THE CORPORATION OF THE TOWNSHIP OF LAURENTIAN VALLEY

BY-LAW #2010-01-004

BEING A BY-LAW TO AUTHORIZE THE MAYOR AND CAO/CLERK TO EXECUTE AN ADDENDUM TO THE AGREEMENT WITH THE MINISTRY OF AGRICULTURE, FOOD AND RURAL AFFAIRS 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 Township of Laurentian Valley is acting in the capacity as lead municipality for the purposes of the joint application; and

WHEREAS the Council of the Corporation of the Township of Laurentian Valley entered into an agreement with the Ontario Ministry of Agriculture, Food and Rural Affairs with respect to the Rural Connections Broadband Program on September 24th, 2009; and

WHEREAS the agreement provides for written amendments to said agreement; and

WHEREAS Schedule L (Aboriginal Consultation Protocol) requires the Province of Ontario and recipients of Provincial Funding to consult Aboriginal Communities;

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 Addendum to the Rural Connections Broadband Agreement with the Ministry of Agriculture, Food and Rural Affairs Rural Connections Broadband Program 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 NINETEENTH DAY OF JANUARY, 2010

READ A THIRD TIME AND PASSED THIS NINETEENTH DAY OF JANUARY, 2010

Jack Wilson, Mayor

John Baird, CAO/Clerk
RURAL CONNECTIONS BROADBAND PROGRAM
AMENDMENT AGREEMENT

THIS AMENDMENT AGREEMENT ("the Amendment Agreement"), made in triplicate, effective as of ____________________, 2010.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,

as represented by the Minister of Agriculture, Food and Rural Affairs

(referred to herein as the "Ministry")

- and -

THE CORPORATION OF THE TOWNSHIP OF LAURENTIAN VALLEY

(referred to herein as the "Recipient")

WHEREAS the Ministry established the Rural Connections Broadband Program (the "Program") to address barriers to economic growth, and ensure that Ontario’s rural communities remain viable, healthy and vibrant places in which to live, work and invest;

AND WHEREAS the parties entered into an agreement, dated September 24, 2009 to fund the Recipient’s telecommunications Project under the Program (the "Agreement");

AND WHEREAS the Agreement provides for written amendments to the same;

NOW THEREFORE in consideration of the continuation of the Agreement, the parties hereby agree as follows:

1. The definition of "Aboriginal Group" is set aside and replaced by "Aboriginal Group(s)" includes the Indian, Inuit and the Métis peoples of Canada or another group holding Aboriginal or treaty rights under Section 35 of the Constitution Act, 1982.

2. That part of the Agreement concerning letters of credit is set aside and of no further force or effect, and is replaced by:

The Recipient may provide an irrevocable standby letter of credit to the Ministry as an alternative to the requirements for the bonds referenced in Section 16.3. The letter of credit will be issued by a Schedule 1 Canadian bank and may be in the form provided in Schedule "J". Alternatively, the irrevocable standby letter of credit may be issued by a Schedule 1 Canadian bank in favour of the Recipient with the same terms and conditions set out in the form provided in Schedule "J", mutatis mutandis.
In either case, the irrevocable standby letter of credit shall be put into full force and effect and maintained until the Project is complete and the Ministry approves the Final Report submitted by the Recipient, and shall be for an amount equal to the total amount of Financial Assistance the Ministry may provide to the Recipient, as set out in Schedule “C” to this Agreement, unless the Ministry directs otherwise in writing. In the case of an irrevocable standby letter of credit issued in favour of the Recipient, the proceeds of any draw by the Recipient on the letter of credit shall be delivered to the Ministry forthwith;

3. In accordance with Section 8.5 of the Agreement, the Recipient must provide a Final Report in the format appended hereto;

4. The costs of consulting with Aboriginal Group(s), including the translation of documents into languages spoken by the affected Aboriginal Group(s) shall be included in the list of Eligible Costs in Schedule “D”;

5. Costs, following consultations, of accommodation of Aboriginal Group(s), if any, shall be included in the list Ineligible Costs in Schedule “D”; and

6. The Recipient shall:
   (a) immediately notify the Ministry if it becomes aware of a dispute or complaint by any Aboriginal Group(s) regarding the impact the Project may have on an existing or asserted Aboriginal or treaty right. “Aboriginal Group(s)” includes the Indian, Inuit and the Métis peoples of Canada;
   (b) be responsible for consulting with the Aboriginal Group(s) in relation to the Project on behalf of the Ministry in accordance with Schedule “L” - Aboriginal Consultation Protocol appended hereto;
   (c) take directions from the Ministry in relation to consulting with Aboriginal Group(s); and
   (d) provide a description of any actions it took in relation to consultation with any Aboriginal Group in its Final Report.

