mailed, then, in the absence of any interruption in postal service in the City of Peterborough affecting the delivery or handling thereof, on the day following three business days following the date of mailing.

31. Successors and Assigns

The POA shall endure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors and assigns.

32. Appendices

The Appendices to this POA shall constitute an integral part of this POA and all expressions defined in this POA shall have the same meanings in such attachments. In the case of a conflict between the body of this POA and any attachment, the provisions of the body of this POA shall take precedence.

33. Governing Law

This POA shall be governed by the laws of the Province of Ontario. Any dispute arising out of this POA will be determined by a court of competent jurisdiction in the Province of Ontario.

34. Entire POA

The POA forms the entire agreement between the Parties. In the event of conflict or inconsistency between the POA and any other agreement between the Parties, the POA shall prevail.

35. Amendments

The Parties can mutually agree to amend this POA.

36. Headings, subheadings, index numbers, reference numbers

All headings, subheadings, index and reference numbers in POA and attachments are given for the convenience of the Parties and as such must be taken only as a general guide to the items referred to and not relied upon. It must not be assumed that such numbering is the only reference to each item, but the POA as a whole must be fully read in detail for each item.

In witness whereof the Parties have executed this POA as of the Effective Date.

Signed and Delivered

Property Owner(s)

Property Owner Name:

Property Owner Name:

The Corporation of the City of Peterborough

Director, Asset Management and Capital Planning

Commissioner, Infrastructure Planning and Growth Management

Appendix A1 – Intended Improvements

Attach the Funding Request Form as submitted.

Appendix A2 – Actual Improvements

1. Improvements

Actual Improvements	Actual Cost ¹	Expected Lifetime
TOTAL		

2. Actual Incentive/Rebate

The Property Owner is eligible to receive an incentive/rebate of [AMOUNT] from [PROGRAM / PROVIDER].

3. Funding Amount

In accordance with Section 9 of the POA, the Funding Amount is [AMOUNT] which is:

(a) the lesser of:

- (i) The Approved Final Cost which is [AMOUNT] minus an incentive/rebate of [AMOUNT]
- (ii) The Estimated Cost plus five percent of the Estimated Cost which is [AMOUNT]; and
- (iii) the highest dollar amount that does not cause the sum of the Funding Amount and Administrative Charge to exceed the lesser of 10 percent of Current Value Assessment for the property or \$50,000 when the City calculates the Special Charge (Actual) which is [AMOUNT].

(b) minus the Actual Incentive / Rebate which is [AMOUNT]

4. Final Disbursement

The Final Disbursement is [AMOUNT] which is equal to the Funding Amount ([AMOUNT]) minus any Initial Disbursement ([AMOUNT]).

¹ Actual costs include equipment, materials, labour and harmonized sales tax (HST).

Appendix B1 – Estimated Special Charge

The Special Charge (Estimated)¹ is [AMOUNT].

The Special Charge (Estimated) was calculated as follows:

Special Charge Term	15 years
Program Interest Rate	4.50%
Estimated Funding Amount	
Cost of Borrowing ²	
Administrative Charge ³	\$450
Special Charge (Estimated)	
Annual Payment (Estimated)	

Note 1: Payments will be made in accordance with the Property Owner's payment program with the City. See Amortization schedule for more details.

Note 2: The Cost of Borrowing represents the total interest accrued over the Special Charge Term based on the Program Interest Rate and Estimated Funding Amount.

Note 3: The City will not apply penalties or interest to the Administrative Charge even if the Property Owner defaults.

Appendix B2 – Actual Special Charge

The Special Charge (Actual)¹ is [AMOUNT].

The Special Charge (Actual) was calculated as follows:

Special Charge Term	15 years
Program Interest Rate	4.50%
Actual Funding Amount	\$
Cost of Borrowing ²	\$
Administrative Charge ³	\$450
Special Charge (Actual)	\$
Annual Payment (Actual)	\$

Note 1: Payments will be made in accordance with the Property Owner's payment program with the City. See Amortization schedule for more details.

Note 2: The Cost of Borrowing represents the total interest accrued over the Special Charge Term based on the Program Interest Rate and Estimated Funding Amount.

Note 3: The City will not apply penalties or interest to the Administrative Charge even if the Property Owner defaults.

Appendix C – Form of Assignment, Novation, and Release

(The current Property Owner can reproduce and use this form to satisfy the requirements in Section 22 (Sale and Release). Please inform City staff if an electronic version is needed.)

This Agreement made as of the ___ day of ____, 20__.

Among:

_____ (the "Assignor")

and

_____ (the "Assignee")

and

The Corporation of the City of Peterborough (the "City")

Whereas:

- A. Pursuant to City Bylaw 24-065 (the "By-law"), the Assignor applied to participate in the City of Peterborough's Better Homes Peterborough - Loan Program and consequently, entered into a Property Owner Agreement with the City of Peterborough on _____ (the "POA"), a copy of which is attached as Schedule A, to obtain funding for energy efficiency and water conservation improvements at the Property (the "Funding Amount").
- B. The Bylaw delegated authority to to one or both of the Commissioner of Infrastructure, Planning and Growth Management and the Director of Asset Management and Capital Planning to (1) execute agreements to give effect the HEEP, (2) to do such this and execute such documents and agreements on behalf of the City with homeowners and others which satisfy the HEEP requirements, and (3) impose on the Property a Special Charge in the amount of _____.
- C. The Special Charge will be the Funding Amount together with the Cost of Borrowing and the Administrative Charge.
- D. The POA includes additional obligations that are separate and apart from the obligation to repay the Special Charge (Actual) that the Bylaw has imposed on the Property.

