

CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2002-47

Being a by-law to authorize the signing of an agreement between the Corporation of the Town of Amherstburg and Essex Power Corporation.

WHEREAS the Corporation of the Town of Amherstburg is a shareholder of Essex Power Corporation, and

WHEREAS the parties named agreed that the Town holds a promissory note dated June 1, 2002; and

WHEREAS the parties have agreed that the Town will hold a loan for the sum of \$960,762 dollars; and

WHEREAS an agreement has been prepared specifying the terms and conditions which is attached hereto.

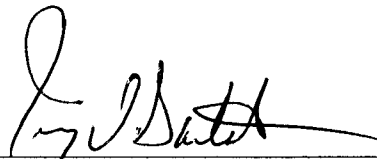
NOW THEREFOR THE CORPORATION OF THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be authorized to sign and apply the Corporate seal to the agreement.


1st Reading - September 23, 2002

2nd Reading - September 23, 2002

3rd Reading - September 23, 2002



MAYOR



CLERK

LONG TERM FINANCING AGREEMENT

THIS AGREEMENT made this *14* day of *Nov*, 2002

BETWEEN:

THE TOWN OF AMHERSTBURG (hereinafter referred to as “**The Town**“)

OF THE FIRST PART

and

ESSEX POWERLINES CORPORATION (hereinafter referred to as “**EPL**“)

OF THE SECOND PART

WHEREAS EPL is duly incorporated pursuant to Section 142, Schedule A of the Electricity Act, 1998;

AND WHEREAS The Town is duly incorporated as of June 27, 1997 pursuant to The Ministry of Municipal Affairs and Housing Order;

AND WHEREAS the parties have agreed that The Town holds a promissory note dated June 1, 2000;

AND WHEREAS The Town is a shareholder of EPL and they operate as separate corporate entities, notwithstanding the provisions of this Agreement and other agreements that the parties may enter into from time to time;

AND WHEREAS the parties shall consult as frequently as may be desirable to ensure declarations and intentions are known;

NOW THEREFORE IN CONSIDERATION OF THE MUTUAL CONVENANTS HEREIN CONTAINED the parties have agreed that The Town will hold a loan for the sum of 960,762 dollars of lawful money of Canada (hereinafter referred to as the original loan principal, the receipt and sufficiency of which is hereby expressly acknowledged), the Parties covenant and agree, with each other, as follows;

1. Prior Agreements

All other agreements regarding the matters contained in this agreement, whether oral or written, are terminated, specifically a Promissory Note dated June 1, 2000.

2. Term

The term of this Agreement shall be from January 1, 2002 to and including December 31, 2007 and year by year thereafter until there is no outstanding loan principal unless EPL gives notification in writing of not less than one year to The Town that EPL wishes to end the agreement at which time EPL will pay the remaining loan principal and interest then owing prior to the end of the Agreement.

3. Repayment Schedule

- 3.01 EPL shall pay The Town annually not more than twenty-five percent (25%) of the original loan principal in the first year of this agreement and not more than fifteen percent (15%) thereafter subject to article 3.03 and 3.04.
- 3.02 The Town may defer the payment in any year to a subsequent year and EPL shall pay The Town the deferred payment or payments in addition to the current year's annual payment subject to article 3.03 and 3.04.
- 3.03 The Town shall notify EPL by March 1 or the 1st business day thereafter in the year that payment is due The Town's intention to receive payment as per article 3.01 and 3.02.
- 3.04 EPL shall notify The Town by July 1 or the 1st business day thereafter EPL's intention to make payment or partial payment as per article 3.01 and 3.02 by October 1 or the 1st business day thereafter in the year that payment is due.
- 3.05 The Town may request payment and EPL will make payment of the entire outstanding loan principal by notifying EPL by March 1 that The Town wishes payment to be made by March 1 of the following year conditional on EPL's ability to make distributions according to the "Unanimous Shareholders Agreement" which classifies this agreement as a "Second Tier Loan".

