THE CORPORATION OF THE TOWNSHIP OF LAURENTIAN VALLEY

BY-LAW NUMBER 01-07-102

BEING A BY-LAW AUTHORIZING THE REEVE AND THE CHIEF ADMINISTRATIVE OFFICER OF THE CORPORATION OF THE TOWNSHIP OF LAURENTIAN VALLEY TO ENTER INTO AN AGREEMENT WITH THE CORPORATION OF THE TOWN OF PETAWAWA

WHEREAS The Corporation of the Township of Laurentian Valley is desirous of entering into a Agreement with the Corporation of the Town of Petawawa for the purchase of a Water Main;

AND WHEREAS a Municipality has authority under the Public Utilities Act R.S.O. 1990, c.P52 as amended to acquire, maintain and operate waterworks;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF LAURENTIAN VALLEY ENACTS AS FOLLOWS:

1. That Municipal Council of the Corporation of the Township of Laurentian Valley enter into an Agreement with the Corporation of the Town of Petawawa in the form attached as Appendix “A” hereto;

2. That the Reeve and the Clerk be hereby authorized to enter into the agreement referred to in Section 1 on behalf of the Corporation;

3. That this by-law shall come into full force and effect on the date of final passing hereof.

READ A FIRST AND SECOND TIME THIS 31ST DAY OF JULY, 2001

REEVE - JACK WILSON  DARREL RYAN, CAO


REEVE - JACK WILSON  DARREL RYAN, CAO
THIS AGREEMENT made this 31st day of July, 2001

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF LAURENTIAN VALLEY
(Hereinafter called the "Township")
PARTY OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF PETAWAWA
(Hereinafter called the "Town")
PARTY OF THE SECOND PART

WHEREAS the “Township” and the “Town” have agreements for the supply of water from the City of Pembroke;

AND WHEREAS the “Town” is the owner of a water main which crosses the “Township” and connects to the City of Pembroke Water Distribution System as shown on Schedule “A” hereto;

AND WHEREAS the “Township” is desirous of purchasing the said water main and the “Town” is desirous of retaining a licence to utilize the water main as required by the “Town”;

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is acknowledged and agreed to by each of the parties hereto, the parties hereto covenant and agree as follows:

1. For the purposes of this Agreement:
   (a) "Town" shall mean the Corporation of the Town of Petawawa and its predecessor municipalities and/or any successor municipality through amalgamation;
   (b) "Township" shall mean the Corporation of the Township of Laurentian Valley and its predecessor municipalities and/or any successor municipality through amalgamation;
   (c) "Water" shall mean potable water supplied from and by the City of Pembroke water treatment and distribution system through the “Trunk Main” as shown on Schedule “A” and that meets all applicable Ministry of the Environment regulations and requirements in force from time to time;
   (e) “Trunk Main” is the water main shown on Schedule “A” and any appurtenances relating thereto extending from the eastern boundary of the “Township” to the western boundary of the “Township”;
   (f) “Point of Connection of the Town” shall mean the point or points where the “Trunk Main” connects to the Town of Petawawa water distribution system;
(g) “Point of Connection of the Township” shall mean the point where the “Trunk Main” connects to the City of Pembroke water distribution system;
(h) “Metered Quantity” shall mean the volume of “Water” as measured by totalizer water meters or such other approved meters at or near the “Point of Connection of the Town” or the “Point of Connection of the Township”;
(i) “Maintain” includes repair.

2. The obligations of the parties hereto set out in this Agreement shall be conditional upon the “Township” obtaining, at its own expense, all necessary approvals, including, without limitation, approvals pursuant to The Environmental Assessment Act.

3. The “Town” agrees to sell to the “Township” and the “Township” agrees to buy from the “Town” the “Trunk Main” shown on Schedule “A” for the sum of $240,000.00 plus any applicable taxes and the “Township” agrees to pay the said sum upon the signing of this Agreement and receiving the Bill of Sale. This transaction shall be concluded on or before the 15th day of July, 2001.

4. (a) Upon transfer of the “Trunk Main” to the “Township” pursuant to Paragraph 3 of this Agreement, the “Township” hereby grants an irrevocable licence for the sum of One Dollar ($1.00) in favour of the “Town” for conveying “Water” to the “Town” through the “Trunk Main”, subject to the provisions of Paragraph 4(b) and provided the terms of the City of Pembroke and “Town” supply of water agreement or any successor agreement are complied with.

(b) The licence shall expire at the earliest date of the following:

(i) The date that the “Town” advises the “Township” in writing that it no longer requires the licence;

(ii) Ninety-nine (99) years from the date of this agreement.

(c) In the event the “Town” does not have the right to receive “Water” because of the termination or expiry of the City of Pembroke and “Town” supply of water agreement or any extensions thereof or the “Town” no longer has the right to receive “Water” because of the termination or expiry of any successor City of Pembroke and “Town” supply of water agreement or any extensions thereof, the right of the “Town” to convey “Water” through the “Trunk Main” pursuant to paragraph 4(a) shall be suspended until such time as the right of the “Town” to receive “Water” from the City of Pembroke has been restored.
5. (a) The “Town” shall pay to the City of Pembroke those amounts that are required to be paid for the “Metered Quantity” of “Water” received by the “Town” pursuant to the existing supply of water agreement or any extensions thereof or any successor supply of water agreements or extensions thereof.

