

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2012 - 35

By-law authorizing the execution of a Contracted Service Agreement between the Corporation of the Town of Amherstburg and the University of Windsor for the Rural Connections Project Management

WHEREAS under Section 8 of the Municipal Act 2001, S.O., 2001, c. 25, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act.

AND WHEREAS under Section 9. (1) (a) and (b) of the Municipal Act 2001, S.O., 2001, c. 25, as amended, Section 8 shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues;


AND WHEREAS the Council of The Corporation of the Town of Amherstburg deems it expedient to enter into an agreement with the University of Windsor for the Rural Connections Project Management;

NOW THEREFORE the Council of The Corporation of the Town of Amherstburg enacts as follows:

1. That the Council of The Corporation of the Town of Amherstburg agrees to enter into an agreement with the University of Windsor for the Rural Connections Project Management.
2. That the said agreement be attached hereto as Schedule "A" and forms part of this By-law.
3. That the Mayor and Clerk are hereby authorized to sign and seal said agreement on behalf of The Corporation of Town of Amherstburg.
4. This By-law shall come into force and take effect immediately upon the final passing thereof.

Read a first, second and third time and finally passed this 14th day of May, 2012.


MAYOR - WAYNE HURST


CLERK - BRENDA M. PERCY

CONTRACTED SERVICE AGREEMENT

Between

THE UNIVERSITY OF WINDSOR

And

CORPORATION OF THE TOWN OF AMHERSTBURG

This Contracted Service Agreement between **The University of Windsor, through its Centre for Smart Community Innovation activities** (hereinafter "**University**") and **Corporation of the Town of Amherstburg** (hereinafter "**Town of Amherstburg**"). **NOW, THEREFORE, THIS AGREEMENT WITNESSES** that in consideration of the mutual promises and covenants hereinafter contained, the University and Town of Amherstburg hereby agree as follows:

Section 1 THE PROJECT

- 1.1 The University agrees to carry out and implement the Project, entitled, "**Town of Amherstburg Rural Connections**" as set out and described in Section 2 (hereinafter "Project") upon the terms and conditions hereinafter set forth. The University shall commence the Project on or after **April 1, 2011** and shall complete the Project by **December 31, 2012** (hereinafter "Term").

Section 2 DELIVERABLE(S)

- 2.1 Deliverable(s) are described within Schedule 1. They shall be submitted to the Town of Amherstburg by the dates outlined within Schedule 1. Unless the University is notified to the contrary by Town of Amherstburg within twenty-five (25) business days following receipt of the deliverable(s), the deliverable(s) will be deemed to have been accepted by Town of Amherstburg according to the terms and conditions of this Agreement.

Section 3 BASIS OF PAYMENT

- 3.1 In consideration of University carrying out the Project, Town of Amherstburg shall pay University the cost of the work for project administration in the sum not to exceed **\$24,000 Canadian** dollars. In addition, the Town of Amherstburg will reimburse the University of Windsor up to \$35,600 of direct costs associated with the e-business outreach/awareness strategy, public and public sector access requirements and OMAFRA communications protocol costs including the plaques and ceremonies.

Section 4 METHOD OF PAYMENT

- 4.1 The sum stipulated above shall be paid by Town of Amherstburg, by cheque made payable to the University within 30 (thirty) days of receipt of Invoice(s) upon execution of this Agreement. Cheques shall be sent to:
Accounts Receivable
University of Windsor
Windsor, Ontario N9B 3P4
- 4.2 Invoices shall be submitted to the Town of Amherstburg representing an initial payment of an amount equal to 50% of the Project Management costs upon signing of this Agreement, 40% after completion of the Progress Report identified in Schedule 1 of this Agreement and the deliverables identified up to the completion of the Progress Report, and the remaining 10% within 30 days of receipt of the 10% hold-back amount received by the Municipality from OMAFRA. Invoices for direct costs associated with the public and public sector access requirements and OMAFRA communications protocol costs including the plaques and ceremonies will be invoiced by the University monthly in a form suitable to the Town of Amherstburg in accordance with the requirements of OMAFRA. All invoices submitted to Town of Amherstburg will be dated before November 1, 2012.

Section 5 AMENDMENTS AND WAIVERS

- 5.1 All amendments to this Agreement shall be valid or binding only if they are in writing and executed by all of the parties. Any waiver of any breach of any provision of this Agreement shall be effective or binding only if it is in writing and signed by the party giving the waiver and, unless otherwise provided in the written waiver, shall be limited to the specific breach waived.

Section 6 INDEMNIFICATION

- 6.1 The University shall indemnify, reimburse and hold harmless the Town of Amherstburg, its officer, directors, governors, agents, invitees, and employees from and against all claims, demands, loss, damages, liabilities or costs (including legal fees and court costs) and expenses by reason or on account of property damage, death, personal injury breach of law, of whatever nature or kind, caused by any negligent act or omission by or on behalf of the University with respect to any use of Town of Amherstburg property, or personnel or resulting from the use by the Town of Amherstburg or its customers or licensee of any deliverable or intellectual property developed by the University under this Agreement.
- 6.2 The Town of Amherstburg shall indemnify, reimburse and hold harmless the University, its officer, directors, governors, agents, invitees, and employees from and against all claims, demands, loss, damages, liabilities or costs (including legal fees and court costs) and expenses by reason or on account of property damage, death, personal injury breach of law, of whatever nature or kind, caused by any negligent act or omission on the part of the Town of Amherstburg with respect to any use of University property, or personnel.

