

CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2004-66

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

WHEREAS the *Municipal Act*, 2001, S.O. 2001, c. 25, Sections 8 and 9, provides municipalities with the powers of a natural person to govern their affairs as they consider appropriate;

AND WHEREAS the Town of Amherstburg owns and Essex Power has been maintaining and operating the works necessary for the lighting within a portion of the municipality;

AND WHEREAS the Town of Amherstburg desires that Essex Power continue to provide for the ongoing maintenance of the street lighting system including the purchase and inventory of adequate materials and equipment;

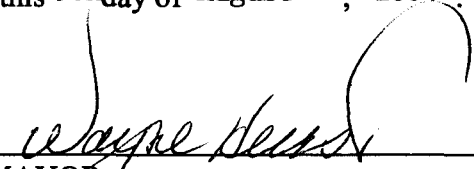
AND WHEREAS it is desirous of the parties hereto to enter into a street light maintenance agreement;

AND WHEREAS an agreement has been prepared specifying the terms and conditions which is attached hereto and shall take effect the 1st day of September 2004;


**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF
THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:**

1. That the Mayor and Clerk be, and they are hereby authorized and instructed, to execute the originals and the copies of the said agreement and to affix the corporate seal thereto.
2. That this By-law shall come into force and take effect on the date of final passage thereof.

Read a first, second and third time and finally passed this 9th day of August, 2004.



MAYOR



CLERK

Certified to be a true copy of By-law
No. passed by Council of the
Town of Amherstburg on the
day of , .

Clerk



**STREET LIGHT
MAINTENANCE
AGREEMENT
TOWN OF
AMHERSTBURG**

**STREET LIGHT MAINTENANCE
AGREEMENT INDEX**

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THIS AGREEMENT MADE IN TRIPLICATE THIS DAY OF , EFFECTIVE THE 1ST DAY OF
SEPTEMBER , 2004.

BETWEEN:

ESSEX POWER SERVICES CORP.
(Hereinafter called "Essex Power")

OF THE FIRST PART;

AND:

THE CORPORATION OF THE TOWN OF AMHERSTBURG
(Hereinafter called "the Municipality")

OF THE SECOND PART.

WHEREAS the Municipality owns and Essex Power has been maintaining and operating the works necessary for lighting the streets within the Municipality.

AND WHEREAS the Municipality desires that Essex Power continue to provide for the ongoing maintenance of the street lighting system including the purchase and inventory of adequate materials and equipment;

AND WHEREAS it is desirous of the parties hereto to enter into a street light maintenance agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants hereinafter expressed, it is agreed by and between the parties hereto as follows:

ARTICLE I - GENERAL

1.00 STREET LIGHTING SYSTEM

In this agreement, unless there is something in the subject matter or context inconsistent therewith, "street lighting system" shall mean all lighting installations along public roadways, public walkways, and public alleys within the Municipality. Lighting installations which are owned by other agencies, the municipal parks department, private individuals or corporations, shall not be considered as part of the street lighting system.

1.01 OPERATION OF STREET LIGHTING SYSTEM

The Municipality hereby retains the services of Essex Power in connection with the design, construction, maintenance and operation of the street lighting system and Essex Power hereby agrees to provide the service described herein under the general direction and control of the municipality.

1.02 SERVICES

The services to be provided by Essex Power for the street lighting system are set forth in Article 2 and such services as well as services changed, altered or added to under Section 1.07 are hereinafter referred to as the "services".

1.03 COMPENSATION

The Municipality shall pay Essex Power in accordance with the provisions set forth in Article 3.

1.04 STAFF AND METHODS

Essex Power shall use current principles and shall skillfully and competently perform the services and shall employ only skilled and competent staff who will be under the supervision of Essex Power.

1.05 DRAWINGS AND DOCUMENTS

Drawings and documents or copies thereof required for the street lighting system shall be exchanged between the parties on a reciprocal basis. Documents prepared by Essex Power under the terms of this agreement may be used by the Municipality, including "as built" records. The Municipality shall have ownership of the original drawings which shall be retained and filed in the Essex Power offices.

1.06 RECORDS AND AUDIT

In order to provide data for the calculation of charges on a timely basis, Essex Power shall keep a detailed record of the hours worked by, and salaries paid to its staff employed upon the street lighting system, equipment and materials.

Essex Power, when requested by the Municipality, shall provide copies of invoices and/or receipts as evidence of payment with respect to any disbursement for which Essex Power claims reimbursement under this agreement.

