

**THE CORPORATION OF THE  
TOWNSHIP OF EDWARDSBURGH/CARDINAL  
BY-LAW NO. 2008-80**

**“A BY-LAW TO AUTHORIZE THE MAYOR AND CAO/TREASURER TO EXECUTE  
AN AGREEMENT WITH GREENFIELD JOHNSTOWN LIMITED PARTNERSHIP  
FOR ROAD AND WATER LINE CONSTRUCTION COSTS”**

**WHEREAS** the Municipal Act 2001, SO 2001, Chapter 25, Section 9 gives the municipality the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this Act;

**AND WHEREAS** the Municipal Act 2001, SO 2001, Chapter 25, Section 8(1) states that the powers of a municipality shall be interpreted broadly so as to confer broad authority on municipalities to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues;

**AND WHEREAS** the Municipal Act 2001, SO 2001, Chapter 25, Section 8(2) states that in the event of ambiguity, the ambiguity shall be resolved so as to include, rather than exclude, municipal powers that existed before the Municipal Act, 2001 came into force;

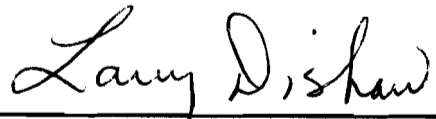
**AND WHEREAS** the Council of the Township of Edwardsburgh/Cardinal desires to enter into an agreement with Greenfield Johnstown Limited Partnership to recover the costs of construction of Edison Avenue and the water line to service Greenfield's ethanol plant located in the Edwardsburgh/Cardinal Industrial Park;


**NOW THEREFORE** the Council of The Corporation of the Township of Edwardsburgh/Cardinal enacts as follows:

1. The Mayor and CAO/Treasurer are hereby authorized to execute the agreement attached hereto as Schedule “A”.
2. Schedule “A” attached hereto shall form part of this by-law.

Read a first and second time in open Council this 15<sup>th</sup> day of December, 2008.

Read a third and final time, passed, signed and sealed in open Council this 15<sup>th</sup> day of December, 2008.

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Clerk

**This Agreement made this 15<sup>th</sup> day of December, 2008.**

**Between:**

**Township of Edwardsburgh/Cardinal  
(a municipal corporation under the  
Municipal Act of Ontario)**

**(the "Township")**

**And**

**GreenField Johnstown Limited Partnership  
(a limited partnership under  
the Limited Partnerships Act of Ontario)**

**("GFE")**

**Recitals:**

1. GFE has purchased a parcel of land from the Township in the Township's industrial park and is in the process of constructing an ethanol manufacturing plant.
2. The existing access by way of the former Pirelli Drive now called Commerce Drive is not adequate for the requirements of GFE.
3. GFE requires a public highway built to its specifications, to wit, Ministry of Transportation Ontario standards ("the Specifications") and with access to County Road #2 directly across from the Port of Prescott Grain Elevators.
4. The Township has no immediate need for the highway required by GFE other than for GFE and there is no foreseeable need by abutting land owners for the proposed highway.
5. The Township has agreed to build the road to the Specifications and to assume it as a public highway on the basis of a special service under S.326 of the Municipal Act ("the Road").
6. GFE requires a sub-surface pipeline ("the Water Line") to discharge its cooling water into the St. Lawrence River and the Township prefers to construct this Water Line as part of the new public highway construction. The Township has agreed to construct the Water Line on the basis of a special service under S.326 of the Municipal Act. The Township has agreed in a separate agreement to grant an easement to GFE for the Water Line.
7. GFE and the Township intend that GFE's property at 141 Commerce Drive, Part Lots 31 to 33, being Part 1 on Reference Plan 15R10769 ("the Property") be designated under S.326(1)(c) as an area of the municipality in which the property owner, GFE, receives an additional benefit from the special service, that is, the Road and the Water Line, that is not received or will not be received in other areas of the municipality.
8. GFE acknowledges and agrees that the Township shall levy under section 312 on the rateable property of GFE the cost of the designing and building of the Road and the Water Line.
9. GreenField Ethanol (Johnstown) Inc. is the registered owner of the property described in paragraph 7 as bare trustee for GFE and signs this agreement on behalf of GFE.