(b) The “Town” agrees that the “Metered Quantity” of “Water” received by the “Town” from the City of Pembroke shall be the “Metered Quantity” of “Water” measured at the “Point of Connection of the Town”.

(c) The “Township” shall pay to the City of Pembroke those amounts that are required to be paid for the “Metered Quantity” of “Water” received by the “Township” pursuant to the existing supply of water agreement or any extensions thereof or any successor supply of water agreements or extensions thereof.

(d) The “Township” agrees that the “Metered Quantity” of “Water” received by the “Township” from the City of Pembroke shall be the “Metered Quantity” of “Water” measured at the “Point of Connection of the Township” less the “Metered Quantity” of “Water” measured at the “Point of Connection of the Town”.

(e) The “Township” agrees to supply, install, operate and maintain at its own expense, all totalizer water meters and associated valves or such other approved water meters in its metering chambers located at or near the “Point of Connection of the Town” and the “Point of Connection of the Township”. The meters shall be read at such times as are necessary to comply with the terms of any supply of water agreement with the City of Pembroke in force from time to time during the term of this Agreement.

(f) The “Township” hereby grants an easement to the “Town” for access to any of the said metering chambers and meters located at or near the “Point of Connection of the Town” and the “Point of Connection of the Township” for purposes of recording the readings and for verification that the said meters are accurate.

(g) In the event that the “Town” or the “Township” wishes to have the accuracy of either or both of the meters checked, then in such event the “Township” agrees to have the meter(s) checked forthwith for accuracy by the meter(s) manufacturer or by an independent testing firm approved by both the “Town” and the “Township”. The “Town” and the “Township” shall be provided a copy of the test results and if
the test results reveal that the meter(s) was registering correctly (within 3%), the expense of removing and testing the meter(s) shall be paid by the party requesting such test. If the meter(s) when tested, is found to register incorrectly by 3% or more, an adjustment will be made to the calculations set out above in Paragraph 5 of this Agreement for the preceding three months prior to the testing of the meter(s). In such event, the expense of removing and testing the meter(s) will be paid by the “Township”. The cost of any repairs or replacement of the meter(s) shall be borne by the “Township”. Upon the installation of the reconditioned or new water meter(s), the “Township” shall notify the “Town” in writing and shall provide the “Town” with a copy of the meter(s) accuracy test report as prepared by the manufacturer or by an independent testing firm.

6. (a) The “Township” agrees that the “Trunk Main” shall be maintained by the “Township” strictly in accordance with the requirements of the Ontario Ministry of the Environment and all relevant provincial legislation.

(b) The “Township” further agrees to maintain the “Trunk Main” at the “Township’s” expense with no cost whatsoever to be charged to the “Town” during the term of the licence described in Paragraph 4 of this Agreement or any extension thereof.

c) The “Township” acknowledges and agrees with the “Town” that:
   i) the “Trunk Main” is being transferred to the “Township” “as is” and that the “Town” makes no representation or warranty as to the condition or fitness for the purpose of the “Trunk Main”; and

   ii) upon the transfer of the “Trunk Main” to the “Township”, the “Township” shall be solely responsible for all repairs, replacement, operation and maintenance of the “Trunk Main” at the “Township’s” sole expense; and

   iii) the “Township” shall, at its sole expense, maintain the “Trunk Main” (or any replacement thereof) at all times in good condition and proper repair and, for so long as the licence described in Paragraph 4 of this Agreement is in effect, shall indemnify and save harmless the “Town” from and against all manner of actions, causes of action, liens, judgments, orders, awards, suits, claims, executions and demands which may be brought against or made upon the “Town” and from and against all loss, costs, charges, damages and expenses which may be sustained, incurred or paid by the “Town” arising from in any way or as a consequence of the failure of the “Township” to properly operate, maintain and keep in good repair
the "Trunk Main". The "Town" acknowledges and agrees that the
foregoing indemnity from the "Township" shall not apply to any losses,
costs, charges, demands and expenses arising from the negligence of the
"Town". The obligations of the "Township" to indemnify the "Town"
shall survive any termination or release in whole or in part of this
Agreement, notwithstanding anything in this Agreement to the contrary;
and

iv) the "Township" shall not make or permit to be made any alterations or
additions to the "Trunk Main" that will or may have the effect of adversely
affecting the "Town's" ability to obtain "Water" from the City of
Pembroke Water Treatment and Distribution System through the "Trunk
Main" in the volumes permitted by the Agreement between the "Town"
and the City of Pembroke or any renewal or successor agreement.

