

THE CORPORATION OF THE TOWNSHIP OF AMARANTH

BY-LAW NUMBER 45 - 2010

A By-law to authorize the execution of a letter of intent regarding the  
Township Landfill Site

WHEREAS the Township has been approached by a prospective purchaser interested in purchasing the Township's landfill site for use as a soil remediation landfill facility;

AND WHEREAS Council considers it to be in the interests of the municipality to enter into a Letter of Intent with the said prospective purchaser which will establish a process and terms according to which the Township and prospective purchaser will proceed to negotiate a binding agreement of purchase and sale for the Township landfill site;

AND WHEREAS the Township considers the prospective purchaser's proposed use of the landfill site to be an industrial operation for the purposes of By-law 14-2006;

AND WHEREAS By-law 14-2006 exempts industrial operations from certain requirements contained in that by-law, including the obligations to declare lands to be surplus and to obtain an appraisal of the same;


AND WHEREAS notice has been published that Council would be considering future options for the landfill site, including the disposition of the site for use as a soil remediation landfill facility;

NOW THEREFORE the Council of the Corporation of the Township of Amaranth hereby enacts as follows:

1. That Schedule "A" shall form part of this By-law.
2. That the Clerk and Mayor shall be authorized to execute a Letter of Intent with the prospective purchaser in the same or substantially the same form as that attached hereto as Schedule "A", and to attach the corporate seal thereto.

By-law read a first and second time this 20<sup>th</sup> day of October, 2010

By-law read a third time and passed this 20<sup>th</sup> day of October, 2010.

  
CLERK, Susan S. Stone

  
MAYOR, Don MacIver

LETTER OF INTENT

Township of Amaranth  
374028 6<sup>th</sup> Line, RR 7  
Orangeville, Ontario  
L9W 2Z3

Re: Purchase of Landfill Property located at Lot 16, Concession 4, Amaranth Township,  
County of Dufferin from the Township of Amaranth (the "Township")

To Whom It May Concern:

The purpose of this letter is to set out, in broad terms, the basis upon which the undersigned, [corporate purchaser to be named and to be subject to paragraph 5] (the "Buyer") would be prepared to purchase the landfill property ("the property") located on 4<sup>th</sup> Line, north of 15 Sideroad from the Township. The legal description of the property is described in Schedule A to this letter. If the terms proposed in this letter agreement are satisfactory to the Township, the Buyer and the Township would then proceed to negotiate and execute a binding purchase agreement. Please review the terms proposed in this letter agreement.

Terms

1. Prior to the execution of this letter agreement, and no later than Monday, October 18, 2010, the Buyer shall provide the Township with an information piece providing the public with details regarding its proposal. Should such documentation not be provided to the Township in accordance with the above timeline, or should such documentation be unsatisfactory to the Township then it is agreed that these negotiations are at end. It is further agreed that if the negotiations are at an end that the Buyer and the Township shall have no further obligations to one another in respect of the property, except for those obligations set out in paragraph 18.
2. Immediately upon both parties executing this letter agreement, the Buyer will deposit \$500,000.00 cash with the Township to demonstrate the Buyer's commitment to this project during the due diligence period. The deposit will be applied without interest against the purchase price of the property.
3. The purchase price for the property will be \$3,000,000. The remainder of the payment (\$2.5 million) will be made to the Township within 30 days of the Buyer receiving an amendment to the existing Certificate of Approval upon terms and conditions that are satisfactory to the Buyer and to the Township and which satisfaction shall be subject to paragraph 8.
4. The parties agree that the property shall be used by the Buyer solely as a facility for soil treatment, remediation that remediates hydrocarbon impacted and other impacted soils and then transfers such remediated soils off site and/or landfills such soils or impacted soils, as approved by the Ministry of the Environment ("MOE"). Such processes may

