

THE REGIONAL MUNICIPALITY OF YORK

BYLAW NO. 2017-53

A bylaw to authorize a Municipal Capital Facilities Agreement between The Regional Municipality of York and YTN Telecom Network Inc.

WHEREAS section 110(1) of the *Municipal Act, 2001*, SO 2001, c. 25, as amended (the “**Act**”), provides that the council of a municipality may enter into an agreement for the provision of municipal capital facilities by any person;

AND WHEREAS paragraph 5 of section 2 of Ontario Regulation 603/06, as amended (the “**Regulation**”), provides that such an agreement can be entered into with respect to municipal facilities for the provision of telecommunications systems;

AND WHEREAS The Regional Municipality of York (the “**Region**”) owns certain telecommunications facilities (the “**Facilities**”) through which the Region provides telecommunications services to entities located within the Region;

AND WHEREAS the Region has determined that it is in the public interest for the Facilities to be owned, operated, maintained and expanded by YTN Telecom Network Inc. (“**YTN**”);

AND WHEREAS the Region intends to transfer the Facilities to YTN and to provide certain financial and other assistance to YTN to assist YTN to own, operate, maintain and expand the Facilities;

AND WHEREAS it is the intention of both the Region and YTN that the financial and other assistance to be provided by the Region to YTN under this Agreement be for the provision of municipal capital facilities under section 110 of the Act and the Regulation;

NOW THEREFORE the Council of the Region hereby enacts as follows:

1. The Council hereby designates the Facilities as municipal capital facilities for telecommunications purposes.
2. The Region is authorized to enter into a Municipal Capital Facilities Agreement with YTN in the form attached as Schedule “A” to this Bylaw (the “**Agreement**”).
3. The Regional Clerk and Regional Chair are hereby authorized to execute the Agreement on behalf of the Region.
4. In accordance with section 110(5) of the Act, the Clerk is hereby directed to give written notice of this Bylaw to the Minister of Finance.

5. Schedule "A" attached is incorporated into and shall form part of this Bylaw.

ENACTED AND PASSED on October 19, 2017.

Christopher Raynor
Regional Clerk

Wayne Emmerson
Regional Chair

Authorized by Clause 4, Report 14 of the Committee of the Whole, adopted by Regional Council at its meeting on October 19, 2017.

SCHEDULE "A"

THIS AGREEMENT made this 19th day of October, 2017.

BETWEEN:

THE REGIONAL MUNICIPALITY OF YORK
(hereinafter referred to as the "**Region**")

OF THE FIRST PART

- and -

YTN TELECOM NETWORK INC.
(hereinafter referred to as "**YTN**")

OF THE SECOND PART

MUNICIPAL CAPITAL FACILITIES AGREEMENT

WHEREAS the Region owns certain telecommunications facilities (defined in this Agreement as the "**Facilities**") through which the Region provides telecommunications services to entities located within the Region;

AND WHEREAS the Region has determined that it is in the public interest for the Facilities to be owned, operated, maintained and expanded by YTN;

AND WHEREAS the Region intends to transfer the Facilities to YTN and to provide certain financial and other assistance to YTN to assist YTN to own, operate, maintain and expand the Facilities;

AND WHEREAS it is the intention of both the Region and YTN that the financial and other assistance to be provided by the Region to YTN under this Agreement be for the provision of municipal capital facilities under Section 110 of the Act and the Regulations thereunder;

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto covenant and agree as follows:

INTERPRETATION

In this Agreement,

“**Act**” means the *Municipal Act, 2001*, SO 2001, c. 25, as amended;

“**Council**” means the Council of the Region as composed from time to time;

“**Facilities**” means the telecommunications network constructed by and currently operated by the Region and which enables broadband connectivity throughout the Region;

“**Municipal Capital Facilities**” means municipal capital facilities that meet the requirements of section 110 of the Act and the Regulations;

“**Regulations**” means the regulations made under the Act; and

“**Rights-of-Way**” means highways, streets, road allowances, lanes, bridges or viaducts which are under the jurisdiction of the Region.

In this Agreement, unless the context requires otherwise, words importing the singular include the plural, and vice versa, and words importing gender include all genders.

