



**CORPORATION OF THE TOWN OF INGERSOLL
BY-LAW NO. 10-4579**

**A by-law to authorize the execution of an Agreement with
Intech Clean Energy Inc.**

WHEREAS the Town of Ingersoll is desirous of entering into an agreement with Intech Clean Energy Inc to construct a 10 megawatt grid tied solar photovoltaic (PV) renewable electricity generation system;

NOW THEREFORE the Council of The Corporation of the Town of Ingersoll enacts as follows:

- (1) That the Mayor and the Clerk are hereby authorized to execute an agreement with Intech Clean Energy Inc. and to affix the seal of The Corporation of the Town of Ingersoll hereto.
- (2) That a copy of the said agreement shall be annexed to and form part of this by-law.

READ a first and second time in Open Council this 31st day of August 2010.

READ a third time in Open Council and passed this 31st day of August 2010.

THE CORPORATION OF THE TOWN OF INGERSOLL

Paul Holbrough, Mayor

Elaine Clark, Clerk

AGREEMENT FOR PROFESSIONAL SERVICES

MEMORANDUM OF AGREEMENT effective as of ____ day of September, 2010.

BETWEEN:

THE CORPORATION OF THE TOWN OF INGERSOLL

(hereinafter called the '**Client**')
DRAFT

THE PARTY OF THE FIRST PART

- AND -

Intech Clean Energy Inc.

(hereinafter called the '**Intech**')
DRAFT

THE PARTY OF THE SECOND PART

WHEREAS the Client intends is to construct a 10 megawatt grid tied solar photovoltaic (PV) renewable electricity generation system on 45 acres of land in the Industrial Park adjacent to Clark Road in the Town of Ingersoll (hereinafter called the '**Project**') and has requested Intech to design, supply, install and commission a 10 megawatt ground mounted grid tied solar PV system in connection therewith;

AND WHEREAS the Intech agrees to provide the requested services;

NOW THEREFORE WITNESSETH that in consideration of the covenants contained herein, the Client and the Intech mutually agree as follows:

1. SPECIFICATION

The purpose of this agreement is to construct a 10 megawatt grid tied solar photovoltaic (PV) renewable electricity generation system on approximately 45 acres of land in the Industrial Park adjacent to Clark Road in The Town of Ingersoll.

This work would be a continuation of the Town's ongoing effort and commitment to energy conservation, environmental responsibility and sustainability while making a contribution towards supplying clean and renewable energy to Ontario's electricity grid. The grid-tied solar PV system will take advantage of the Feed-In Tariff (FIT) program under the new Green Energy Act and achieve as much energy potential as possible up to 10 megawatts.

2. BACKGROUND

The Town of Ingersoll is committed to championing renewable energy opportunities and by grid tying the solar PV system, green energy generated by harnessing the power of the sun will be sent back into Ontario's electricity grid thereby allowing the Town to access an incentive through the Feed-In Tariff program under the Province's new Green Energy Act.

This initiative will allow the Town of Ingersoll to assess the benefits of this work from a triple bottom line perspective – economic, environmental and social while considering future opportunities for installing solar PV on other town facilities. The work seeks to serve as a tremendous education and awareness building opportunity for both staff and the local community. A web-based monitoring system will allow for the retrieval of detailed information such as a live link to the amount of green electricity being generated and fed into the grid. This will be promoted via the town's website, electronic information boards as well as other marketing and promotional tools.

3. SCOPE OF WORK

Intech must include, without limiting to, the following as part of their scope of work.

- a. Intech will supply and install a 10 megawatt ground mounted grid tied solar PV system.
- b. All associated equipments and accessories required for this system such as electrical cables, conduits, inverters, electrical meters, etc. must be considered as part of this scope of work.
- c. The PV panels must be installed facing true South, at an angle of inclination of 35 to 45 degrees.
- d. The PV panels must be elevated at least 3 ft (1 metre) from the roof surface in order to prevent snow accumulation.
- e. The PV panels must be one of high efficiency panels available in today's technology
- f. All wiring, controls, meters and hardware required for grid tie-in must be provided and installed, including all utility safety disconnect switches, appropriately sized inverters.

- g. All electrical works must be done by Licensed Electrician(s) certified by appropriate jurisdiction in Ontario.
- h. Intech must take the responsibility to advise the Client and to obtain all required permits including Building Permit and ESA approval, if necessary, and meet all of the Ontario Building Code (OBC) requirements and other applicable codes and standards in the execution of this project.
- i. Completed project will be ready for and meet all requirements of the Province's proposed Feed-In Tariff program under the Green Energy and Economy Act.
- j. Intech will coordinate all necessary requirements and activities regarding all incentive programs, including FIT program.
- k. Intech will provide post commissioning report on the performance of the installed solar PV system.
- l. Intech will provide operating training and maintenance manuals for all equipment supplied.
- m. Intech will provide warranty information including workmanship and panel warranty.
- n. Intech will supply and install open protocol data logging equipment and associated web enabled software to record required system performance parameters.
- o. The system data must be accessible through Client's intranet. The Intech shall work with Clients Information Technology Services (ITS) in this regard.
- p. Intech will provide the type of PV Panel and its efficiency rating.
- q. Intech will provide the type of total PV Panel system rating before inverter, inverter efficiency and power output.
- r. Intech will provide a schematic of the total system layout including the grid connection.
- s. Intech will provide the type of PV panel and workmanship warranty information.