It is further agreed that all other terms and conditions of the Agreement shall remain the same and in full force and effect, mutatis mutandis.

The Recipient hereby acknowledges that the provision of Financial Assistance for the Project is strictly conditional upon the Government of Ontario satisfying any obligation it may have to consult with, and where appropriate, accommodate any Aboriginal Group(s) with an interest in the Project.
IN WITNESS WHEREOF the parties have executed this Amending Agreement made as of the date first written above.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
as represented by the Minister of Agriculture, Food and Rural Affairs by:

Name: The Honourable Leona Dombrowsky
Title: Minister of Agriculture, Food and Rural Affairs

Date

RECIPIENT'S NAME: THE CORPORATION OF THE TOWNSHIP OF LAURENTIAN VALLEY
by:

Name: Jack W. Wilson
Title: Mayor

Date  

AFFIX CORPORATE SEAL

Name: John A. Baird
Title: Chief Administrative Officer/Clerk

Date 

I/We have authority to bind the Recipient.
SCHEDULE H
FINAL REPORT

File: "[Type File Number]"
Recipient: "[Type Municipality Name]"
Contact: "[Type Contact Name & Title]"
Telephone: "[Phone number]"
Total Eligible Costs: "$"[Total Cost Amount]"
Funding Approved: "$"[Total Funding Amount Approved ]"
Start Date: "[Project Start Date]"
End Date: "[Project End Date]"
Partner ISP: "[ISP]"

Section 1. Project Scope and Implementation

This section should provide description of the physical area to be covered by the project. Information should include a description of the population and types of businesses and organizations within the target area. Include a high level description of the project timeline from contract with government to completion, including the major milestones and timelines.

Section 2. Project Partners

Describe the partners, their contributions and anticipated benefits from the project. Not all partners are financial contributors so their role should be described in detail.

Section 3. Changes (variances) from Original Plan

Project – Describe any design or scope changes from the approved Project and Technical Plans. (e.g., terrain challenges, etc.)

Budget – Describe changes in the project budget and the rationale for them. (e.g., cost overruns, construction delays, equipment issues, etc.)

Schedule – Describe changes in project schedule, why they were made, and the impact on the project. (e.g., delays in the supply chain, vendor issues, etc.)
Section 4. Final Financial Statement

Complete and sign the attached Financial Statement showing all sources and uses of Project funds.

Section 5. Data Collection for Project Evaluation

Complete Form Attached – Data Collections for Project Evaluation

Section 6. Aboriginal Consultations Information

Please provide all information concerning actions taken in relation to consultations with any Aboriginal Group during the term of this Agreement.

Section 7. Other Information

Please provide any other information which demonstrates the success of the project and its impact on other stakeholders (e.g. citizens, businesses, small and medium enterprises), rural communities and the Province of Ontario.

Section 8. Confidentiality and Signature

Information submitted in this report to the Province of Ontario will be subject to the Freedom of Information and Protection of Privacy Act. Any information submitted in confidence should be clearly marked “CONFIDENTIAL” by the Recipient. Inquiries about confidentiality should be directed to the Rural Community Development Branch.

NAME and TITLE (Please print):

SIGNATURE:

DATE:
SCHEDULE L
ABORIGINAL CONSULTATION PROTOCOL

1.0 Purpose

The purpose of this Aboriginal Consultation Protocol is to set out the responsibilities of the Ministry and the Recipient in relation to consultation with Aboriginal Groups on the Project, and to delegate procedural aspects of consultation from the Ministry to the Recipient.