7. The "Township" agrees to indemnify and save the "Town" harmless from and against any
and all liability, loss, damage, cost, fees, or expenses whatsoever which the "Town" may
incur, suffer or be required to pay, as a result, directly or indirectly, by reason of or as a
consequence of any act of the City of Pembroke or any claim, action, suit, application,
litigation, charge, complaint, prosecution, assessment, reassessment, investigation or
other proceeding of any nature or kind whatsoever (collectively, a "Claim") that may be
made or asserted by the City of Pembroke against or affecting the "Town" or made or
asserted by the "Town" against the City of Pembroke, including without limiting the
generality of the foregoing, all costs of obtaining an alternate source of supply of water
and transmission of the water, in the event the City of Pembroke terminates the supply of
water agreement with the "Town" if such "Claim" and costs relate to or arise from the
"Town" signing this Agreement with the "Township".

If any Claim is made or brought against the "Town" in connection with any of the matters
against which the "Town" would be indemnified pursuant to this indemnity, the "Town"
shall give notice to the "Township" of such claim as soon as practicable. Upon notice to
the "Town" within 30 days of service of a claim on the "Town", the "Township" may at
its expense appoint such legal counsel as is acceptable to the "Town" to represent the
"Town" and contest and defend in a timely manner against any such claim and take all
such steps as may be necessary or proper to prevent the resolution thereof in a manner
adverse to the "Town".

In addition, if requested by the "Township", the "Town" agrees to assign to the
"Township" any "chose in action" that the "Town" may have relating to any right of
action against the "City", or any successor municipality of the "City" and its assigns, with respect to the supply of water to the "Town" for which an indemnification is being claimed by the "Town" from the "Township" pursuant to this Agreement. Such assignment shall be in exchange for the payment by the "Township" to the "Town" in full of all losses, damages, costs, expenses, etc. suffered or incurred by the "Town" to which this indemnity relates.

This indemnity and the benefit of the obligations of the "Township" shall enure to the benefit of the "Town" and any successor municipality and assigns and shall be binding upon the "Township" and any successor municipality.

8. If any term or provision of this Agreement or the application thereof to any person shall to any extent by held to be invalid or unenforceable, the balance of the Agreement shall not be affected thereby and each term and provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

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

10. All notices, requests, demands or other communications by the terms hereof required or permitted to be given by one party to another shall be given in writing by personal delivery or fax or by first class mail, postage prepaid, addressed to such other party or delivered to such other party as follows:

The "Township" to:

460 Witt Road
R. R. #4
Pembroke, Ontario
K8A 6W5
Attention: Chief Administrative Officer

The "Town" to:

1111 Victoria Street,
Petawawa, Ontario
K8H 2E6
Attention: Chief Administrative Officer

or at such other address as may be given by any of them to the others in writing from time to time and such notices, requests, demands or other communications shall be deemed to have been received when faxed or delivered, or if mailed seventy-two (72) hours after 12:01 a.m. on the day following the day of mailing thereof.
11. (a) This Agreement shall not be assigned by either party hereto without the prior written consent of the other party.

(b) The Parties hereto agree that in the event either or both of the parties hereto should amalgamate with any other municipality, this Agreement shall survive any such amalgamation and shall continue to have full force and effect.

12. The parties hereto, and each of them, covenant and agree that each of them shall and will, upon reasonable request of the other party, make, do, execute or cause to be made, done or executed, all such further and other lawful acts, deeds, things, devices and assurances whatsoever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.

13. In the event of any dispute arising between the parties hereto, such dispute shall be determined by a single arbitrator, if the parties hereto agree upon one, otherwise by three arbitrators one to be appointed by the “Township” and the other to be appointed by the “Town”, a third to be chosen by the first two named arbitrators before they enter upon the business of arbitration. The award and determination of such arbitrator or arbitrators or any two of such arbitrators shall be binding upon the parties hereto and their respective successors and assigns.

14. a) It is agreed and acknowledged by the parties hereto that each is satisfied as to the jurisdiction of itself and the other to enter into this Agreement. The “Town” therefore covenants and agrees that it shall not question the jurisdiction of itself or the “Township” to enter into this Agreement, nor question the legality of any portion thereof; and likewise, the “Township” agrees that it shall not question the jurisdiction of itself or the “Town” to enter into this Agreement nor question the legality of any portion thereof. The parties hereto, their successors and assigns, are and shall be estopped from contending otherwise in any proceeding before a Court of competent jurisdiction.

b) This Agreement shall continue in full force and effect until the date upon which the licence referred to in Paragraph 4 of this Agreement expires.
15. This Agreement contains the entire Agreement between the Parties hereto with reference to the subject matter hereof, shall not be altered or amended except by an agreement, in writing, duly executed by the Parties hereto, and shall enure to the benefit of and be binding upon the Parties hereto, their successors and assigns.

IN WITNESS WHEREOF the Parties hereto have set their hands and seal attended to by the hands of the proper signing officers duly authorized in that regard on the date and year first above written.

THE CORPORATION OF THE TOWNSHIP OF LAURENTIAN VALLEY

Reeve: Jack Wilson

Chief Administrative Officer: Darrel Ryan

THE CORPORATION OF THE TOWN OF PETAWAWA

Mayor: Bob Sweet

Chief Administrative Officer: Robert Rantz