

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (**MOU**) is entered into this _____ day of _____, 2011, by and between the Lancaster Power Authority, a municipal utility (**LPA**), and Instream Energy Systems, a British Columbia Corporation (**Instream**).

RECITALS

Whereas:

- A. Instream is in the business of developing renewable energy systems and related infrastructure, projects, and technology.
- B. Instream desires to develop projects and build or have built hydrokinetic power generation systems in the City of Lancaster, the Antelope Valley, and throughout the State.
- C. LPA desires to work with Instream to construct hydrokinetic power generation systems.
- D. LPA desires to encourage the development of renewable power generation to stimulate economic development in the City, including job creation, an enhanced tax base, attraction of desirable businesses and potential direct earnings from hydrokinetic power generation.
- E. Instream and LPA desire to investigate, among other opportunities, the development of a complete hydrokinetic power solution consisting of arrays of vertical axis hydrokinetic turbines which are simple, low cost devices, which convert the kinetic energy in moving water into electricity. The modular nature of the system means that it has the potential to offer a low-cost renewable energy solution that can be scaled to the physical characteristics of a waterway and to individual customer requirements.
- F. Now, therefore, in consideration of the mutual understandings and agreements set forth herein, the parties hereby agree as follows:

Agreement

- 1. Definitions. As used in this MOU, the following terms shall have the stated meanings:
 - 1.1. "Confidential Information" means information, other than "Excluded Information," which is disclosed either orally or in writing by or on behalf of a Party to another Party in connection with the Proposed Project and which is identified by or on behalf of the disclosing Party as confidential. In designating information as "Confidential Information," the disclosing Party shall have a reasonable, good faith belief that the information is confidential or exempt from disclosure under applicable law (including, without limitation, the California Public Records Act and the Federal Freedom of Information Act). Such information is confidential, proprietary or generally not available to the public and shall remain the property of the disclosing Party. Confidential Information shall include such information supplied prior to the date hereof by or on behalf of a Party in connection with the Proposed Project.
 - 1.2. "Excluded Information" means information which:
 - 1.2.1. at the time of its disclosure by or on behalf of a Party was already known by or in the possession of the receiving Party;

- 1.2.2. after the time of its disclosure is obtained by a Party from a third party who lawfully possesses such information and is not under any contractual, legal or fiduciary obligation to a Party to keep such information confidential;
 - 1.2.3. at the time of disclosure or thereafter is published or otherwise made generally available to the public, unless such publication or general availability is the result of a breach of this Agreement; or
 - 1.2.4. at the time of this Agreement or thereafter is required to be disclosed by a Party in any judicial, regulatory, or administrative proceeding, unless the judicial, regulatory, or administrative body before whom such proceeding takes place has required such data or information to be kept confidential.
- 1.3. "Advisors" means, when used with reference to a Party, the attorneys, accountants, consultants, technical advisors, financial advisors and lenders of such Party and its affiliates.
- 1.4. "LPA" shall also include all of their elected and appointed boards, officials, officers, agents and employees.
2. Development of vertical axis hydrokinetic turbines. LPA and Instream will work together to develop vertical axis hydrokinetic turbines (VAHTs) in feasible locations. In general terms, Instream will develop, own, operate, and promote the VAHTs. LPA will provide site control, permitting assistance, and other utility services for the VAHTs. Instream, with the LPA's assistance and guidance, will dedicate resources to work with public and private utilities, governmental and quasi-governmental entities to expedite permitting and the construction of inner connects to the VAHTs. LPA will encourage Instream, if VAHTs are proved successful, to open office, manufacturing, assembly and repair facilities within the City. LPA will share in the financial returns on the installation of VAHTs.
3. Other Projects. Instream will explore and propose to the LPA ways to construct or have constructed hydrokinetic power generation systems and associated infrastructure, LPA ownership of hydrokinetic power projects, municipal power purchase agreements directly with public and private utilities, governmental and quasi-governmental entities and other related projects.
4. Stimulus Funds. LPA and Instream will explore ways to work together to secure and apply for Federal Stimulus Funds or other grants for projects and infrastructure related to renewable energy and associated development in the City.
5. Obligation to maintain confidentiality. Each Party agrees not to disclose any other Party's Confidential Information without such Party's prior written consent, except as provided in Section 7; provided, however, a Party may disclose another Party's Confidential Information to the Party's officers, directors, employees, and Advisors and to its affiliates and the officers, directors, employees, and Advisors of its affiliates (collectively, "Representatives") who need to know such Confidential Information and agree to maintain the confidentiality of the Confidential Information in accordance with the terms hereof. In addition, Company may disclose Confidential Information received by it hereunder to any potential developer, contractor, funding source, trustee or any power or transmission provider or purchaser or any other entity that may participate in or be affected by the development, construction, financing, ownership or operation of the Proposed Project and who agree to maintain the confidentiality of the Confidential Information in accordance with the terms hereof.

