

THE CORPORATION OF THE TOWNSHIP OF LAURENTIAN VALLEY

BY-LAW #2009-07-029

BEING A BY-LAW TO AUTHORIZE THE MAYOR AND CAO/CLERK TO EXECUTE AN AGREEMENT WITH BELL ALIANT REGARDING THE RURAL CONNECTIONS BROADBAND PROGRAM

WHEREAS Section 8 of the Municipal Act, 2001 provides the municipality with the powers of a natural person and the authority to govern their affairs as they consider appropriate; and

WHEREAS the Town of Petawawa and the Township of Laurentian Valley submitted a joint application for funding through the Rural Connections Broadband Program of the Ministry of Agriculture, Food and Rural Affairs to service the communities with access to Broadband Services; and

WHEREAS the Town of Petawawa and the Township of Laurentian Valley have jointly selected Bell Aliant as the Broadband Internet Service Provider for the project; and

WHEREAS the Joint Broadband Committee appointed by the Councils of the Town of Petawawa and the Township of Laurentian Valley to manage the Rural Connections Broadband Project has approved the agreement with Bell Aliant; and

WHEREAS the Township of Laurentian Valley is acting in the capacity as lead municipality for the purposes of applicable agreements; and


WHEREAS the Council of the Corporation of the Township of Laurentian Valley deems it expedient to enter into an agreement with Bell Aliant to be the Broadband Internet Provider for the Rural Connections Broadband Project;

NOW THEREFORE the Council of the Corporation of the Township of Laurentian Valley enacts as follows:

1. That the Mayor and CAO/Clerk be and are hereby authorized to execute the attached agreement with Bell Aliant and to do or cause to be done all matters or act or anything to give full force and effect to this By-Law.
2. That the executed agreement annexed hereto be made part of this By-Law.
3. That this By-Law shall come into force and effect immediately upon the passage thereof.

READ A FIRST AND SECOND TIME THIS TWENTY-FIRST DAY OF JULY, 2009

READ A THIRD TIME AND PASSED THIS TWENTY-FIRST DAY OF JULY, 2009


Jack Wilson, Mayor


John Baird, CAO/Clerk

THIS AGREEMENT made as of the Fifteenth day of September, 2009

BETWEEN:

**BELL ALIANT REGIONAL COMMUNICATIONS, LIMITED
PARTNERSHIP**

(hereinafter referred to as "**Contractor**")

OF THE FIRST PART

- and -

CORPORATION OF THE TOWNSHIP OF LAURENTIAN VALLEY

(hereinafter referred to as the "**Municipality**")

OF THE SECOND PART

WHEREAS:

1. The Municipality is party to a "Rural Connections" agreement with HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Agriculture, Food and Rural Affairs for the expansion of broadband services within the territories of the Town of Petawawa and the Township of Laurentian Valley.
2. The Township of Laurentian Valley is the lead municipality for the purposes of the "Rural Connections" Agreement.
3. The Municipality issued a request for proposals to internet service providers describing the services sought and the areas in which broadband internet access was to be made available (the "**RFP**");
4. The Contractor submitted a response to the Municipality dated **January 23rd, 2009** (the "**Response**"); and
5. The Municipality has selected the Response to provide the broadband internet services and the parties wish to enter into this agreement to formalize their respective obligations.

NOW THEREFORE, the parties agree as follows:

Article 1 Paramourncy

1.1 In the event of a conflict between a provision of the RFP or Response and anything contained in this agreement, the provisions of this agreement shall supersede the RFP and Response and govern the parties' right and obligations. This agreement supersedes all prior negotiations, representations, or agreements whether written or oral relating to any matter described in this agreement, the RFP or Response and may only be amended by the parties in writing.

Article 2 Work

2.1 The Contractor shall perform the total construction related services required to provide broadband internet services to those areas within the territory of the Municipality more specifically described in the RFP (the "**Work**").