1.1 Definitions

For the purposes of this Schedule L:

"S. 35 Duty" means any duty the Ministry may have to consult and, where appropriate, accommodate Aboriginal Groups in relation to the Project flowing from Section 35 of the Constitution Act, 1982.

2.0 Responsibilities of the Ministry

2.1 The Ministry is responsible for:

(i) determining the Aboriginal Groups to be consulted in relation to the Project, if any, and advising the Recipient of same;

(ii) the preliminary and ongoing assessment of the depth of consultation required with the Aboriginal Groups;

(iii) at its discretion, delegating procedural aspects of consultation to the Recipient pursuant to this Agreement;

(iv) directing the Recipient to take such actions, including without limitation suspension of the Project, as the Ministry may require;

(v) satisfying itself, where it is necessary to do so, that the consultation process in relation to the Project has been adequate and the Recipient is in compliance with this Agreement; and

(vi) satisfying itself, where any Aboriginal or treaty rights and asserted rights of Aboriginal Groups require accommodation, that Aboriginal Groups are appropriately accommodated in relation to the Project.

3.0 Responsibilities of the Recipient

3.1 The Recipient hereby acknowledges that, for the purposes of any S. 35 Duty borne by the Ministry, the Recipient is the Ministry’s delegate and in this capacity is responsible for carrying out the procedural aspects of consultation delegated to it by the Ministry pursuant to this Agreement.

3.2 The Recipient is responsible for:
(i) giving notice to the Aboriginal Groups regarding the Project as directed by the Ministry, if such notice has not already been given by the Recipient or the Ministry;

(ii) immediately notifying the Ministry of contact by any Aboriginal Groups regarding the Project and advising of the details of the same;

(iii) informing the Aboriginal Groups about the Project and providing to the Aboriginal Groups a full description of the Project unless such description has been previously provided to them;

(iv) following up with the Aboriginal Groups in an appropriate manner to ensure that Aboriginal Groups are aware of the opportunity to express comments and concerns about the Project, including any concerns regarding adverse impacts on hunting, trapping, fishing, plant harvesting or on burial grounds or archaeological sites of cultural significance to the Aboriginal Groups, and immediately advising the Ministry of the details of the same;

(v) informing the Aboriginal Groups of the regulatory and approval processes that apply to the Project of which the Recipient is aware after reasonable inquiry;

(vi) maintaining the Aboriginal Groups on the Recipient’s mailing lists of interested parties for environmental assessment and other purposes and providing to the Aboriginal Groups all notices and communications that the Recipient provides to interested parties and any notice of completion;

(vii) making all reasonable efforts to build a positive relationship with the Aboriginal Groups in relation to the Project;

(viii) providing the Aboriginal Groups with reasonable opportunities to meet with appropriate representatives of the Recipient and meeting with the Aboriginal Groups to discuss the Project;

(ix) if appropriate, providing reasonable financial assistance to Aboriginal Groups to permit effective participation in consultation processes for the Project;

(x) considering comments provided by the Aboriginal Groups regarding the potential impacts of the Project on Aboriginal or treaty rights or asserted rights, including adverse impacts on hunting, trapping, fishing, plant harvesting or on burial grounds or archaeological sites of cultural significance to an Aboriginal Group, or on other interests, or any other concerns or issues regarding the Project;

(xi) answering any questions to the extent of the Recipient’s ability and receiving comments from the Aboriginal Groups, notifying the Ministry of the nature of the questions or comments received and maintaining a chart showing the issues raised by the Aboriginal Groups and any responses the Recipient has provided;
(xii) where an Aboriginal Group asks questions regarding the Project directly of the Ministry, providing the Ministry with the information reasonably necessary to answer the inquiry, upon the Ministry’s request;

(xiii) subject to Section 3.2 (xiv), where appropriate, discussing with the Aboriginal Groups potential accommodation, including mitigation of potential impacts on Aboriginal or treaty rights, asserted rights or associated interests regarding the Project and reporting to the Ministry any comments or questions from the Aboriginal Groups that relate to potential accommodation or mitigation of potential impacts;

(xiv) consulting regularly with the Ministry during all discussions with Aboriginal Groups regarding accommodation measures, if applicable, and presenting to the Ministry for the purposes of Section 2.1 (v) hereof, the results of such discussions prior to implementing any applicable accommodation measures;

(xv) complying with the Ministry’s direction to take any actions, including without limitation suspension of the Project, as the Ministry may require; and

(xvi) **providing in any contracts with third parties for the Recipient’s right and ability** to respond to direction from the Ministry as the Ministry may provide in accordance with Section 2.1 (xv).