6. Use of confidential information. Each Party agrees not to use Confidential Information other than for the purpose of evaluating, negotiating, or implementing the Proposed Project. Nothing in this Agreement shall constitute an obligation of a Party to disclose Confidential Information to the other Party.
7. Disclosure pursuant to legal requirements. Notwithstanding any provision to the contrary contained herein, a disclosure by a Party that otherwise would be prohibited by this Agreement shall be permitted if such disclosure is compelled by a judicial, regulatory, administrative body of competent jurisdiction, or by law, but then only if in conformance with the following provisions:
 - 7.1. The disclosing Party shall:
 - 7.1.1. take all reasonable steps to preserve the privileged nature and confidentiality of Confidential Information, including requesting that Confidential Information not be disclosed to non-Parties or the public;
 - 7.1.2. give the other Party prompt notice of any legal process and, to the extent practicable, gives the other Party the opportunity to seek an appropriate protective order or to pursue such further legal action as may be necessary to preserve the privileged nature and confidentiality of Confidential Information; and
 - 7.1.3. provide reasonable assistance to and cooperation with the other Party to preserve the privileged nature and confidentiality of Confidential Information.
 - 7.2. If LPA receives a request for records concerning the Proposed Project under the California Public Records Act or the Federal Freedom of Information Act, it shall:
 - 7.2.1. give notice to Company of the request within three (3) business days of receipt, along with a copy thereof;
 - 7.2.2. consult and reasonably cooperate with Company concerning the request and LPA's anticipated response thereto, including identifying particular records which LPA believes may be subject to disclosure;
 - 7.2.3. provide Company with the opportunity to respond and comment on the records identified by LPA under Section 7.2.2 which response Company shall provide within five (5) business days after such identification of records. If Company objects to the disclosure of a record, Company shall cite the statutory basis for such objection. LPA shall not disclose such record; provided however, that if the person requesting the records files a legal action to compel disclosure, Company shall reimburse LPA for any and all costs incurred by it in defending such action, including costs and attorney's fees, and for plaintiff's costs and attorneys' fees paid by LPA if awarded by the court in a final judgment on the action.
8. Delivery of confidential written materials. Any written materials conveyed under this Agreement, which the disclosing Party believes constitute Confidential Information, shall be clearly marked "CONFIDENTIAL."
9. Return of written materials. Upon request by a Party, the other Party shall return all written Confidential Information to the requesting Party or, at the election of the requesting Party, shall destroy such written Confidential Information. Upon receipt of such a request, fifteen (15) days shall be allowed for the Party receiving the request to assemble and return or, if so elected in accordance with this paragraph, to destroy all written Confidential Information in the possession of the Party receiving the request. The receiving Party shall not be deemed to have retained or failed to destroy any Confidential Information which is in electronic form if such information is deleted from local hard

drives so long as no attempt is made to recover such information from servers or back-up source. Notwithstanding the foregoing, the Company may retain a printed or electronic set of Confidential Information in the offices of its General Counsel solely for purposes of enforcement of agreements and compliance with applicable regulatory requirements. Company's General Counsel shall make such retained set of Confidential Information available for review at Company's offices by LPA's legal counsel upon reasonable notice. Any obligation of LPA to destroy records under this Agreement shall be consistent with and subject to applicable provisions of state and federal law.

10. Publicity. Until a formal development and operating agreement has been signed, both by Instream and LPA, neither party shall issue any press release or otherwise publicize or disclose to any third party (except consultants or other third parties, that the LPA may rely upon for evaluating such agreements) the details of the corroborative work undertaken as part of this MOU without the prior written consent of the other party, which consent shall not be unreasonably withheld. This paragraph shall not apply to any statements made by either party in connection with, or at the time of, the approval of this MOU.
11. Term and Termination. This MOU shall become effective on the date of LPA approval and shall terminate upon the earliest to occur of the following: (a) the execution by the parties of one or more definitive agreements with respect to the subject matter of this MOU; or (b) six months from the date hereof. The term of this MOU can be extended upon the written mutual agreement of both Instream and LPA.
12. Non-Binding Effect. This MOU is intended to serve as a general basis for commencing negotiations for one or more definitive agreements between the LPA and Instream with respect to the matters referenced herein. This MOU does not contain all the detailed provisions to be incorporated in any such definitive agreement(s), but does reflect the current mutual intentions of the parties. With the exception of Section 5 and 10 hereof, which are intended to be binding upon the parties, neither the LPA nor Instream shall have any legal obligation under or by virtue of this MOU, including any obligation to enter into any definitive agreement or other contract, to provide any services, to disclose any information, to make any investment or pay any consideration or compensation, whether or not expressly described herein; provided that the parties agree to cooperate in good faith along the lines described in this MOU.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized representative as of the date first written above.

“Instream”

Instream Energy Systems,
a British Columbia Corporation

By: _____
Patrick Earle, Chief Executive Officer

“LPA”

Lancaster Power Authority,
a municipal utility

By: _____
R. Rex Parris, Chairman

ATTEST:

By: _____
Geri K. Bryan, Secretary

APPROVED AS TO FORM:

By: _____
David R. McEwen, Legal Counsel