*Originals to GFE  
for signature  
Dec 16/08  
via Russ*

**1. Scope:**

The Township shall build at Township's expense the Road from the north side of County Road 2 to the property line at Greenfield's Johnstown ethanol plant, as described on Schedule A attached. The Road shall include the entrance and turning lane on County Road #2 and such other

requirements as the County Engineer may have. The complete scope of the work is set out in Schedule A.

The Township at its expense shall also construct the Water Line as described in Schedule "A" attached.

## **2. Road and Water Line Costs:**

The costs (referred to as the "Road and Water Line Costs") shall include engineering, design, permits, physical construction, construction insurance and the carrying costs during the period of construction up to receipt of permanent financing..

Current estimated Road and Water Line Costs are \$675,000.

## **3. Specification:**

The Township shall construct the Road and Water Line in accordance with the Specifications which are set out in further detail in Schedule B attached.

## **4. Construction plans, costs and schedule**

(a) The Township shall engage an Ontario professional engineer ("the Engineer") to design the Road and the Water Line, prepare a cost estimate and construction schedule for the Road and the Water Line. The Township shall tender the engineering and GFE shall confirm in writing the engagement of the Engineer.

(b) On production of the Engineer's report, GFE shall confirm in writing that the costs estimated, the Specifications, and construction schedule are acceptable.

(c) The Township shall tender the construction of the Road and the Water Line in accordance with good municipal tendering practice. Prior to the Township awarding the bid to the successful bidder GFE shall approve the bid

(d) If GFE does not approve steps 1 or 2 then the Township shall rework the design, schedule or bid process to obtain GFE's approval or if no approval is received after reworking then this agreement shall be terminated. GFE will then take on full responsibility for the construction of the Road but in any case, it shall be built to Ministry of Transportation Ontario standards.

(e) If termination does occur as the result of GFE not approving the design, schedule and cost estimate then GFE shall pay to the Township all their costs to date, including an administration fee of 5%, and any other reasonable out of pocket expenses attributable to the Road and Water Line design and construction project to that point.

## **5. Special Service under S.326 of the *Municipal Act*.**

(a) The Township and GFE agree that the Road and Water Line is a special service under S.326 of the *Municipal Act*.

(b) The Township and GFE agree that the Property is an area of the Township in which GFE as the property owner receives an additional benefit from the special service, that is, the Road and the Water Line, that is not received or will not be received in other areas of the Township pursuant to S.326(1) (c) of the *Municipal Act*.

(c) GFE agrees that the Township is entitled to levy a special local municipality levy under S.312 on the rateable property of GFE to raise the Costs of the Road and the Water Line.

(d) GFE and the Township agree that the annual special levy shall be in such an amount per year that the Costs of the Road are recovered by the Township over 5 years with interest at 3.75% per year calculated annually. Payments shall be in the amount \$12,358.00 per month commencing December 21, 2008 (30 days after drawdown) for a period of 60 consecutive months on the 21<sup>st</sup> of each month.

(e) Payment of the levy shall begin the earlier of:

- a) the startup of the ethanol plant or
- b) 6 months after completion of the Road.

#### **6. Progress of Works**

(a) The Township shall design and construct the Road and the Water Line in a timely manner and in no event shall completion of the Road and the Water Line to the scope of work and specification as outlined in schedules A and B be any later than October 1, 2008.

(b) If the Township is unable to meet the construction schedule and in the opinion of GFE will not meet the completion date outlined above then GFE may with 7 days written notice complete the Road and the Water Line but in any case the Road shall be built to Ministry of Transportation Ontario standards.

(c) In the event that GFE assumes construction of the Road and the Water Line then GFE shall pay the Township the Road and Water Line Costs incurred by the Townships to that date plus an administration fee of 5%, on the terms as set out in the payment schedule.

#### **7. Maintenance of the Road and Water Line**

The Road shall be a public highway and maintenance of the Road shall be the responsibility of the Township at all times as its practice with other public roads in the Township.