Now therefore in consideration of the transfer of the Property from the Assignor to the Assignee, the City's release of the Assignor, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. **Definitions.** Unless otherwise defined herein, all capitalized terms used in this POA shall have the respective meanings ascribed to them in the POA.

2. **Assignment of POA.** The Assignor does hereby absolutely and unconditionally assign, novate, transfer, set over and convey unto the Assignee, for its sole use and benefit, all of the Assignor's right, title, interest, obligations and liabilities in, to and under the POA from and after the date hereof.
3. **Assumption of POA.** The Assignee hereby accepts this assignment contained in Section 2 hereof and covenants and agrees with the Assignor that, from and after the date hereof, the Assignee assumes and is responsible for and will perform, observe, satisfy, discharge and pay as and when due the obligations and liabilities of the Assignor under the POA arising from and after the date hereof.
4. **Consent of City.** The City (in its capacity as an existing party under the POA), effective from and after the date hereof, hereby consents to the assignment of all the Assignor's right, interest, obligations and liabilities in, to and under the POA, and accepts in full satisfaction the Assignee as a party to the POA in substitution for the Assignor.
5. **Agreement between the City and Assignee.** The Assignee covenants with the City that the Assignee will perform, observe, satisfy, discharge and pay as a when due the obligations and liabilities of the Property Owner under the POA arising from and after the date hereof. Among other things, the Assignee will provide information necessary for automatic enrolment in the Pre-Authorized Property Tax Payment Program as discussed further in the POA.
6. **Release of the Assignor.** In accordance with Section 22 of the POA, the City hereby releases and discharges the Assignor of and from the observance and performance of the covenants, agreements and obligations under the POA, effective from and after the date hereof.
7. **Joint and Several Liability.** The liability of each entity comprising the Assignee hereunder shall be joint and several.
8. **Successors and Assigns.** This Assignment, Novation and Release shall ensure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, executors, administrators, successors and assigns.
9. **Governing Law.** This Assignment, Novation and Release shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.
10. **Counterparts.** This Assignment, Novation and Release may be executed in several counterparts and by facsimile transmission of an originally executed document, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
11. **Further Assurances.** Each of the Parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required

or necessary to more effectually implement and carry out the true intent and meaning of this Assignment, Novation and Release.

12. **Headings, Extended Meanings.** The headings in this Assignment, Novation and Release are inserted for convenience of reference only and shall not constitute a part hereof and are not to be considered in the interpretation hereof. In this Assignment, Novation and Release, words importing the singular include the plural and *vice versa*; words importing the masculine gender include the feminine gender and vice versa; and words importing persons include firms or corporations and *vice versa*.

In Witness Whereof the Parties hereto have executed this Assignment, Novation and Release as of the date first above-written.

Assignor In the presence of:

By: _____
Name: _____ Witness name: _____

Assignee

By: _____
Name: _____ Witness name: _____

The Corporation of the City of Peterborough

Blair Nelson
Commissioner of Infrastructure, Planning and Growth Management

Ian Boland
Director of Asset Management and Capital Planning (Acting)

Attach copy of the POA and mark it Schedule "A"

Appendix D - Notice To Proceed

[insert completed form here]

Appendix E - Application Form

[Insert completed form here]

Appendix F - Funding Request

[Insert completed form here]

Appendix G – Project Completion Report

[Insert completed form here]

Appendix H – Amortization Schedule

[Insert completed form here by City of Peterborough]

Appendix I - POA Withdrawal Form

(as permitted pursuant to subsection 35.4(4) of Ontario Regulation 596/06)

If you intend to withdraw from the POA, this form must be completed and submitted no later than 8 business days after you submitted your signed POA to the City

I/we, _____, as signator(ies) to a Property Owner Agreement with the City of Peterborough,

Dated _____ concerning my/our property identified as
[insert POA effective date]

[insert Assessment Roll Number] (the "POA"), withdraw my/our

signature(s) from the POA.

Property Owner 1	Title (if auth. rep. of corp. owner)	Date
Property Owner 2, if applicable	Title (if auth. rep. of corp. owner)	Date
Property Owner 3, if applicable	Title (if auth. rep. of corp. owner)	Date

Deliver completed form to:

City Clerk, City Hall,
500 George St N, Peterborough, ON K9H 3R9

Appendix J – Pre-Authorized Property Tax Payment Program Application

To sign up, the Property Owner must log in or register at the City of Peterborough's Online Tax Portal and complete the Pre-Authorized Payments form.

Access the portal here: www.peterborough.ca/mytaxportal