

THE REGIONAL MUNICIPALITY OF YORK

BYLAW NO. 2023-40

A bylaw to authorize a Municipal Capital Facilities Agreement among The Regional Municipality of York, YTN Telecom Network Inc. and Community Network Partners 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 (“**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 Capital 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 telecommunication 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 further developed, designed, constructed, operated, maintained and expanded to serve the residents and businesses located within the geographic boundaries of York Region as provided for in the YorkNet/CNPI Agreements (the “**YorkNet/CNPI Agreements**”);

AND WHEREAS the Region wishes to provide financial or other assistance as prescribed by the Act and the Regulation for the purpose of owning, operating, maintaining and expanding the Facilities pursuant to, arising out of or related to the YorkNet/CNPI Agreements pursuant to section 110 of the Act and the Regulation thereunder in order that YorkNet and CNPI provide Municipal Capital Facilities for a telecommunications system;

AND WHEREAS the Region intends to enter into an Agreement with YorkNet and CNPI with respect to the ownership, development, operation and maintenance of the Facilities pursuant to Section 110 of the Act and the Regulation.

NOW THEREFORE, the Council of The Regional Municipality of York 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 under section 110 of the Act in respect of the Facilities with YorkNet and CNPI in

accordance with the Regulation with respect to the ownership, development, operation and maintenance of the Facilities (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 June 29, 2023.

Regional Clerk

Regional Chair

Authorized by Item J.2.10 of the Committee of the Whole dated June 15, 2023, adopted by Regional Council at its meeting on June 29, 2023

SCHEDULE “A”

THIS AGREEMENT made this _____ day of _____, 2023.

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 “**YorkNet**”)

OF THE SECOND PART

- and -

COMMUNITY NETWORK PARTNERS INC.

(hereinafter referred to as “**CNPI**”)

OF THE THIRD PART

MUNICIPAL CAPITAL FACILITIES AGREEMENT

WHEREAS the Region owns and will expand certain telecommunications facilities through which telecommunications services are provided to entities located within the geographic boundaries of York Region or which otherwise benefit the Region and its residents, and YorkNet and CNPI intend to enter into the YorkNet/CNPI Agreements as hereinafter defined with respect to the ownership, development, operation and maintenance of telecommunication facilities through which telecommunications services are to be provided to entities located within the geographic boundaries of York Region or which will otherwise benefit the Region and its residents and businesses;

AND WHEREAS the Region has determined that it is in the public interest for the Facilities (as hereinafter defined) to be developed, designed, constructed, used, operated, maintained and expanded;

AND WHEREAS the Region and YorkNet have previously entered into a Municipal Capital Facilities Agreement with respect to telecommunications facilities dated

October 19, 2017 and the Region passed by-law No. 2017-53 authorizing that Municipal Capital Facilities Agreement which agreement and by-law are intended to remain in full force and to be hereby confirmed;

AND WHEREAS it is the intention of the Region, YorkNet and CNPI that any financial and other assistance to be provided by the Region with respect to the Facilities, if any, 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 are hereby acknowledged), the parties hereto covenant and agree as follows:

ARTICLE I INTERPRETATION

1.1 In this Agreement,

- (a) “**Act**” means the *Municipal Act*, 2001, SO 2001, c. 25, as amended, or its successor or replacement;
- (b) “**Council**” means the Council of the Region as composed from time to time;
- (c) “**Facilities**” means the telecommunications facilities and system owned by the Region in respect of which YorkNet has been granted certain rights of use and agreed to certain obligations with respect to their operations and maintenance and the telecommunications facilities and system to be developed, designed, constructed, owned, used, operated and maintained in accordance with the terms and conditions of the YorkNet/CNPI Agreements;
- (d) “**Municipal Capital Facilities**” means municipal capital facilities that meet the requirements of section 110 of the Act and the Regulations;
- (e) “**Regulations**” means the regulations made under the Act, as amended or their successors or replacements; and
- (f) “**YorkNet/CNPI Agreements**” means the following agreements to be entered into by YorkNet and CNPI in connection with the Facilities, in each case in accordance with and subject to the terms and conditions of YorkNet’s constating documents and its powers and authorities:

an Implementation Agreement to be entered into by YorkNet and CNPI; and

a Dark Fibre IRU and Maintenance Agreement to be entered into by YorkNet and CNPI.

1.2 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.

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

1.4 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.

1.5 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.

ARTICLE II ACKNOWLEDGEMENTS AND COVENANTS

2.1 The parties hereto acknowledge and agree that the Facilities are intended to enable telecommunications and broadband connectivity and serve as a telecommunications system that will provide a benefit to the public and shall operate on that basis.

2.2 The Region, YorkNet and CNPI acknowledge and agree that the Region may, at its sole and unfettered 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 for the purpose of the ownership, operation, maintenance and expansion of the Facilities as a Municipal Capital Facility.

2.3 Without limiting the generality of the foregoing, the aforesaid assistance provided by the Region may include any financial assistance contemplated by, provided pursuant to, arising out of or otherwise related to the YorkNet/CNPI Agreements.

2.4 The Region, YorkNet and CNPI acknowledge and agree that it is their joint intention that any financial and other assistance, if any, provided by the Region for the purpose of owning, operating, maintaining and expanding the Facilities, is being, and will in the future be, provided by the Region pursuant to section 110 of the Act and the Regulations thereunder in order that YorkNet and CNPI provide Municipal Capital Facilities for a telecommunications system. Except for the specific assistance set forth in any other express written agreements to which the Region is a party, the Region is not obligated in any manner with respect to the Facilities or to provide any financial assistance or support or to perform or undertake any obligation or liability in connection therewith.

2.5 The Facilities shall be owned, operated, maintained and expanded in accordance with and subject to the terms and conditions of the YorkNet/CNPI Agreements.

2.6 The parties 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, that would result in the Facilities ceasing to be owned, operated, maintained and expanded in accordance with and subject to the terms and conditions of the YorkNet/CNPI Agreements.

**ARTICLE III
MISCELLANEOUS**

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

3.2 Time is of the essence of this Agreement.

3.3 From time to time, the parties will execute and deliver to the other such additional documentation, provide such additional information, take such action and provide such further assurances as any other party hereto may reasonably require, in order to carry out the intention and terms of this Agreement.

3.4 This Agreement shall be binding upon the parties and their respective successors and permitted assigns. This Agreement may not be assigned by a party without the prior written approval of the other parties hereto, which consent may be unreasonably withheld.

3.5 For clarity, notwithstanding any other provision in this Agreement, the parties agree and acknowledge that: (a) nothing in this Agreement is intended to create or shall be construed as creating any obligation owed by either the Region or CNPI to the other under, pursuant to, arising out of or otherwise related to the YorkNet/CNPI Agreements and the YorkNet/CNPI Agreements are solely between CNPI and YorkNet; (b) nothing in this Agreement is intended to create or shall be construed as creating any obligation or liability on the part of the Region in relation to the Facilities or any of the YorkNet/CNPI Agreements; and (c) the Region has no liability or obligation under or pursuant to, arising out of or otherwise related to the YorkNet/CNPI Agreements. The parties hereto acknowledge and agree that this Agreement is being entered into for the sole purpose of ensuring compliance with the requirements of the Act and Regulations.

*[rest of page intentionally left blank;
signature page follows]*

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

THE REGIONAL MUNICIPALITY OF YORK

Per: _____
Name:
Title: Regional Chair

Per: _____
Name:
Title: Regional Clerk

YTN TELECOM NETWORK INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

COMMUNITY NETWORK PARTNERS INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title: