



**Corporation of the Town of Ingersoll
Council Agenda
Special Meeting of Council
Town Centre, Council Chambers
Wednesday, October 21, 2015, 6:00 p.m.**

Call to Order

Disclosures of Pecuniary Interest

Special Report

- 1) Request for Option to Lease from ERTH for Public Works Rooftop Solar [C-070-15](#)

By-Laws

- 1) [By-Law 15-4842](#) - To authorize the execution of an Option Agreement between ERTH Community Power One LP and the Corporation of the Town of Ingersoll
- 2) [By-Law 15-4843](#) – To adopt and confirm all actions and proceedings of the Council of the Town of Ingersoll at the Council meeting held on October 21, 2015

Upcoming Council Meeting

Regular Meeting of Council
Monday, November 9, 2015, 6:00 p.m.
Town Centre, Council Chambers

Adjournment



DEPARTMENT: Clerk's Department

REPORT NO: C-070-15

COUNCIL MEETING DATE: October 21, 2015

TITLE: Request for Option to Lease from ERTH for Public Works Rooftop Solar

OBJECTIVE

To provide Council with information in order to consider the option to lease from ERTH for the Public Works building for the provision of a rooftop solar project.

BACKGROUND

As previously indicated to Council, Erie Thames Powerlines are applying to Ontario's Feed-in-tariff program for solar generation projects. Erie Thames has identified the Town's Public Works building as a potential for a rooftop generating project.

At this point Erie Thames is simply asking Council to approve an "Option to Lease." This will provide them with the necessary access rights that will meet the Fit program requirements. If approved, a more formal lease would be entered into that would detail the particulars of the lease including the lease rate.

ANALYSIS

Normally, under leasing of town facilities, Council would wish to consider a process that would involve competitive bids but since this is simply an option to lease and given the time frames for application to the Fit Program Council may be willing to consider providing this option.

Council will want to be cognizant of the particulars of the actual lease should Erie Thames be successful in their bid to the Fit Program so that Council can demonstrate to the public that they are getting fair value for the usage of their facilities.

INTERDEPARTMENTAL IMPLICATIONS

N/A

FINANCIAL IMPLICATIONS

There could potentially be revenue which would be a positive.

RECOMMENDATION

THAT report C-070-15 be received as information and that Council bring forward a by-law to enter into an option to lease with Erie Thames Powerlines for the Public Works Building for a potential rooftop solar power generation project.

Prepared by: Michael Graves, Clerk

Approved by: William Tigert, Chief Administrative Officer

Attachments

Correspondence from ERTH
Option Agreement

ERTH



CORPORATION

October 7, 2015

The Corporation of the Town of Ingersoll
130 Oxford Street (2nd Floor)
Ingersoll, ON
N5C 2V5

Attention: Municipal Council
William Tigert, CAO

Re: Feed-in-Tariff (FIT) Program – Option to Lease for Ingersoll Public Works Building

As previously reported to Council, ERTH Corporation and Erie Thames Powerlines (“ERTH”) are looking to develop solar generation projects in our shareholder communities that are eligible for Ontario’s Feed-in-Tariff (“FIT”) program. On that note, we asked for and received blanket municipal support resolutions from Council supporting the development of rooftop and ground mount solar PV generating projects.

In particular, we have identified the rooftop of the Town’s Public Works building (the “Public Works Building”) as a good candidate for a 130kW solar rooftop generating project. In order to make our application to the FIT program, ERTH needs to establish “Access Rights” in accordance with the FIT rules. Accordingly, we are respectfully asking Council to approve execution of the attached Option to Lease (“Option”). The purpose of the Option is that it provides ERTH with an option to build and maintain a generating project at Public Works Building.

Please be advised that ERTH will return to the Town to negotiate a more detailed lease agreement in the event that we are awarded a FIT contract for the Public Works Building. Regarding the lease payment for the rooftop, we have included a number of placeholder options (i.e. lease payment based on a percentage of gross revenue, fixed lease payment, or an equity interest in the project in lieu of lease payments) for the Town’s consideration and discussion when, and if, we are awarded a FIT contract for the Public Works Building.

Regards,

Tyler Moore
EVP & Corporate Secretary

Cc: Chris White, Erie Thames Powerlines Corporation

Encl.

OPTION AGREEMENT

Agreement made this _____ day of _____, 2015.

BETWEEN:

THE CORPORATION OF THE TOWN OF INGERSOLL

(hereinafter called "**Landlord**")

OF THE FIRST PART,

ERTH COMMUNITY POWER ONE LP

(hereinafter called "**Tenant**")

OF THE SECOND PART

WHEREAS Tenant has expressed an interest in leasing certain lands owned by Landlord (as described in Schedule "A" of Schedule 1 hereto, the "**Lands**") for the purposes of building, operating and maintaining a solar photovoltaic renewable energy generation facility (the "**Project**") on the rooftop (the "**Rooftop**") of the building located thereon (the "**Building**");

AND WHEREAS Landlord has agreed to grant to Tenant an option to lease (the "**Option**") the Rooftop on the terms and subject to the conditions contained in this option agreement (the "**Agreement**");

WITNESS THAT in consideration of the payment of Ten Dollars (\$10) by Tenant to Landlord, and the covenants and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby covenant and agree with each other as follows:

1. Landlord hereby irrevocably grants to Tenant, for a period of thirty two (32) months from the date hereof (the "**Option Period**"), an exclusive option to lease the Rooftop and such parts or areas of the Building and the Lands which are necessary or incidental to the Project or desirable to Tenant for the purpose of building, operating and maintaining the Project on the Rooftop pursuant to a Feed-In Tariff Contract ("**FIT Contract**") to be entered into between Tenant and the Independent Electricity System Operator.
2. Tenant may exercise the Option at any time during the Option Period by delivering Notice to the Landlord. If Tenant exercises the Option, Tenant and Landlord shall use commercially reasonable efforts to enter into a rooftop lease for solar power development (the "**Lease**") upon such terms and conditions which are consistent and customary for leases relating to rooftop solar photovoltaic renewable energy projects in the Province of Ontario wherein the landlord constitutes a Municipal Site Host (as defined in the Appendix 1 – Standard Definitions applicable to the FIT Contract).
3. Tenant shall pay to Landlord during the term of the Lease an amount of rent equal to eight percent (8%) (or such market rate that is agreed to between the parties) of the gross revenue of the Project, per annum. Notwithstanding the foregoing, Landlord and Tenant may negotiate a fixed amount of per annum rent at such time as the Option is exercised, or the parties may agree that Landlord will acquire an interest in the equity of Tenant in lieu of the payment of rent.
4. During the Option Period, Landlord grants Tenant a licence for the purpose of completing its due diligence and other investigative work on or in respect of the Lands, the Building and the Rooftop including, without limitation, engineering studies and other due diligence activities, as may be reasonably necessary or desirable to assess the

appropriateness of the Lands, the Building and the Rooftop for the purpose of building, operating and maintaining the Project.

5. The parties hereto agree that Tenant shall be permitted to register notice of this Option on title to the Lands, and that Landlord will cooperate in relation to such registration. The parties agree that the rights and obligations set out herein shall run with the title to the Lands and shall be binding upon and enure to the benefit of Tenant and Landlord and their respective heirs, executors, administrators, successors and assigns.
6. Tenant may terminate this Option at any time by delivering Notice to Landlord.
7. Any notice, direction or other communication given regarding the matters contemplated by this Agreement (each a “**Notice**”) must be in writing, sent by personal delivery, courier or facsimile (but not by electronic mail) and addressed:
 - (a) to Landlord at:

 - (b) to Tenant at:

A Notice is deemed to be given and received (i) if sent by personal delivery or courier, on the date of delivery if it is a business day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next business day, or (ii) if sent by facsimile, on the business day following the date of confirmation of transmission by the originating facsimile. A Party may change its address or other contact particulars for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address / contact particulars. Any element of a Party’s address that is not specifically changed in a Notice will be assumed not to be changed.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURES FOLLOW]

IN WITNESS WHEREOF the parties have executed and delivered these presents as of the day and year first above written.

**THE CORPORATION OF THE TOWN OF
INGERSOLL**

Per: _____
Name:
Title

I have the authority to bind the Corporation

ERTH COMMUNITY POWER ONE LP

Per: _____
Name:
Title:

I have the authority to bind the Corporation

SCHEDULE 1

THE LANDS

Municipal Address: 80 Pemberton Street, Ingersoll ON N5C 2T0

PIN No.: 00182-0276

Legal Description: PT LT 13 CON 4 NORTH OXFORD; PT LT 190 BLK 40 PL 279; PT ORIGINAL CHANNEL OF THAMES RIVER SHOWN ON PL 477 N OF CENTRELINE OPPOSITE LT 13 CON 4 N OXFORD; PT ORIGINAL CHANNEL OF THAMES RIVER AS SHOWN ON PL 477 S OF CENTRELINE OPOSITE LT 18 CON BROKEN FRONT W OXFORD; AS IN FIRSTLY IN 419091; S/TA5789;S/TA72445;S/T 306651; TOWN OF INGERSOLL



**Corporation of the Town of Ingersoll
By-Law 15-4842**

A By-law to authorize the execution of an Option Agreement between ERTH Community Power One LP and the Corporation of the Town of Ingersoll

WHEREAS it is deemed necessary and advisable to enter into an Option Agreement with ERTH Community Power LP for the purpose of an option to lease the rooftop of the Ingersoll Public Works building.

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

1. That an Option Agreement between ERTH Community Power One LP and the Corporation of the Town of Ingersoll is hereby approved.
2. That the Mayor and Clerk are hereby authorized and directed to execute the said agreement and the Clerk is directed to affix the corporate seal thereto.
3. That a copy of the said agreement, in substantially the same form, shall be attached to and form part of this by-law.

READ a first and second time this 21st day of October, 2015.

READ a third time and finally passed this 21st day of October, 2015.

Edward (Ted) Comiskey, Mayor

Michael Graves, Clerk

OPTION AGREEMENT

Agreement made this _____ day of _____, 2015.

BETWEEN:

THE CORPORATION OF THE TOWN OF INGERSOLL

(hereinafter called "**Landlord**")

OF THE FIRST PART,

ERTH COMMUNITY POWER ONE LP

(hereinafter called "**Tenant**")

OF THE SECOND PART

WHEREAS Tenant has expressed an interest in leasing certain lands owned by Landlord (as described in Schedule "A" of Schedule 1 hereto, the "**Lands**") for the purposes of building, operating and maintaining a solar photovoltaic renewable energy generation facility (the "**Project**") on the rooftop (the "**Rooftop**") of the building located thereon (the "**Building**");

AND WHEREAS Landlord has agreed to grant to Tenant an option to lease (the "**Option**") the Rooftop on the terms and subject to the conditions contained in this option agreement (the "**Agreement**");

WITNESS THAT in consideration of the payment of Ten Dollars (\$10) by Tenant to Landlord, and the covenants and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby covenant and agree with each other as follows:

1. Landlord hereby irrevocably grants to Tenant, for a period of thirty two (32) months from the date hereof (the "**Option Period**"), an exclusive option to lease the Rooftop and such parts or areas of the Building and the Lands which are necessary or incidental to the Project or desirable to Tenant for the purpose of building, operating and maintaining the Project on the Rooftop pursuant to a Feed-In Tariff Contract ("**FIT Contract**") to be entered into between Tenant and the Independent Electricity System Operator.
2. Tenant may exercise the Option at any time during the Option Period by delivering Notice to the Landlord. If Tenant exercises the Option, Tenant and Landlord shall use commercially reasonable efforts to enter into a rooftop lease for solar power development (the "**Lease**") upon such terms and conditions which are consistent and customary for leases relating to rooftop solar photovoltaic renewable energy projects in the Province of Ontario wherein the landlord constitutes a Municipal Site Host (as defined in the Appendix 1 – Standard Definitions applicable to the FIT Contract).
3. Tenant shall pay to Landlord during the term of the Lease an amount of rent equal to eight percent (8%) (or such market rate that is agreed to between the parties) of the gross revenue of the Project, per annum. Notwithstanding the foregoing, Landlord and Tenant may negotiate a fixed amount of per annum rent at such time as the Option is exercised, or the parties may agree that Landlord will acquire an interest in the equity of Tenant in lieu of the payment of rent.
4. During the Option Period, Landlord grants Tenant a licence for the purpose of completing its due diligence and other investigative work on or in respect of the Lands, the Building and the Rooftop including, without limitation, engineering studies and other due diligence activities, as may be reasonably necessary or desirable to assess the

appropriateness of the Lands, the Building and the Rooftop for the purpose of building, operating and maintaining the Project.