4. Interest

Interest means the rate paid for use of the outstanding loan principal calculated at 7.25% per annum of the loan principal calculated annually and payable to The Town by the 20th business day following the calendar year end.

5. Arbitration

- 5.01 The parties agree to consult with each other and to negotiate in good faith to resolve any differences or disputes which either party may have relating to the interpretation, application or implementation of this agreement, or any dispute which may arise over any costs, fees or other costs incurred and failing agreement the parties agree to resolve their disputes by arbitration as provided in Article 5.02.
- 5.02 Arbitration of a dispute shall be commenced by written notice by a party requesting arbitration to the other, which notice shall identify the issue or issues it wishes to submit to arbitration. Within thirty (30) days of the date of the notice, the Parties shall agree upon a single arbitrator and failing agreement then each party shall appoint an arbitrator

and the two appointees shall within 45 days of the date of the notice of arbitration appoint a third person who shall act as Chair of the arbitration panel, and failing agreement the Chair shall be appointed by a judge of the Superior Court of Ontario pursuant to the provisions of the Arbitration's Act, RSO 1991 c.A.17.

- 5.03 The commencement of the arbitration and all rules of procedure for the arbitration shall be by agreement of the Parties, or failing agreement, as determined by the arbitrator or Chair of the arbitrator panel. The provisions of the Arbitration's Act, RSO 1991 c.A.17, as amended or any successor legislation shall apply to the arbitration.
- 5.04 All decisions of the arbitrator or arbitrators, as the case may be, shall be made in writing and shall be delivered to all Parties within ten (10) days from the conclusion of the arbitration. All decisions shall be final and binding upon the Parties, their respective successors and assigns, and shall not be subject to appeal.
- 5.05 Each Party shall pay its own costs incurred in respect of the arbitration including the payment of its appointee to the arbitration panel, and in the case of a three person panel the parties agree to share the fees of the Chair and other related costs equally.

6. Notices

All notices required to be given to either of the Parties under this Agreement shall be in writing and shall be delivered by prepaid unregistered post or hand delivery to the following:

- a) to the Chief Administrative Officer at: 271 Sandwich Street North, Box 159, Amherstburg, Ontario, N9V 2Z3
- b) to the General Manager, EPL at: 360 Fairview Avenue West Suite 318, Essex, Ontario, N8M 3G4

or to such other address or individual as may be designated by written notice to the other Party. Any notice given by personal delivery shall be deemed to have been given on the day of actual delivery hereof and if sent by prepaid post, on the third day after mailing.

7. Amendments

Amendments to this Agreement shall be in writing and executed by the Parties duly authorized signing officers.

8. Headings

The headings in this Agreement are for purposes of reference only and shall not be read or construed so as to abridge or modify the meaning of any provision in the main text of this Agreement.

9. Governing Law

This Agreement shall be construed in accordance with the laws of the Province of Ontario.

10. Successors

117.01 This Agreement shall ensure to the benefit of and be binding upon the Parties and their successors and assigns, respectively.

117.02 The Parties explicitly acknowledge and agree that the term of this Agreement shall remain in full force and effect and be binding upon new business corporations incorporated under the Business Corporations Act to whom assets and liabilities will be transferred.

117.03 For the purposes of this Agreement, whenever the term The Town or EPL is used, the term shall be deemed to include all successor business corporations incorporated to whom assets and liabilities are transferred.

11. Regulatory Changes

The Parties acknowledge that substantial changes to legislation and regulations and government policies are likely to occur during the term of this Agreement which are likely to affect the nature of the relationship between them, and as consequence the parties hereby agree to consult and negotiate in good faith any amendments to this Agreement which may be necessitated by changes in the regulatory environment, and failing agreement to submit their differences to arbitration as provided in Article 5.

IN WITNESS WHEREOF the Parties have duly executed this Agreement on the date first above written:

The Town of Anherstburg

Per:



MAYOR



CLERK

Essex Powerlines Corporation

Per:



Chair



General Manager