



By-law 24-2022

A By-law to Authorize and Approve Municipal Service Corporations and Certain Agreements and Other Matters Related to the Delivery of a High-Speed Digital Communications Network

Whereas a By-law to authorize and approve municipal service corporations and certain agreements and other matters related to the delivery of a turnkey high-speed digital communications network that will provide next generation Internet services to businesses, homes and community services for the benefit, and the economic and social well-being of the inhabitants of the County through a public-private partnership with a private-sector led utility (the "Broadband Project"), including such provisions for governance, security and other matters as are deemed necessary by the Council to ensure the successful delivery of the Broadband Project or as are, or may be required by the federal and provincial funding partners for the Broadband Project through certain agreements with the Province of Ontario and the Government of Canada; and

Whereas Section 203(1) of the *Municipal Act*, 2001, S.O. 2001, c.25 provides that without limiting sections 9, 10 and 11 of the said Act, those sections authorize a municipality inter alia to establish corporations and to nominate or authorize a person to act as an incorporator, director, officer or member of a corporation in accordance with such conditions and restrictions as may be prescribed; and

Whereas Section 9 of the *Municipal Act*, 2001, S.O. 2001, c.25 provides that 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 Section 107 of the *Municipal Act*, 2001, S.O. 2001, c.25 provides that, subject to section 106 of the said Act, a municipality may make grants, on such terms as to security and otherwise as the Council considers appropriate, to any person, group or body, including a fund, for any purpose that the Council considers to be in the best interests of the municipality; and

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Whereas Section 110(3) of the *Municipal Act*, 2001, S.O. 2001, c.25 provides that despite section 106 of the said Act, a municipality may provide financial or other assistance to any person who has entered into an agreement to provide facilities under section 110; and

Whereas Section 22(1) of the *Municipal Act*, 2001, S.O. 2001, c.25 provides that a municipality may provide a system that it would otherwise not have power to provide within the municipality, if it does so in accordance with an agreement with the Province of Ontario under a program established and administered by the Province of Ontario; and

Whereas Section 275(6) of the *Municipal Act*, 2001, S.O. 2001, c.25 provides that nothing in section 275 of the said Act prevents any person or body exercising any authority of a municipality that is delegated to the person or body prior to nomination day for the election of a new Council; and

Whereas after an open/competitive Request For Proposals process in January 2021, the County has selected Digital Infrastructure Group Inc. ("DIG") and Meridiam Infrastructure North America Corp. ("Meridiam") as the preferred proponents to partner, through their affiliate Ontario Broadband Networks GP ("OBN GP"), with the County in a public-private partnership for the delivery of the Broadband Project; and

Whereas on March 10, 2021, in respect of the Broadband Project, the County made an application to the Universal Broadband Fund for Federal and Provincial funding support for the establishment of a broadband network on the model of Broadband as an Open Access Utility to address the high-speed Internet needs of businesses, social service institutions and residents within the County (the "UBF Application"); and

Whereas by letter dated August 12, 2021, the Director General, Connected Canada, on behalf of Innovation, Science and Economic Development Canada advised the County that the UBF Application had been accepted for funding by the Federal Government and by the Province of Ontario on condition that the County execute an Ontario Payment Transfer Agreement with the Province (the "PTA"); and

Whereas pursuant to the PTA, the County is required to maintain in respect of governance, inter alia, decision-making mechanisms, procedures to enable the County to manage the funds for the Broadband Project prudently and effectively, procedures to identify and manage risk associated with the Broadband Project, and procedures to enable the County to complete the Broadband Project successfully; and

Whereas in accordance with Section 6 of Ontario Regulation 599/06, as amended, the Council has received a business case study in respect of the establishment of Northumberland County Community Development Initiatives Corporation ("NCCDIC") and Intelligent Northumberland Inc. pursuant to Section 203 of the *Municipal Act*, 2001, S.O. 2001, c.25 (the "Business Case Study") for municipal purposes including the

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administration of Project funding with provisions in respect of security therefor, participation in governance and decision-making through a partial equity interest in the Project, risk management, and monitoring the successful completion of the Project, as required by the PTA and as deemed to be prudent and appropriate by the Council of the County; and

Whereas DIG, Meridiam and OBN GP intend to made additional investments through the same limited partnership structure used for the Project to expand next generation internet services to the towns and other municipalities within the County, the County's partial equity and debt interests can be expected to generate additional benefits as increased revenues result from the expanded internet business occur over time, but without the requirement for any additional equity or debt investment from the County.

Now Therefore Be It Enacted as a by-law of the Council of the Corporation of the County of Northumberland as follows:

1. **That** the Business Case Study for the establishment of NCCDIC and Intelligent Northumberland Inc. as municipal services corporations, attached hereto as Schedule "A" is hereby approved and adopted; and
2. **That** the establishment of NCCDIC and Intelligent Northumberland Inc. as municipal services corporations in accordance with the Business Case Study and their incorporation under the *Ontario Business Corporations Act*, is hereby authorized and approved; and
3. **That** the Asset Transfer Policy attached hereto as Schedule "B" is hereby approved and adopted; and
4. **That** the initial Boards of Directors of NCCDIC and Intelligent Northumberland Inc. shall consist of Jennifer Moore, T.J. Flynn and Robert Watson; and
5. **That** the Shareholders Agreement between the County and NCCDIC attached as Schedule "C" hereto, is hereby authorized and approved; and
6. **That** the structure of the Broadband Project described in Schedule "D" attached hereto, is hereby authorized and approved; and
7. **That** upon the establishment of NCCDIC and Intelligent Northumberland Inc., authority and direction is hereby given to NCCDIC and Intelligent Northumberland Inc. to enter into a General Partner Corporation Shareholder Agreement and a Limited Partnership Agreement with OBN GP, in accordance with the Term Sheets attached as Schedule "E" hereto; and

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8. **That** the CAO is hereby delegated, authorized and directed to finalize, execute and deliver, with the advice of the counsel for the County in respect of such matters as they may require, all agreements, documents, filings, instruments, notices and other writings and to perform and do all acts and things as they deem necessary to give effect to the approvals and directions set forth in this By-law and the attachments hereto.

That By-law 24-2022 be introduced and be deemed to be read a first, second and third time, passed, signed and sealed this 20th day of July, 2022.

R.J. (Bob) Crate, Warden

Nancy MacDonald, Clerk