5. The parties hereto agree that Tenant shall be permitted to register notice of this Option on title to the Lands, and that Landlord will cooperate in relation to such registration. The parties agree that the rights and obligations set out herein shall run with the title to the Lands and shall be binding upon and enure to the benefit of Tenant and Landlord and their respective heirs, executors, administrators, successors and assigns.
6. Tenant may terminate this Option at any time by delivering Notice to Landlord.
7. Any notice, direction or other communication given regarding the matters contemplated by this Agreement (each a “**Notice**”) must be in writing, sent by personal delivery, courier or facsimile (but not by electronic mail) and addressed:
 - (a) to Landlord at:

 - (b) to Tenant at:

A Notice is deemed to be given and received (i) if sent by personal delivery or courier, on the date of delivery if it is a business day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next business day, or (ii) if sent by facsimile, on the business day following the date of confirmation of transmission by the originating facsimile. A Party may change its address or other contact particulars for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address / contact particulars. Any element of a Party’s address that is not specifically changed in a Notice will be assumed not to be changed.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURES FOLLOW]

IN WITNESS WHEREOF the parties have executed and delivered these presents as of the day and year first above written.

**THE CORPORATION OF THE TOWN OF
INGERSOLL**

Per: _____
Name:
Title

I have the authority to bind the Corporation

ERTH COMMUNITY POWER ONE LP

Per: _____
Name:
Title:

I have the authority to bind the Corporation

SCHEDULE 1

THE LANDS

Municipal Address: 80 Pemberton Street, Ingersoll ON N5C 2T0

PIN No.: 00182-0276

Legal Description: PT LT 13 CON 4 NORTH OXFORD; PT LT 190 BLK 40 PL 279; PT ORIGINAL CHANNEL OF THAMES RIVER SHOWN ON PL 477 N OF CENTRELINE OPPOSITE LT 13 CON 4 N OXFORD; PT ORIGINAL CHANNEL OF THAMES RIVER AS SHOWN ON PL 477 S OF CENTRELINE OPOSITE LT 18 CON BROKEN FRONT W OXFORD; AS IN FIRSTLY IN 419091; S/TA5789;S/TA72445;S/T 306651; TOWN OF INGERSOLL



**Corporation of the Town of Ingersoll
By-Law 15-4843**

A bylaw to adopt and confirm all actions and proceedings of the Council of the Town of Ingersoll at the Council meeting held on October 21, 2015

WHEREAS Section 5 (3) of The Municipal Act, Chapter, S.O. 2001, c. M.25 as amended, states that a municipal power, including a municipality's capacity, rights, powers and privileges under section 9, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise;

AND WHEREAS in many cases, action which is taken or authorized to be taken by Council or Committee of Council does not lend itself to or require an individual by-law

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

1. **THAT** all actions and proceedings of the Council of The Corporation of the Town of Ingersoll at the meeting held on October 21, 2015 are hereby adopted.
2. **THAT** the taking of any action authorized in or by the Council of The Corporation of the Town of Ingersoll are hereby adopted, ratified and confirmed.
3. **THAT** where no individual by-law has been or is passed with respect to the taking of any action authorized in or by the Council of The Corporation of the Town of Ingersoll, then this by-law shall be deemed for all purposes to be the by-law required for approving and authorizing the taking of the action.
4. **THAT** the Mayor and Officers of The Corporation of the Town of Ingersoll are hereby authorized and directed to do all things necessary to give effect to the recommendations, motions, resolutions, reports, action and other decisions of the Council and the Mayor and Clerk are hereby authorized and directed to execute all necessary documents in the name of The Corporation of the Town of Ingersoll and to affix the seal of the Corporation thereto.
5. **AND FURTHER THAT** this by-law shall become effective and shall come into force after third reading of the by-law.

READ a first and second time in Open Council this 21st day of October, 2015.

READ a third time in Open Council and passed this 21st day of October, 2015.

Edward (Ted) Comiskey, Mayor

Michael Graves, Clerk