1.07 CHANGES AND ALTERATIONS AND ADDITIONAL SERVICES

With the written consent of Essex Power, the Municipality, in writing, may at any time after the execution of this agreement or the commencement of the services, delete, extend, increase, vary 'or otherwise alter the services forming the subject of this agreement. Where such action by the Municipality necessitates additional staff or services, Essex Power shall be paid for additional services and/or staff employed together with such expenses and disbursements as are necessary. Where such action by the Municipality necessitates a reduction in staff and/or equipment then six months written notice shall be given to Essex Power by the Municipality.

1.08 SUSPENSION OR TERMINATION

The Municipality, or Essex Power may, giving one year notice in writing to the other, to suspend or terminate the services or any portion thereof.

1.09 INVENTORY AND EQUIPMENT

Upon termination of this agreement, the Municipality agrees to purchase Essex Power's street light inventory on hand that had been purchased and stored specifically for the Municipality, at current book value, along with all equipment and tools used exclusively for the construction, maintenance and operation of the street lighting system of the Municipality.

1.10 INDEMNIFICATION

Essex Power shall protect, defend, indemnify and save harmless the Municipality from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the Municipality, its officers, employees or agents may suffer as a result of the negligence of Essex Power, its officers, employees, contractors or agents in the performance of this agreement.

Essex Power shall be responsible for repair and replacement of all work it undertakes on the street lighting system during the term of this agreement and shall protect, defend and save the Municipality harmless in respect of any damage, defect or want of repair thereto, arising from any breach or default or from negligence by Essex Power, its officers, employees or agents and from all loss, charges, damages, liens, costs, legal fees, expenses and liabilities which the Municipality, its officers, employees, or agents may incur, provided however, that Essex Power shall not be responsible for any claim or demand arising from the negligence by any officer, employee, or agent of the Municipality while acting within the scope of his or her duties or employment.

1.11 ASSIGNMENT

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

1.12 PREVIOUS AGREEMENT

This agreement supersedes all previous agreements, arrangements, or understandings between the parties, whether written or oral, in connection with, or incidental to the street lighting system.

1.13 APPROVAL BY OTHER AUTHORITIES

Unless otherwise provided in this agreement, where the work of Essex Power is subject to the approval or review of an authority, department or government, or agency other than the Municipality, such application for approval or review shall be the responsibility of Essex Power.

1.14 INSPECTION

The Municipality, or persons authorized by the Municipality, shall have the right, at all reasonable times, to inspect or otherwise review the services performed or being performed, in respect of the street lighting system and the premises where they are being performed.

Additionally, the Electrical Safety Authority (ESA) requires that certain installations be inspected in accordance with the ESA code, and will perform such inspections when notified by Essex Power. As such, Essex Power will ensure that all inspections by ESA occur when required.

1.15 TIME

Essex Power shall perform the services expeditiously as is reasonable with regard to the circumstances to meet the requirements of the Municipality and shall complete any portion or portions of the services in such order as the Municipality may require.

The Municipality shall expeditiously give consideration to all designs, drawings, plans, specifications, reports, tenders, proposals and other information submitted from Essex Power and shall make any decisions which it is required to make in connection therewith so as not to delay the work of Essex Power.

1.16 FURTHER DOCUMENTS

Essex Power shall, from time to time, and at all times hereafter upon reasonable request of and at the expense of the Municipality, execute and deliver all other and further documents for the purpose of effectually carrying out all the intents and purposes of this agreement.

1.17 NOTICES

Any notice, document or other communication required or permitted to be given hereunder shall be in writing and shall be sufficiently given if delivered or sent by prepaid registered mail from a Post Office in Canada addressed in the case of the Municipality to:

**The Corporation of the Municipality of Amherstburg
P.O. Box 159
271 Sandwich Street South
Amherstburg, ON. N9V 2Z3**

Attention: Mr. Lou Zarlenga, P. Eng. – Manager of Public Services

or addressed in the case of the Essex Power to:

**Essex Power Services Corp.
2730 Highway 3
Oldcastle, ON. N0R 1L0
Attention:: Mr. J. Wladarski,President**

Each of the foregoing shall be entitled to specify a different address by giving written notice as aforesaid to the other. Any notice, if mailed, shall be deemed to have been given on the third business day following such mailing or if delivered by hand, shall be deemed to have been given on the day of delivery if a business day, or if not a business day, on the next business day following the day of delivery.

1.18 COUNTERPARTS

This agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to bear date as of the date written above.