The Water Line shall be the property of GFE located on a grant of easement by the Township to GFE. Maintenance of the Water Line shall be the responsibility of GFE.

#### **8. Public Highway**

The Township shall pass a by-law to declare the Road a public highway upon completion, and provide GFE a right-of way for access pending enactment of such by-law.

#### **9. Street signs**

Street signs and traffic signs shall be the responsibility of the Township.

#### **10. Dispute Resolution**

In the event any dispute arises between the parties with respect to any matter the subject of this Agreement, the following shall be the dispute resolution process:

(a) The Township represented by the Chief Administrative Officer and GFE represented by John Creighton shall meet at the Township Office within 48 hours of being informed of a dispute and shall attempt a resolution. The County Engineer for the United Counties of Leeds and Grenville shall also be present at any dispute that touches on access to the County Road.

(b) In the event that a resolution is not reached at the meeting referred to in (a), then if the dispute involves design or interpretation of a design or plan or a specification set out in a design or plan or whether or not the party constructing the Road or the Water Line has met or complied with the design, plan and specifications of and for the Road or the Water Line, then the Engineer shall make the decision and his decision shall be final and binding.

(c) In the event that a resolution is not reached at the meeting referred to in (a), then if the dispute involves other than as set out in (b) then the parties agree that any dispute shall be submitted to a single arbitrator whose decision on the matters laid before him shall be final and binding. The arbitrator shall be selected and the arbitration shall be conducted pursuant to the *Arbitration Act, 1991*, S.O. 1991 c. 17. The parties agree that submission of a dispute dealt with by this section shall be a condition precedent to any application or action brought before any competent court.

## 11. General Terms

**Assignment.** The rights of either party under this Agreement shall not be assignable without the prior written consent of the other party.

**Successors and Assigns.** This agreement shall be binding on and enure to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to confer on any person, other than the parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this agreement.

**Entire Agreement.** This agreement and the Schedules referred to herein constitute the entire agreement between the parties hereto and supersede all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject-matter ..

**Amendments.** No modification or amendment to this agreement may be made unless agreed to by the parties hereto in writing.

IN WITNESS HEREOF the parties hereto have duly executed this agreement under seal as of the day and year first above written.

**Greenfield Johnstown Limited  
Partnership by its sole general partner  
Greenfield Johnstown G.P. Inc.**

by: \_\_\_\_\_  
Donald Pierce  
“I have the authority to bind the Corporation”

**GreenField Ethanol (Johnstown) Inc.  
as Trustee for Greenfield Johnstown  
Limited Partnership**

by: \_\_\_\_\_  
Donald Pierce  
“I have the authority to bind the Corporation”

**Township of Edwardsburgh/Cardinal**

by: \_\_\_\_\_  
Larry Dishaw, Mayor

by: \_\_\_\_\_  
Russell Trivett, CAO/Treasurer  
“We have the authority to bind the  
Corporation”

## **Schedule A**

### **Scope of work**

1. The public portion of the New Main Entrance to the GFE plant.
2. Modification required at County Road #2, including a deceleration lane for westbound traffic and a turning lane for eastbound traffic.
3. Realignment of the Port entrance with the new Road.
4. Non contact process Water Line from GFE property limit to the St. Lawrence River.
5. All the above listed works including ditches, lighting, pavement, road signs, top soil and seeding as needed.

## **Schedule B**

### **Specifications**

1. Work specifications are described in the following documents:
  - Construction of Johnstown Ethanol Plant Access Road and Process Sewer issued on May 2008 by Eastern Engineering Group, project no. 3862;
  - Addendum no. 1 issued June 6, 2008 by Eastern Engineering Group, project 3862;
  - Addendum no. 2 issued June 6, 2008 by Eastern Engineering Group, project 3862; and
  - Addendum no. 3 issued June 11, 2008 by Eastern Engineering Group, project 3862.
  
2. Work specifications are described in the following drawings:
  - Access Road Plan and profile, drawing no. 1, rev. no. 1; and
  - Access Road Plan and profile, drawing no. 2, rev. no. 1.