Section 7 TERMINATION

- 7.1 This Agreement shall terminate upon the occurrence of any one of the following events:
- (a) thirty (30) days written notice to the other party;
 - (b) upon the bankruptcy, receivership or dissolution of the Town of Amherstburg.

Upon termination of this Agreement, each party shall return to the other all material and property of the other held by it. A notice given by a party terminating its obligations under this Agreement is effective only thirty (30) days from the date on which that notice is received and shall not release, discharge or otherwise affect the obligation of that party with respect to any service or good that was required prior to the time when that notice takes effect.

Section 8 NONPERFORMANCE

- 8.1 If the University or Town of Amherstburg breaches or defaults under any term or conditions hereof, including if University or Town of Amherstburg fails to perform in accordance with any of the requirements of the Agreement or to make progress so as to endanger performance, either party, may upon thirty (30) days notice, if the other party within thirty (30) days has not cured the breach or default, terminate this Agreement. University and Town of Amherstburg will have the right to damages under contract, tort (including negligence), strict liability or otherwise for damages, except for consequential damages in the event of termination or breach by the other.

Section 9 NOTICES

- 9.1 Notices under this Agreement shall be sent by registered mail, return receipt requested, or delivered by hand, return receipt requested, to the following address of the parties, unless changed by written notice.

Town of Amherstburg
271 Sandwich Street South
Amherstburg, ON N9V 2A5
Attn: Paul Beneteau, Treasurer
P: 519-736-5401 F: 519-736-5403
E: pbeneteau@amherstburg.ca

University of Windsor
4th Flr Leddy Library
CSCI, 401 Sunset Avenue
Windsor, ON N9B 3P4
Attn: Todd W. Sands, Exec. Director
P: 519-253-3000, F: 519-973-7055

Section 10 RECORDS

10.1 The parties shall maintain adequate financial records in accordance with generally accepted accounting principles. University and Town of Amherstburg shall maintain adequate records with regards to all other aspects of the agreement. They shall preserve and make available all records related to this Agreement for examination by the other party and any other party legally entitled to inspect and/or examine them.

Section 11 GOVERNING LAW

11.1 This Agreement is subject to and shall be construed in accordance with the laws of the Province of Ontario.

Section 12 ENTIRE AGREEMENT

12.1 This Agreement and the documents 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 hereof. None of the parties hereto shall be bound or charged with any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings not specifically set forth in this Agreement or in the documents and instruments to be delivered on or before the execution to this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Agreement as of the effective date of the 20th day of March, in the year 2012.

University of Windsor:

By: *R Taylor*
Mr. Richard Taylor
Director of Legal Services
I have authority to bind the University of Windsor.

Date: *May 23/12*

Town of Amherstburg:

By: *B Percy*
Brenda M. Percy
Manager, Council & Legislative Services / Clerk

Date: *June 7/12*

University of Windsor:

APPROVED LEGAL By: *Todd Sands*
R.S.T. Dr. Todd Sands
Executive Director & CIO, CSCI
I have authority to bind the University of Windsor

Date: *May 23, 2012*

Town of Amherstburg:

By: *Wayne Hurst*
Wayne Hurst
Mayor

Date: *June 7/12*

Schedule 1: Deliverables

In accordance with the funding agreement between the Town of Amherstburg and the Province of Ontario, provided below, the University of Windsor will assist in meeting the following deliverables, referred to within the Corporation of the Town of Amherstburg By-Law No. 2011-37:

- Assist the municipality as required with the preparation of the Request for Proposals for the procurement of services within the scope of the Rural Connections Broadband Program Funding Agreement.
- Assist with the assessment of vendor responses received during the procurement process.
- Prepare, with the assistance of the Town of Amherstburg, all Project Reports, as outlined in Section 8 of the Rural Connections Broadband Program Funding Agreement with the Province of Ontario as per the schedule below:

Project Milestone Schedule as per Schedule “E” of the Rural Connections Broadband Program Funding Agreement.

Expenditure Reports as per Schedule “G” of the Rural Connections Broadband Program Funding Agreement on or before **August 31, 2012** or as significant changes in projections dictate.

Progress Report as per Schedule “F” of the Rural Connections Broadband Program Funding Agreement on or before **June 30, 2012**

Final Report containing the information described in Schedule “H” of the Rural Connections Broadband Program Funding Agreement, on or before **December 31, 2012** or within 90 days of the project completion, whichever is earlier. This will also include **the Broadband Access at Project Completion Report**, as specified in Schedule “K” of the Rural Connections Broadband Program Funding Agreement.

- Oversee and execute the required outreach strategies as outlined in Schedule 1 of the Rural Connections Broadband Program Funding Agreement. All expenditures are to be incurred on or before **October 31, 2012**.