2.2 The Contractor shall have total control of the Work and shall direct and supervise the Work in the manner it deems most efficient.

2.3 The performance and completion of the Work shall proceed pursuant to a plan (the "**Project Plan**"), which the Contractor shall:

- (1) Prepare and provide the Project Plan to the Municipality showing the timeline for completion of the Work and each specific deliverable thereunder;
- (2) Prepare and submit a revised technical plan for final approval by the Municipality.
- (3) Construct the project according to Schedule 4 submitted on February 4th, 2009 related to Bell Aliant's commitment of new construction valued at \$1,479,000.00 and \$390,000.00 of in-kind existing infrastructure. The above figures include the \$990,930.00 of Bell Aliant Capital Costs, \$390,000.00 of existing infrastructure and municipal contribution of \$488,070.00 for a total of \$1,869,000.00. Schedule 4 (dated February 4th 2009) and Bell Aliant's email of January 23rd, 2009 are attached as Schedule A and B and form part of this agreement.
- (4) Provide a revised "Bell Aliant Schedule "B" reflecting the same amounts as in Item 3 above prior to the signing of this agreement.

- (5) Monitor the progress of the Work relative to the Project Plan and inform the municipality of its progress when billing for work completed or quarterly, whichever is the more frequent.
 - (6) Notify the Municipality of any change in the date of any deliverable identified in the Project Plan.
 - (7) Provide outreach and awareness assistance to the municipality as outlined in Section 8 of the January 23rd, 2009 RFP response.
- 2.4 All property used in or created through the Work shall be and remain vested absolutely in the Contractor and the Municipality acknowledges that no title shall pass to it by operation of this agreement.
- 2.5 The Contractor shall provide reasonable access to the agents and employees of the Municipality for all sites where the Work is being undertaken on reasonable notice and at all reasonable times.
- 2.6 The Contractor shall comply with all laws, regulations; orders and standards required by applicable construction or health and safety legislation for the Province of Ontario and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.
- 2.7 The Municipality acknowledges that, save as specifically provided in this Agreement, the Contractor makes no representations or warranties whatsoever with regard to the Work.

Article 3 Payment

- 3.1 Applications for payment on account of the Contract Price shall be made no more frequently than once monthly in each calendar year in accordance with the progress of the work as per Bell Aliant's Schedule B (which is attached as Schedule C and forms part of this agreement). The amount claimed by the Contractor shall be limited to the value of eligible costs (as defined by OMAFRA for the Rural Connections Broadband Program), proportionate to the amount of the Contract Price, of Work performed as of the last day of the payment period.
- 3.2 Upon completion of the project the Contractor shall also include Bell's relevant data for Schedules "H" and "K". Samples of all these Schedules are attached and form part of this agreement.

- 3.3 The Municipality agrees to pay within sixty (60) days of receipt of each invoice from the Contractor in full for Work completed until one third of the value of the cost of new construction is met as described in Schedule A and B attached, together with any such value added taxes levied upon the price of the Work by the Governments of Canada or Ontario, which is computed as a percentage of the price and includes the goods and services tax, and any similar tax, the payment or collection of which is an obligation of the Contractor. Notwithstanding the total cost of the Work, the Municipality's maximum liability to the Contractor in respect of the Work is \$623,000.00.
- 3.4 The Municipality shall make all payments required under the terms of this agreement in accordance with all legislation and statutory requirements respecting holdbacks for constructions liens and shall pay all unpaid balances promptly upon the expiration of any applicable lien periods.