1.19 INTERPRETATION

In this agreement, words importing the singular number include the plural, and vice versa, and words importing the masculine gender include the feminine gender.

1.20 HEADINGS

Section headings are not to be considered part of this agreement are included solely for convenience of reference and are not intended to be full or accurate descriptions of the contents thereof

1.21 BINDING EFFECT

This agreement shall extend to and be binding upon and endure to the benefit of the parties hereto and their respective successors and assigns.

1.22 INSURANCE

The Essex Power hereby covenants and agrees to maintain at all times sufficient insurance as may be required by the Municipality.

1.23 TERM OF AGREEMENT

This Agreement shall take effect the first day of September 2004 for a period concluding December 31, 2006.

ARTICLE 2 - SERVICES

2.1 ESSEX POWER SERVICES FOR STREET LIGHTING SYSTEM

2.1.1 DESIGN SERVICES

Essex Power will provide the following services in conjunction with the design of street lighting systems:

- (a) Design and Engineering Services necessary for the design of all structures and facilities to serve the best interests of the public, with due regard for environmental concerns, capital cost and operating efficiency in accordance with current acceptable standards established by the municipality and regulatory authorities.

These services to include, but not restricted to:

- (i) new roadway lighting
 - (ii) retrofitting existing plant for upgrading
 - (iii) localized improvements
 - (iv) lighting in new developments
 - (v) special lighting designs
- (b) Preparation of plans to enable the Municipality to prepare legal documents and to obtain any easements necessary for the construction of the street lighting system where the system cannot be contained on municipal property and is not part of a plan of subdivision.
 - (c) Circulation of designs to other utilities to avoid conflicts; and for obtaining of all necessary approvals from other agencies.
 - (d) Guidance and advice to Municipal staff regarding current technology, materials and equipment, and research studies.
 - (e) When required, the preparation of preliminary sketch plans and quantity estimates of alternative designs which shall be submitted to the Municipality, for consideration and approval before proceeding with the actual detailed design of the project.
 - (f) When required, review and comment on designs prepared by consultants and submitted to Essex Power by the Municipality.
 - (g) Participate in a reasonable number of meetings for information, negotiations or presentation purposes with the Municipality in connection with design criteria, standards or detailed designs.
 - (h) The provision of tender documents and reproducible contract drawings for any work to be tendered.
 - (i) The keeping of complete and accurate records of time spent on the design, review and contract preparation by Essex Power staff for which reimbursement is required, based on pre-approved pricing.

2.1.2 CONSTRUCTION, ADMINISTRATION AND SUPERVISION SERVICES

Essex Power will provide the following services, in conjunction with the construction, reconstruction or upgrading of street lighting systems:

- (a) ADMINISTRATIVE SERVICES
 - (i) Consultation in the tendering of a contract for any work, the comparative analysis of bids, and the preparation of contract documents for execution.
 - (ii) Where work is undertaken by Essex Power forces that requires the supply of material, scheduling, inspection, and preparation of "as built" drawings.
 - (iii) The review, modification and approval of the construction schedule, the processing of payments, and finalization of all construction related costs shall be documented and forwarded to the Municipality on a monthly basis or as otherwise required.

- (iv) Essex Power is responsible for the quality of all construction work undertaken on behalf of the Municipality where it administers the project.
- (v) Review shop drawings submitted to ensure they conform with the design requirements and contract documents.
- (vi) Review any charges for addition or deletions and issue change orders. The Municipality is to be advised when accumulated change orders are +/- 10% of the project estimate.
- (vii) Provide annually to the Municipality in a mutually acceptable time period, the Essex Power line rebuilding program complete with pole replacement list, in order that the Municipality can consider the revision or addition to street lighting in the affected areas.
- (viii) Co-ordinate the installation of new or reconstructed street lighting plant, either in isolation or conjunction with new road construction or reconstruction on road right-of-ways within the Municipality. No work is to be undertaken until a Purchase Order has been issued by the Municipality or, in the case of developer-financed subdivisions, Municipal approval of design.
- (ix) Provide the Municipality with a status report of Municipal purchase orders not completed and invoiced on request of in a mutually agreeable time period.
- (x) Advise the Municipality of proposed construction start dates for any work on the street lighting system covered by a purchase order.
- (xi) Request, in writing, additional funds where a purchase order amount is anticipated to be exceeded. The request must be accompanied by a written explanation of the need for additional funds.
- (xii) The draft budget details regarding line rebuilding, light upgrading or new installations will be provided annually in October (or other appropriate time) of the year preceding the budget year.

(b) FIELD SUPERVISION OF WORK UNDERTAKEN BY ESSEX POWER

- (i) Essex Power will provide the necessary labour and equipment to perform the work. Efforts shall be made to use the most inexpensive equipment but, where this is not feasible, the Municipality shall pay for the actual equipment used.
- (ii) Review the physical construction work being undertaken to ensure compliance with the plans and specifications.
- (iii) Provide any necessary field stakeout for layout control and calculation of pay quantities for the work.
- (iv) Arrange for testing materials supplied for incorporation in the work and the review of test results and judgement of acceptability of said materials.
- (v) Arrange for on-site testing during the construction of the work to verify acceptability according to the specifications.
- (vi) Investigate, report and recommend on unusual circumstances which may arise during construction.
- (vii) Carry out final inspection at the conclusion of the construction work and at the end of the maintenance period.

- (viii) Preparation of and submission to the Municipality of one set of reproducible drawings showing "as constructed" details.

2.1.3 OPERATION AND MAINTENANCE SERVICES

Essex Power will respond to citizen notification regarding street light outages and to prepare replacement or maintenance work schedules based on the citizen's information, and the Municipality's after dark patrol reports. The spot replacements or maintenance will take place in accordance with the following levels of service or as may be agreed to from time to time:

Within 5 working days for single lights and small groups at one location;

Within 2 working days where a complete section is not illuminated;

Within 24 hours where a complete section on a main thoroughfare is involved;

Emergency crews will be dispatched to repair sections of street lights if requested by the Municipality.

In such circumstances where the Municipality is required to engage the services of an alternate contractor for emergency repairs, Essex Power shall be notified of same.

It is herewith agreed that all calls for street light outages/malfunctions receive by the municipality will be routed to Essex Power staff by calling 776 - 8900.

(a) OPERATION OF SYSTEM

Essex Power shall provide the following services with regard to the day to day operation of the street lighting system:

- (i) The storage and maintenance of an inventory of replacement parts, new lamps, luminaires, poles, controls, conductors and other appliances, and features as may be required from time to time.
- (ii) Administer the inventory of stock items to comply with the agreed upon maximum and minimum quantities and keep accurate stock records.
- (iii) Provide a parts repair facility in conjunction with the inventory control to refurbish parts brought back from the field.
- (iv) Prepare a "request for proposal" to dispose of surplus inventory.
- (v) Update the street light status report annually and provide the Municipality with updated system records including total load wattage, location maps, annual variance, and GIS compatible information when adopted by Essex Power.
- (vi) Provide the Municipality with an annual stock report that summarizes value of stock on hand as of December 31st of each year.

(b) MAINTENANCE OF SYSTEM

Essex Power shall maintain and repair the Municipality's street lighting system in accordance with the service levels established by the Municipality from time to time as is feasible in accordance with the Municipality's financial limits as dictated by the Municipality's street lighting budget. Any request for program adjustments shall be in writing by the designated authority for Essex Power and

approved in writing by the designated authority for the Municipality. Essex Power shall provide the following services with regard to the repair and maintenance of the street lighting system.

- (i) Annually provide to the Municipality, at a mutually agreed upon time, preliminary estimates of the funds required for planned maintenance as well as repair and spot maintenance.
- (ii) Repair and replace damaged street lighting plant in accordance with mutually acceptable standards and level of service.
- (iii) Notify the Municipality by telephone of any damage to poles situated in hazardous locations before the pole is replaced in order to consider a possible alternate replacement location.
- (iv) During any emergency, such as storm damage or overhead line collapse, carry out work necessary to effect emergency repairs and reinstate power. Records of work carried out during the emergency to be submitted subsequently for verification and payment.
- (v) Carry out all necessary repairs to the street lighting system caused by vehicular damage as a result of "hit and run" accidents as well as police reported accidents.
- (vi) Carry out a program of planned repairs of street lighting outages based upon an agreed upon reporting system .
- (vii) Carry out a program of planned general replacement of street lighting equipment in accordance with an annual work schedule approved by the Municipality.
- (viii) Carry out a program of planned tree trimming associated with street lighting equipment only upon pre-notification to the Manager of Public Services of the Municipality.

2.1.4 SUPPLY OF ENERGY

Essex Power agrees to ensure that the electrical power supply to the Municipality's street lighting system is maintained by authority of Essex Power Lines Corp..

Essex Power will advise Essex Power Lines Corp. immediately of all fixture additions or deletions so that the connected load, and hence the monthly energy billings, are maintained as current as possible.