Except where other expressly provided, all amounts in this Agreement are stated in and shall be paid in Canadian currency.

In the event that one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any application law, the validity, legality or enforceability of the remaining provisions hereof shall not be affected or impaired thereby. Each of the provisions of this Agreement is hereby declared to be separate and distinct.

This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

ACKNOWLEDGEMENTS AND COVENANTS

The Region and YTN agree and acknowledge that the Region intends to transfer ownership of the whole or part of the Facilities to YTN by way of gift or sale or to otherwise lease or lend the use of the whole or part of the Facilities to YTN. Such transactions and/or assistance shall be at the discretion of the Region as from time to time approved by Council.

YTN acknowledges and agrees that the Facilities are intended to provide a benefit to the public and that YTN shall operate the Facilities on that basis.

YTN further acknowledges and covenants that it will not further transfer ownership of the Facilities or encumber the Facilities without the express consent of the Region.

The Region covenants and agrees that it will consent to YTN's use of and access to the Regional Rights-of-Way as may be required in order to construct, operate, maintain and expand the Facilities. The Region and YTN covenant and agree that they will execute such further agreements as are necessary for this purpose.

The Region and YTN acknowledge and agree that the Region may, at its discretion from time to time as approved by a by-law enacted by Council, provide financial or other assistance as prescribed by the Act and the Regulations thereunder to YTN for the purpose of YTN's ownership and operation of the Facilities.

Without limiting the generality of the foregoing, the assistance provided by the Region to YTN may include any or all of the following:

- funding of YTN's annual capital and operating expenses;
- guaranteeing borrowing by YTN;
- the use of services of employees of the Region at less than fair market value;
- the use of office space and equipment owned by the Region at less than fair market value;
- exemption of the land on which the Facilities are located from taxation for municipal and school purposes; and
- exemption of the land on which the Facilities are located from the payment of development charges.

The Region and YTN acknowledge and agree that it is their common intention that the financial and other assistance being provided by the Region to YTN for the purpose of owning, operating, maintaining and expanding the Facilities, is being provided by the Region pursuant to section 110 of the Act and the Regulations thereunder in order that YTN provide Municipal Capital Facilities. Except for the specific assistance set forth herein, the Region is not obligated in any manner with respect to the Facilities or to provide any additional financial assistance in connection therewith.

YTN shall operate, maintain and expand the Facilities so that the Facilities satisfy the requirements applicable to Municipal Capital Facilities under the Act and the Regulations. If any amendments are made to Section 110 of the Act or the Regulations thereunder after the date of this Agreement, YTN and the Region covenant and agree to cooperate reasonably to try to achieve their mutual common intention that the Facilities be Municipal Capital Facilities throughout the time that this Agreement is in force.

The Region and YTN covenant and agree that they will not, while this Agreement is in force, do any act or thing, or omit to do any act or thing if doing so or omitting to do so, as the case may be, that would result in the Facilities ceasing to satisfy all statutory

requirements applicable to a Municipal Capital Facility pursuant to the Act and the Regulations.

MISCELLANEOUS

No provision of this Agreement may be changed, modified or amended, other than by an agreement in writing signed by YTN and the Region, and duly approved by Council of the Region.

Time is of the essence of this Agreement.

From time to time, YTN or the Region, as the case may be, will execute and deliver to the other such additional documentation, and will provide such additional information, as the other may reasonably require, in order to carry out the intention and terms of this Agreement.

This Agreement shall be binding upon both the Region and YTN and their respective successors and permitted assigns. This Agreement may not be assigned by YTN without the prior written consent of the Region, which consent may be unreasonably withheld.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed on the date first above written.

THE REGIONAL MUNICIPALITY OF YORK

Per: Wayne Emmerson
Name: Wayne Emmerson
Title: Regional Chair

Per: Christopher Raynor
Name: Christopher Raynor
Title: Regional Clerk

We have the authority to bind the Region.

YTN TELECOM NETWORK INC.

Per: Wayne Emmerson
Name: Wayne Emmerson
Title: Chief Executive Officer

Per: Christopher Raynor
Name: Christopher Raynor
Title: Secretary

We have the authority to bind the Corporation.