Article 4 Liability, Insurance and Indemnity

- 4.1 The Contractor shall:
- (1) Maintain five million dollars (\$5M) of general liability insurance, automobile liability insurance, and property insurance suitable for the performance of the Work. Such insurance shall name both "The Corporation of the Township of Laurentian Valley" and "Her Majesty the Queen in Right of Ontario"
 - (2) provide the Municipality with a certificate evidencing its insurance at the commencement of the Work and upon request by the Municipality;
 - (3) be responsible for any deductible amounts under such insurance policies; and
 - (4) ensure that all such policies be issued by insurers licensed to underwrite insurance in the Province of Ontario.
- 4.2 The Contractor shall indemnify and hold harmless the Municipality, its agents and employees from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings (hereinafter called "**Claims**") by third parties that arise out of, or attributable to, the Contractor's performance of the Work provided any such Claims are:
- (1) attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property,

- (2) caused by negligent acts or omissions of the Contractor or anyone for whom it is in law responsible, and

The Municipality expressly waives the right to indemnification for any claims other than those stated above.

- 4.3 The Contractor shall, upon the request of the Municipality, provide the Municipality a letter of credit for performance of the Work in the amount of \$934,500.00 (50% of \$1,869,000.00) which shall remain in full force and effect during the term of this agreement or until such time as final provincial acceptance of all documents and final payment to the municipality.
- 4.4 The letter of credit provided by the Contractor pursuant to this agreement shall be issued by a chartered bank of Canada with branches in the Province of Ontario or such other issuer that the parties select and shall be maintained in good standing until the Ministry of Agriculture, Food and Rural Affairs acknowledges completion of the project and releases any holdback as provided by the OMAFRA Funding Agreement.

Article 5 General Provisions

- 5.1 Neither the Contractor nor the Municipality shall disclose the terms or conditions of this agreement, the Project Plan, or the subject matter thereof to a third party (other than the disclosing party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding; provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 5.2 No waiver by any of the parties to this agreement of a breach or default by the other shall be deemed to be a waiver of any preceding or succeeding breach or default of the same or any other provision of this agreement. Each of the parties shall be entitled to injunctive and other equitable relief to cure any breach or threatened breach of this agreement without effecting or lessening their other rights and remedies whether under this agreement or at law.
- 5.3 Any notice, request, payment or any communication required or permitted to be given under this agreement by any party to the other shall be made in writing and shall be given, made or communicated, as the case may be, by courier, personal delivery, facsimile transmission, or regular mail using the following addresses:

(1) For the Contractor:

**Bell Aliant Regional Communications
176 Argyle Street
Renfrew, Ontario K7V 1T5**

(2) For the Municipality:

**Township of Laurentian Valley
RR#4, 460 Witt Rd
Pembroke, On K8A 6W5**

or such other address or addresses as the party may designate from time to time by giving notice as herein provided.

Any notice or other communication related to this agreement shall be deemed to have been given, made or delivered, as the case may be, at the time that the same is personally delivered, or, if given by electronic or facsimile transmission, on the day on which it is sent subject to confirmation of delivery, or, if sent by mail, on the 3rd day excluding Saturdays, Sundays, and statutory holidays in the Province of Ontario following the date on which it was mailed.

- 5.4 Neither party to this agreement may assign, transfer or otherwise dispose of all or any part of its rights and obligations hereunder or interest herein to any person, firm or corporation without the prior written consent of the other party.
- 5.5 This agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors, and such assigns that are permitted by this agreement.
- 5.6 This agreement shall be interpreted, construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- 5.7 This agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one instrument. Delivery of an executed counterpart's signature page by facsimile or an electronic reproduction of an executed counterpart signature page by electronic mail is effective execution and delivery of this agreement.

5.8 Project completion date will be December 30th, 2010, unless otherwise agreed to by all parties.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF the parties have executed this agreement on the date first written above.

**BELL ALIANT REGIONAL COMMUNICATIONS,
LIMITED PARTNERSHIP** by its general partner, **BELL
ALIAN T REGIONAL COMMUNICATIONS INC.**

Per:  _____

**THE CORPORATION OF THE TOWNSHIP OF
LAURENTIAN VALLEY**

Per:  _____
Name: Jack Wilson, Mayor

Per:  _____
Name: John Baird, CAO/Clerk