Services, supplies and related infrastructure which are specifically not included are the following items:

- a. All expert reports including reports such as noise impact or soil condition;
- b. Any fencing around the perimeter of the project site;
- c. Road access to the project site;
- d. Connection to the hydro grid and commissioning by the Ontario Power Authority; The Client will submit an application to Hydro One to cover these costs.
- e. Installation of necessary utility services such as telephone, water, run of water etc.;
- f. Installation of maintenance housing; and
- g. Security systems and services.

4. Operations & Maintenance (O&M) Manuals:

Provide complete operation and maintenance manuals for the PV systems one (1) printed copy and one (1) electronic copy of each manual. Manuals shall incorporate the following:

Contact information – including technical support contact numbers.

As-built electrical & shop drawings submitted in electronic format.

Manuals and product data sheets for all modules, inverters, disconnects, fuses, breakers, mounting system components as well as documentation of product warranties as stipulated above.

Operations documentation with power up and power down procedures, which shall include instructions for semi-annual and annual maintenance.

Documentation from the Electrical Safety Authority (ESA) confirming approval of the final system, including ESA Plan Approval documentation.

Warranty documentation for solar modules inverters and racking system.

5. Training on Operations & Maintenance

This will include two (2) sessions (4 hours per session) with six (6) people per session. Training sessions will be conducted one (1) month apart.

The training will cover the following.

- a. General operations & system functions.
- b. System shut down & power up procedures.
- c. Emergency procedures.
- d. System status monitoring.
- e. General Troubleshooting

6. Quality Assurance

General Requirements

All materials and equipment supplied for this project shall be new and CSA/UL certified/approved.

The Contractor shall provide documentation to demonstrate that persons involved in the work have appropriate training and experience in PV system installation and are to the Town of Ingersoll's satisfaction holding all the proper applicable licenses.

All materials and equipment shall be installed to provide a clean, aesthetically pleasing

installation. Any suggestions regarding additional means of improving aesthetics of the installation should be provided to Town of Ingersoll for review.

Referenced Standards

Photovoltaic Modules shall meet Underwriter Laboratories (UL and CUL) 1703 Standard for Safety for Flat-Plate Photovoltaic Modules and Panels

The Utility Interactive Grid-Tied Inverter shall conform to the following standards:

1. Underwriter Laboratories (UL) 1741 Standard for Safety for Static Inverters & CSA 22.2 No. 107.1 standards.
2. CUL and UL Listed

Installation of the PV system shall meet the requirements of the Ontario Electrical Safety Code (OESC) 2009 and the Ontario Building Code (OBC) 2006

7. Equipment Warranties

The Intech shall provide the Town of Ingersoll with:

- a. a minimum one (1) full year warranty (including troubleshooting, parts, and labour) for the installed PV system. The warranty shall provide for service at the site including trouble-shooting, repair, labour, and replacement of components found to be defective. This warranty shall start upon written acceptance of the PV system by the Town of Ingersoll.
- b. The photovoltaic modules shall have a minimum twenty (20) year manufacturer's Power Output warranty from date of sale, to the Town of Ingersoll. This warranty shall guarantee that the modules shall not output less than eighty (80) percent of their nameplate power during the warranty time frame.
- c. The inverter shall have a minimum total ten (10) year product warranty from date of sale to Town of Ingersoll.
- d. The racking system for the commercial system shall have minimum five (5) year product warranty.
- e. The balance of system components and materials not included in the above shall be provided with the manufacturer's standard warranty of a minimum one (1) year.
- f. The Contractor shall complete all warranty information / registration required by the manufacturers on behalf of the Town of Ingersoll. All documentation associated with the equipment warranties shall be included in the operations & maintenance manuals.

8. General Conditions

8.1 Services

The services to be provided by the Intech and by the Client for the Project are set forth in the Scope of Work.

8.2 Compensation

The Client shall pay Intech in accordance with the provisions set forth in Item 9. For purposes of this agreement, the basis of payment shall be as specified in Item 9.

8.3 Staff and Methods

The Intech shall perform the services under this agreement with that degree of care, skill and diligence normally provided in the performance of such services as contemplated by the agreement at the time such services are rendered and as required by the *Professional Engineers Act* (RSO 1990, Chapter P. 28) and regulations therein. Intech shall employ only competent staff who will be under the supervision of a senior member of the Intech's staff.