include landfarming and/or organic soil conditioning. Further details regarding the facility and its processes shall be disclosed as part of the information to be provided in paragraph 1. It is, however, understood and agreed that any such soils being brought on site shall be tested prior to being brought onto the property; and that soils being brought on site shall be non hazardous and in solid form, and shall not be treated or remediated so that any residual waste becomes hazardous solid waste. The property shall not be used for the depositing of any type of waste other than non-hazardous soils such as other household or industrial waste or for any hazardous materials and/or waste. On request, the Buyer shall operate gratuitously a waste transfer station to accept Township waste on the landfill property and the Buyer shall at its cost make arrangements to have such waste transferred to a licensed waste disposal site other than the landfill property. The Buyer as part of its purchase obligations shall mine the existing landfill to remove the waste previously deposited and shall at its cost pay for such mined waste to be deposited at a licensed waste disposal site elsewhere.

5. The Buyer shall be a corporation with a principal of the corporation being Wilfred Goldlust. Any subsequent binding purchase agreement may not be assigned by the Buyer without the prior written consent of the Township, and the Township shall consent to the assignment of such agreement on such terms and conditions as the Township, acting reasonably, may request. Further, should the Buyer be sold in any way between the date of the execution of this letter agreement to the date of the sale of the property inclusive, the Township may in its sole discretion terminate the sale without penalty or require additional terms and conditions as the Township acting reasonably may request.
6. The Township acknowledges and agrees that the Buyer and its representatives will be conducting due diligence on the property from the signing of this letter agreement until **Monday, February 28, 2011**. Subsequent to the expiry of the due diligence period, the Township and Buyer shall finalize a binding purchase agreement consistent with this letter agreement.
7. The Buyer shall submit all necessary documentation to the Ministry of Environment for an amended Certificate of Approval on or before **Thursday, June 30, 2011** which documentation shall be consistent with paragraph 1 and 4. The Township and its professional advisors shall receive and review all environmental, engineering and other information to be provided to the Ministry of Environment regarding the expansion of the landfill area on the property and for the proposed facility prior to the submission of said information to the Ministry of Environment. In addition the Buyer shall provide any additional information that the Township Engineer or Township Planner acting reasonably may require. All such information shall be prepared by the Buyer in a timely manner and shall be provided to the Township for its review, subsequent to the expiry of the due diligence period as set out in paragraph 6 and prior to **Tuesday, May 31, 2011**. Should the Buyer fail to meet this deadline, and unless the deadline is extended in writing by the parties through their solicitors, then the sale of the property is terminated without penalty to either party. All documentation provided shall be subject to the terms and conditions of paragraph 8.

8. All information provided to the Township in connection with the proposed use of the property shall be subject to review by the Township and its professional advisors to advise Township Council and to permit Township Council to provide to the Buyer reasonable comments that are consistent with the proposed use of the property by the Buyer. The Buyer shall, acting reasonably, consider these comments and make appropriate revisions to such information.
9. Upon both parties signing this letter agreement, the Township agrees to:
- (i) make available to the Buyer and its representatives all information concerning the property, including all environmental studies, reports or other documents;
  - (ii) grant the Buyer and its representatives and consultants access to the property for the purpose of performing environmental site assessments, including soil or groundwater sampling and any other studies to support its application for an amendment of the Certificate of Approval for the landfill;
  - (iii) sign all documents authorizing the Ministry of Environment (Ontario) and any other governmental authority to release information to the Buyers and its representatives about the property;
  - (iv) sign all documents as current owner of the landfill in support of the application of the Buyer as a future owner to amend the Certificate of Approval for the landfill subject to paragraphs 1, 4, 7 and 8; and
  - (v) consent to communication, discussions, negotiations with the Ministry of Environment (Ontario) and any other relevant governmental authority by the Buyer, its representatives, consultants and lawyers relating to the property, any issue pertaining to the environment, existing approvals and new approvals or any other issue that the parties deem necessary for the purposes of the due diligence and the application for the amendment to the Certificate of Approval for the landfill subject to paragraphs 1, 4, 7 and 8.
10. In consideration of the time and expense the Buyer will incur investigating this purchase, the Township agrees that for the due diligence period described in paragraph 6:
- (i) it will not enter into or continue any negotiations or discussions with any other party in respect of the sale, directly or indirectly, of the property. For greater certainty, engagement by the Township in any process through which the County of Dufferin assumes or otherwise become involved in waste management functions, shall be deemed not to violate this requirement;
  - (ii) the Buyer acknowledges that this letter agreement and the By-law authorizing the Mayor and Clerk to execute this letter agreement are public documents, as are the documents provided in paragraph 1 of this letter agreement. Other documents and information disclosed and provided to the Township set out in the foregoing paragraphs shall be considered public documents, unless the Buyer requests that certain documents not be made public pursuant to section 10(1) of the *Municipal*