3.3 The Recipient hereby acknowledges that, notwithstanding Section 3.1 above, the Ministry, any provincial ministry having an approval role in relation to the Project, or any responsible regulatory body, official, or provincial decision-maker, may participate in the matters and processes enumerated therein as they deem necessary.

3.4 The Recipient will carry out the following functions in relation to record keeping, information sharing and reporting to The Ministry:

(i) provide to the Ministry, upon request, complete and accurate copies of all documents provided to the Aboriginal Groups in relation to the Project;

(ii) keep reasonable business records of all its activities in relation to consultation and provide the Ministry with complete and accurate copies of such records upon request;

(iii) provide the Ministry with timely notice of any Recipient mailings to, or Recipient meetings with, the representatives of any Aboriginal Group in relation to the Project;

(iv) immediately notify the Ministry of any contact by any Aboriginal Groups regarding the Project and provide copies to the Ministry of any documentation received from Aboriginal Groups;

(v) advise the Ministry in a timely manner of any potential adverse impact of the Project on Aboriginal or treaty rights or asserted rights of which it becomes aware;
(vi) immediately notify the Ministry if any Aboriginal archaeological
resources are discovered in the course of the Project;

(vii) provide the Ministry with summary reports or briefings on all of its activities in
relation to consultation with Aboriginal Groups, as may be requested by the
Ministry; and

(viii) if applicable, advise the Ministry if the Recipient and an Aboriginal Group
propose to enter into an agreement directed at mitigating or compensating for
any impacts of the Project on Aboriginal or treaty rights or asserted rights.

3.5 The Recipient shall, upon request, lend assistance to the Ministry by filing
records and other appropriate evidence of the activities undertaken both by the Ministry
and by the Recipient in consulting with Aboriginal Groups in relation to the Project,
attending any regulatory or other hearings, and making both written and oral
submissions, as appropriate, regarding the fulfillment of Aboriginal consultation
responsibilities by the Ministry and by the Recipient, to the relevant regulatory or judicial
decision-makers.

4.0 No Implicit Acknowledgement

4.1 Nothing in this Agreement shall be construed as an admission,
acknowledgment, agreement or concession by the Ministry or the Recipient, that a S.
35 Duty applies in relation to the Project, nor that any responsibility set out herein is,
under the Constitution of Canada, necessarily a mandatory aspect or requirement of
any S. 35 Duty, nor that a particular aspect of consultation referred to in Section 3.1
hereof is an aspect of the S. 35 Duty that could not have lawfully been delegated to the
Recipient had the Parties so agreed.

5.0 General

5.1 This Agreement shall be construed consistently with but does not substitute for
any requirements or procedures in relation to Aboriginal consultation or the S. 35 Duty
that may be imposed by a ministry, board, agency or other regulatory decision-maker
acting pursuant to laws and regulations. Such decision-makers may have additional
obligations or requirements. Nonetheless, the intent of the Ministry is to promote
coordination among provincial ministries, boards and agencies with roles in consulting
with Aboriginal Groups so that the responsibilities outlined in this Agreement may be
fulfilled efficiently and in a manner that avoids, to the extent possible, duplication of effort
by Aboriginal Groups, the Recipient, the Ministry, and provincial ministries, boards,
agencies and other regulatory decision-makers.

6.0 Notice and Contact

6.1 All notices to the Ministry pertaining to this Schedule shall be in writing and shall
be given by facsimile or other means of electronic transmission or by hand or courier
delivery. Any notice to the Ministry shall be addressed as follows:
Ministry of Agriculture, Food and Rural Affairs
1 Stone Road West, 4 NW
Guelph, Ontario
N1G 4Y2

Phone: 1-888-466-2372
Fax: (519) 826-4336
Email: ruralconnections.omafra@ontario.ca

Attention: Barb Swartzentruber, Manager