8.4 Drawings, Documents and Digital Data

Drawings, documents and digital data or copies thereof required for the Project shall be exchanged between the parties on a reciprocal basis. Drawings, documents or digital data collected or prepared by Intech for the Client, including record drawings, may be used by the Client for the project herein described and in the future as required. The client indemnifies Intech for unauthorized use of the documents and deliverables.

8.5 Intellectual Property

All concepts, products or processes produced by or resulting from the Services rendered by Intech in connection with the Project, or which are otherwise developed or first reduced to practice by Intech in the performance of his Services, and which are patentable, capable of trademark or otherwise, shall be considered as Intellectual Property and remain the property of Intech.

The Client shall have permanent non-exclusive royalty-free license to use any concept, product or process, which is patentable, capable of trademark or otherwise produced by or resulting from the Services rendered by Intech in connection with the Project and for no other purpose or project.

8.6 Records and Audit

Intech when requested by the Client, shall provide copies of receipts with respect to any disbursement for which the Intech claims payment under this Agreement.

8.7 Indemnification

Intech shall indemnify and save harmless the Client from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the Client, its employees, officers or agents may suffer, to the extent the Intech is legally liable as a result of the negligent acts of the Intech, its employees, officers or agents in the performance of this Agreement.

The Client agrees to hold harmless, indemnify and defend Intech from and against any and all claim, losses, damages, liability and costs of defense arising out of or in any way connected with the presence, discharge, release or escape of contaminants of any kind, excluding only such liability as may arise out of the negligent acts of Intech in the performance of services to the Client within this project.

8.8

Insurance

The Client will accept the insurance coverage amount specified in this clause section (b) as the aggregate limit of liability of Intech and its employees for the Client's damages.

(a) **Comprehensive General Liability and Automobile Insurance**

The Insurance Coverage shall be \$2,000,000 per occurrence and in the aggregate for general liability. When requested, Intech shall provide the Client with proof of Comprehensive General Liability and Automobile Insurance (Inclusive Limits) for both owned and non-owned vehicles.

(b) **Professional Liability Insurance**

The Insurance Coverage shall be in the amount of \$1,000,000 per claim and in the aggregate. When requested, Intech shall provide to the Client proof of Professional Liability Insurance carried by the Consultant, and in accordance with the *Professional Engineers Act* (RSO 1990, Chapter P. 28) and regulations therein.

(c) **Change in Coverage**

If the Client requests to have the amount of coverage increased or to obtain other special insurance for this Project then the Consultant shall endeavour forthwith to obtain such increased or special insurance at the Client's expense as a disbursement allowed.

It is understood and agreed that the coverage provided by these policies will not be changed or amended in any way nor cancelled by Intech until thirty (30) days after written notice of such change or cancellations has been personally delivered to the Client.

8.9

Assignment

Neither party may assign this Agreement without the prior consent in writing of the other.

8.10

Previous Agreements

This Agreement supersedes all previous agreements, arrangements or understandings between the parties whether written or oral in connection with or incidental to the Project.

8.11 **Approval by Other Authorities**

Unless otherwise provided in this Agreement, where the work of Intech is subject to the approval or review of an authority, department of government, or agency other than the Client, such applications for approval or review shall be the responsibility of the Consultant, but shall be submitted through the offices of the Client and unless authorized by the Client in writing, such applications for approval or review shall not be obtained by direct contact by Intech with such other authority, department of government or agency.

8.12 **Inspection**

The client, or persons authorized by the Client, shall have the right, at all reasonable times, to inspect or otherwise review the Services performed, or being performed, under the Project and the premises where they are being performed.

8.13 **Publication**

Intech agrees to obtain the consent in writing of the Client before publishing or issuing any information regarding the Project.

8.14 **Confidential Data**

Intech shall not divulge any specific information identified as confidential, communicated to or acquired by him, or disclosed by the client in the course of carrying out the Services provided herein. These obligations of confidentiality shall not apply to information which is in the public domain, which is provided to Intech by a third party without obligation of confidentiality which is independently developed by the Intech without access to the Client's information, or which is required to be disclosed by law or by court order. No such information shall be used by Intech on any other project without the approval in writing of the client.

8.15 **Dispute Resolution**

- (a) If requested in writing by either the Client or Intech, the Client and Intech shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. If a dispute cannot be settled within a period of ninety (90) calendar days with the mediator, the dispute shall be referred to and finally resolved by arbitration under the rules of the province having jurisdiction or by an arbitrator appointed by the agreement of the parties.
- (b) No person shall be appointed to act as mediator or arbitrator who is in any way interested, financially or otherwise, in the conduct of the work on the Project or in the business or other affairs of either the Client or Intech.
- (c) The award of the arbitrator, including an award for costs if applicable, shall be final and binding upon the parties.
- (d) The provisions of The Arbitration's Act, R.S.O., 1991, Chapter 17, as amended shall apply.