*Freedom of Information and Protection of Privacy Act*, which request the Township in its sole discretion may or may not accept. Should a third party request disclosure of said documents, the Township shall proceed to make a determination regarding such disclosure in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, and the Buyer shall have available to it any remedies under said *Act*;

(iii) the Township will not, and will cause its professional and financial advisors not to use any information disclosed to it by the Buyer in connection with this letter agreement, the Buyer's due diligence or the purchase agreement (including negotiations relating to such agreement) for any purpose other than evaluating the Buyer's proposed purchase of the landfill property, negotiating a binding purchase agreement with the Buyer, *Planning Act* applications, or in connection with the Buyer's application to amend the Certificate of Approval and/or for any other purpose that the Township may be legally obligated to do so use the information.

11. The binding purchase agreement will contain provisions such as representations and warranties, covenants, closing conditions, indemnification and other provisions which are acceptable to the Buyer and which are customarily found in commercial real estate purchase agreements. To the extent that any such customary terms and conditions or to the extent that the information contained in the information piece provided in paragraph 1 conflicts with the specific terms of this letter agreement, the terms and conditions of this letter agreement prevail. Among the covenants provided by the parties will be a covenant by the Township to not oppose, but support the process of transferring and amending the landfill Certificate of Approval and related permits and to cooperate with the Buyer in its negotiations and discussions with the Ministry of Environment or any other governmental authority and during any environmental assessment process, subject to paragraphs 1, 4, 7 and 8.

12. No later than **Tuesday, May 31, 2011**, the Buyer shall submit an application for site plan approval under s. 41 of the *Planning Act* to the Township. Such application shall be made in accordance with all requirements applicable to such applications in the Township, including the payment of fees and provision of information, reports and other materials. Should the Township approve the site plan application, the Buyer acknowledges at a minimum that the Township may impose the conditions contained in paragraph 13, together with any other conditions or modified conditions as part of the required Development/Site Plan Agreement as well as any other considerations that the Township pursuant to the *Planning Act* may deem appropriate. The Buyer acknowledges and agrees that nothing in this letter agreement or in the binding purchase agreement fetters or in any way affects the discretion of Township Council in considering the *Planning Act* application.

13. Any binding purchase agreement shall be conditional on the Buyer entering into a Development/Site Plan Agreement with the Township to be registered on title to the property, which agreement shall contain provisions with respect to the following matters, all of which shall be to the satisfaction of the Township:

- i. Hours of operation;
  - ii. Haul routes restricting the routings so as to pass by a limited number of residences and so as to be as direct as possible to County and/or Provincial roads;
  - iii. Reasonable upgrades to Township roads being used for haul routes being paid for by the Buyer and maintenance payments to the Township as are required due to the operations of the Buyer;
  - iv. Restrictions on the number of trucks per day accessing the Facility;
  - v. Ongoing payments to the Township of royalties in the amount of \$1.55 per tonne for each tonne of soil being delivered to the property, (whether that soil is remediated and then transferred from the property or whether the soil remains on the property and landfilled is immaterial as royalty is paid on each tonne of soil being delivered). The royalty shall be adjusted annually as of January 1 of each year with the royalty being adjusted upward by the Consumer Price Index.
  - vi. Provision of a rehabilitation/closure plan with an after use being a park or nature trails;
  - vii. Letter(s) of Credit to be held by the Township, if any, after due consideration of any sureties required under the amended Certificate of Approval;
  - viii. Insurance;
  - ix. Restrictions regarding the transfer of the landfill property and the assignment of the Development/Site Plan Agreement to another Owner which the terms and conditions of paragraph 5 being applicable *mutatis mutandis* to any such proposed sale;
  - x. Ongoing monitoring to be carried out by the Buyer at its cost, together with triggers and required remedial steps to be carried out at the Buyer's cost;
  - xi. Indemnification of the Township by the Buyer for liabilities arising out of the operations of the Buyer post closing.
14. Any binding purchase agreement shall be subject to the registration on closing of a registered restrictive covenant in favour of the Township restricting the use of the landfill property to the proposal set out in the plans, drawings and other materials provided by the Buyer pursuant to paragraphs 1, 4 and 7. Such restrictive covenant shall provide that the proposal, the operations and the amended Certificate of Approval shall not be modified without the written consent of the Township. Further paragraph 4 shall not merge on closing.
15. The Township shall have the right prior to closing to remove all fixtures and equipment from the site all of which are excluded from the purchase price. The Township shall be responsible for employment obligations for employee(s) working at the site.

16. It is agreed and acknowledged by the Buyer that, until the completion of the sale of the property, the Township may continue to deposit waste on the property pursuant to the existing Certificate of Approval and may continue to run the property as a licensed waste disposal site. As such, the Buyer shall be buying the property on an as is basis, and shall not be entitled or permitted to make any requisitions on title save and except for requisitions to ensure that the Buyer receives unencumbered fee simple (save and except for the development/site plan agreement and the restrictive covenant to be registered on title in favour of the Township pursuant to paragraphs 13 and 14). The Buyer shall be responsible for all land transfer tax fees and all closing fees.
17. The Buyer and the Township agree that:
- (i) if no purchase agreement is entered into between the parties and/or negotiations between the Buyer and the Township towards a binding purchase agreement terminate,
    - (A) the Buyer and its representatives will either return or destroy all information regarding the property provided to it as part of the Buyer's due diligence of the property; and
    - (B) the \$500,000 deposit will be returned to the Buyer without interest and subject to any deductions to satisfy the paragraph 18 below; and
  - (ii) if the Buyer does not receive the amendment to the existing Certificate of Approval in accordance with paragraph 3 above on or before Friday, March 30, 2012; or
  - (iii) if at any time the Buyer determines, at its sole discretion, that it will not receive such amendment;
    - (A) the Buyer may elect, at its sole discretion, to not complete the purchase of the property, and upon notifying the Township of such election will have no further obligations to the Township in respect of the property; and
    - (B) the obligations in subsections 17(i)(A) and (B) above will apply.
18. Except for any legal or engineering time incurred from September 3, 2010 until the execution of this Letter of Intent, the Buyer shall reimburse the Township for its legal and engineering expenses as invoiced from time to time to prepare, negotiate, implement, discuss and advise the Township with respect to the following processes: negotiations, discussions and advice to the Township prior to the execution of this letter agreement, the letter agreement; due diligence responses to the Buyer, the Planning Act application(s); the binding purchase agreement, the Certificate of Approval amendment application, and the transfer of the Property to the Buyer.

19. This letter will be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

If the Township is in agreement with the terms of this letter, please sign where indicated below and return one copy to the Buyer.

Yours truly,

[Corporate Purchaser To Be Named]

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Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**TOWNSHIP OF AMARANTH**

Name:  
Title:

\_\_\_\_\_

Name:  
Title:

\_\_\_\_\_

**SCHEDULE "A" TO LETTER OF INTENT**

East Part Lots 16 & 17, Concession 4, Amaranth Township, County of Dufferin

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