2.2 MUNICIPAL SERVICES FOR STREET LIGHTING SYSTEM

2.2.1 OWNERSHIP OF STREET LIGHTING SYSTEM

The Municipality owns and finances the design, construction maintenance and operation of the street lighting system on existing public road allowances, public walkways, and public alleys within the Municipality. The street lighting infrastructure shall include, but not necessarily be limited to, the following street lighting items:

- underground wiring and ducts
- Municipally-owned lighting poles
- overhead wiring
- transformers
- control equipment
- luminaires, lamps and brackets
- grounding systems
- all drawings and documents related to the system

2.2.2 NEW CONSTRUCTION OF STREET LIGHTS

The Municipality will budget for the construction of new street lights, or the upgrading of existing lighting, in the capital budget associated with major Municipal road projects.

2.2.3 OPERATION AND MAINTENANCE

The Municipality will budget for operation and maintenance of the street lighting system in accordance with the service levels established by the Municipality from time to time.

In addition to the funding of work, carried out by Essex Power under Article 2.1, the Municipality may be required to provide the following:

- (a) The draft details regarding the Municipality's road reconstruction program, where street lighting could be affected, will be provided in October (or other appropriate time) of the year preceding the budget year.
- (b) The negotiations for, and acquisition of, any property or easement required for the street lighting system as identified in section 2.1.1 (b). The property or easement will be obtained in favour of the Municipality.
- (c) Issue purchase orders for all work to be carried out by Essex Power for which specific municipal approval is required.

The Municipality will be responsible for the cost of relocating its attachments when required on joint use poles. Where feasible, Essex Power shall recover costs from a third party if they are requesting the rearrangement of plant.

ARTICLE 3 - PAYMENT OF ESSEX POWER STREET LIGHTING ACCOUNTS

3.00 Essex Power agrees to submit to the Municipality monthly, all accounts for the repair and maintenance of the street light system in the following form.

(a) MAINTENANCE

Maintenance shall include all labour, material, and equipment required for the following activities as requested, by the public or the Municipality:

- (i) The replacement of lamp, photo cell, starter, ballast, and lens changes due failure or malfunction.
- (ii) Minor trouble shooting.

(b) OTHER WORK

Unless otherwise agreed upon, non maintenance repairs shall be invoiced to the Municipality separately. Work carried out as a result of vehicular, or other damage, are to be recorded and invoiced to the Municipality separately for the purpose of the Municipality subsequently claiming costs from insurance companies or individuals, where possible. Other repairs such as repairs to street light cable will also be considered as non maintenance repairs.

(c) DESIGN AND CONSTRUCTION ACTIVITIES

Shall include all design and construction activities for new installations as directed by the Municipality.

(d) INVOICING

Issued within 30 days of the completion of the activities as described herein and based on a per fixture cost, or for work not described herein but as required by the Municipality:

Maintenance (as defined by 3 (a) (i) (ii) above)

Per Fixture Cost Per Month For All Work Described Herein:

\$4.00/fixture (inclusive of G.S.T; corrected monthly)

Each Year Thereafter: Revise the number of fixtures, and determine applicable inflation rate as per Ontario CPI. Additionally, the per fixture unit maintenance charge may increase or decrease subject to an annual review by both parties for the purpose of establishing a mutually agreeable price.

Other Work (as defined by 3 (b) above)

Pre - Approved Cost, or Actual Labour, Equipment & Material.

(e) INTEREST

All payments shall be payable without interest within 30 days after the billing date but, after 30 days, interest will be charged at the prime rate of interest charged by the Municipality's bank to its most creditworthy customers plus 1.5 % per month on the unpaid balance from the date of billing. Where a dispute arises, the Municipality shall pay the undisputed portion forthwith rather than withholding the entire payment.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THE AFFIXING OF THEIR RESPECTIVE CORPORATE SEALS ATTESTED TO BY THE SIGNATURES OF THEIR PROPER OFFICERS DULY AUTHOURIZED IN THAT BEHALF AS OF THE DATE AND YEAR FIRST ABOVE WRITTEN.

On behalf of THE CORPORATION OF THE MUNICIPALITY OF AMHERSTBURG:

Wanda Huss MAYOR
 Signature Title Date

J. Ouellet Aug 17/04
 Witness CLERK DAVID MAILLOU Y. Date

On behalf of: ESSEX POWER SERVICES CORPORATION.:

J. H. H. H. PRESIDENT Aug. 31/04
 Signature Title Date

M. Wittie Aug 31/04
 Witness Date