8.16 **Time**

Intech shall perform the Services expeditiously to meet the requirements of the Client and shall complete any portion or portions of the Services in such order as the Client may require.

The Client shall give due consideration to all designs, drawings, plans, specifications, reports, tenders, proposals and other information submitted by Intech, and shall make any decisions which it is required to make in connection therewith within a reasonable time so as not to delay the work of Intech.

Neither party shall be liable or penalized for delays or failure to perform its services if same is caused directly or indirectly by circumstances beyond a party's reasonable control, including but not limited to acts of God, fire, flood, war (declared and undeclared), acts of terrorism, sabotage, accident, labour dispute, shortage, government action including regulatory requirements, changed conditions, delays resulting from actions or inactions of the other party to this Agreement or third parties, site inaccessibility or inability of others to obtain material, labour, equipment, or transportation. Should any of the above occur, then the schedule shall be adjusted for such delay.

8.17 **Monthly Reporting of Progress**

Intech shall provide the Client with a written report showing the status of the project.

9. **FEES AND DISBURSEMENTS**

9.1 **Definitions**

For the purpose of this Agreement, the following definitions shall apply:

(a) **Cost of the Work:**

- (i) The "Cost of the Work" shall mean the total cost of the Project including all design, applications, reports, materials, equipment, HST and labour.
- (ii) In computing the Cost of the Work, no deductions shall be made on account of any penalties or damages claimed by the Client from any contractor or on account of any other sum withheld from any contractor.
- (iii) The cost of work for the Ingersoll Solar Farm project shall be \$35,500,000, excluding HST.

(b) **SITE:**

Site includes the actual work site and other locations where the checking of materials, equipment and workmanship is carried out.

9.2 **Compensation**

The Client will compensate Intech in accordance with the charges associated with the cost of work. All charges will be payable in Canadian funds. Invoices

will be due and payable within 30 days, as presented upon receipt. All payments are subject to the 10% holdback.

10. Alterations, Extras, Deductions and Claims

The Client shall have the right to make or order any alterations and changes, such as they may deem advisable, at any time before or during the prosecution of the works, in any line, grade, drawing or detail thereof, or to suspend or omit any portion of the work or works, or to increase or decrease the dimensions of any part of the work or works, or to vary in any other way the work herein contracted for; or to order any additional or extra work to be done, or additional or extra materials to be furnished; and the Intech shall, in pursuance of written orders of the Client that effect, proceed with, carry out and execute the works as directed, and shall supply such additional materials, and do such additional or extra work, in pursuance of such orders, without being entitled to any extension of time for completion, or any additional payment on account thereof, except only as herein provided. In each and every case where additional or extra work or material of any kind is ordered to be done and supplied, or where Intech does or supplies, or contemplates doing or supplying any work or material which he considers extra or beyond the requirements of the Contract, or upon which he intends claiming any extra or additional payment, he is required, before commencing any such work, or procuring any such material, to obtain from the Client a written order therefore, stating that the same is an extra and will be paid for as such, and also clearly defining the nature of such extra work or material, and the amount Intech is to receive therefore, or the terms under which the same is to be paid for and the extension of time, if any to be allowed; and Intech shall also, before beginning any such extra work or commencing to deliver any such additional material, notify the Client in writing, of his intention to commence work thereon or delivery thereof, so that a proper account or record of the same may be kept by the Client .

In case of Intech's neglect or failure to observe fully and faithfully the above conditions, he shall forfeit all right to payment therefore, which he otherwise might have had, and shall not make any claim in respect thereof, and if made, the Client may reject the same as invalid, and he shall not have any right of recovery in respect thereof, at law or otherwise, unless he shall have obtained the consent of the Client in writing to his making such claim.

Nothing herein contained is to preclude the Client from having any extra or additional or other work done by the Corporation workmen or other parties, in the event of satisfactory arrangements therefore not having been concluded between the Client and the Intech, or for any other sufficient reason, in the opinion of the Client In the event of any circumstances arising at any time which, in Intech's opinion, would entitle Intech to additional compensation, and which are not fully provided for herein, Intech shall at once, on the discovery of such circumstances, notify the Client, in writing, and shall state in his notification clearly and fully what the circumstances is, and the additional sum or compensation he intends to demand therefore, or otherwise he shall have no claim in respect thereof.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first written above

Intech Clean Energy Inc.

The signatory shall have the authority to bind the corporation or company for purposes of this agreement

Signature

Print Name

Title

THE CORPORATION OF THE TOWN OF INGERSOLL

The signatory shall have the authority to bind the municipality or its agency for purposes of this agreement

Mayor

Clerk