

THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

BY-LAW NO. 21-1569

Being a bylaw to authorize the execution of an agreement with Leepfrog Telecom Ltd.

WHEREAS under Section 8 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, the powers of a municipality shall be interpreted broadly to enable it to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS under Section 9 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 10 (1) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, a single-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

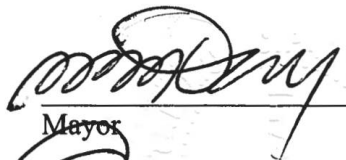
AND WHEREAS the Council of the Municipality of Temagami deems it has, by resolution 21-231 passed on June 17, 2021, accepted the agreement with Leepfrog Telecom Ltd. for the use of municipal property;

NOW THEREFORE the Council of The Corporation of the Municipality of Temagami hereby enacts the following:

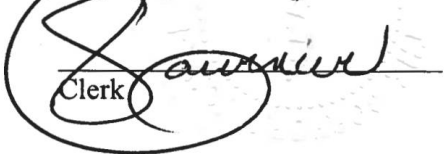
1. That the Mayor and Clerk are hereby authorized to execute the Telecommunications Infrastructure Construction, Installation and Use Agreement with Leepfrog Telecom Ltd., a copy of which is attached hereto as Schedule "A" and forms part of this by-law.
2. That the Clerk of the Municipality of Temagami is hereby authorized to make minor modifications or corrections of a grammatical or typographical nature to the by-law and schedule, after the passage of this by-law, where such modifications or corrections do not alter the intent of the by-law.

TAKEN AS READ A FIRST TIME this 8th day of July, 2021.

READ A SECOND AND THIRD time and finally passed this 8th day of July, 2021.



Mayor



Clerk



**Easement Agreement-Leepfrog Telecom Ltd and
Telecommunications Infrastructure Construction, Installation, and Use Agreement**

THIS AGREEMENT made this 8th day of July, 2021, between the Municipality of Temagami (the “Municipality”) and Leepfrog Telecom Ltd. (“Leepfrog”).

WHEREAS the Municipality owns the following real property (collectively the “Lands”) municipally described as:

- (a) 7 Stevens Road, Temagami, ON, POH 2H0 (the “Stevens Road Property”)
- (b) a property located at the following GPS coordinates, 47.114059° -79.788573°, located on Birch Crescent, known as the North Temagami Water Tower Property
- (c) a property located at the following GPS coordinates, 47.067032° -79.787880°, known as the Temagami Water Tower Property
- (d) a property located at the following GPS coordinates, 47.058254° -79.779324°, known as the Temagami Fire Tower Property
- (e) All gps coordinates in decimal degrees.

AND WHEREAS Leepfrog desires to construct, install, use, and maintain certain telecommunications infrastructure and equipment on the Property as more particularly described hereunder (collectively the “Telecom Assets”).

AND WHEREAS it is the intention of the parties that the relationship as between them be governed by the terms herein so long as this agreement remains in force;

Now THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and for other good and valuable consideration, the parties hereto agree as follows:

1. Term and Termination

2. Termination

- (1) This agreement shall remain in effect until terminated in accordance with its terms.
- (2) This agreement terminates automatically upon the occurrence of any of the following events:
 - (a) the expiry of sixty (60) days prior written notice of termination by Leepfrog to the Municipality
 - (b) the insolvency of Leepfrog;
 - (c) Leepfrog executes an assignment for the benefit of the creditors;
 - (d) Leepfrog fails to pay any amounts payable hereunder within thirty (30) days of the due date thereof;
 - (e) Leepfrog ceases to carry on business; or

- (f) Leepfrog becomes subject to receivership or bankruptcy proceedings;
- 3. Termination of this agreement does not relieve Leepfrog of its obligations and liabilities existing at or accruing to the date of termination.
- 4. Upon termination of this agreement, Leepfrog shall forthwith:
 - (a) pay to the Municipality all amounts due and owing to the Municipality at the time of termination; and
 - (b) execute and register such documents as may be necessary to discharge this agreement from title to the Lands, if applicable, and notify the Municipality of the registration of such discharge.

3. Grant of Rights

- (1) For the consideration described below, the Municipality grants to Leepfrog:
 - (a) all rights and permissions necessary to install, reconfigure, attach, operate, maintain and replace all of the initial and additional Equipment at the Stevens Road Property for wireless telecommunications;
 - (b) all rights and permissions necessary to provide Leepfrog direct vehicular access to all properties listed as the “Lands”
 - (c) access to the tower and Equipment at all locations of the “Lands” on a 24/7 basis;
 - (d) one 24-hour parking space at each property listed as the “Lands” to the extent such a parking space is available;
 - (e) the same rights and permissions as set out in (a) above at the Stevens Road Property for the mounting of a termination box on the outside of the building and/or cabinet or shed and/or building mounted nugget tower with backhaul radios on the roof structure and/or upper part of the building or antenna; and
 - (f) to run a cable providing power to the tower(s) or Equipment, if necessary to provide back-up power.
- (2) The locations of the tower(s) and/or Equipment referred to in (a) and (e) above shall be as identified on the maps for the Stevens Road Property, North Temagami Water Tower Property, Temagami Water Tower Property, and the Temagami Fire Tower Property in the attached Schedules “A”, “B”, “C”, and “D” respectively.
- (3) Before exercising any of the rights set out in (1) above, Leepfrog shall consult with the Municipality with a view to minimizing the adverse effects, if any, on the Municipality’s use of the Lands.
- (4) For clarity, Leepfrog shall be solely responsible for all costs associated with the exercise of the rights set out in (1) above.

4. Compensation

- (1) Leepfrog shall pay to the Municipality compensation for the above-noted grant of rights as follows:
 - (a) an annual OR lump sum payment of ONE HUNDRED FIFTY Dollars (\$150.00) for the Stevens Road Property, payable no later than December 31st of each year; and
 - (b) monthly payments of TWO HUNDRED FIFTY Dollars (\$250.00) for Temagami Fire Tower Property, payable on the 1st day of each month.
 - (c) monthly payments of ONE HUNDRED FIFTY Dollars (\$150.00) for North Temagami Water Tower Property, payable on the 1st day of each month
 - (d) monthly payments of ONE HUNDRED FIFTY Dollars (\$150.00) for Temagami Water Tower Property, payable on the 1st day of each month

Notwithstanding the dates set out in (1)(a) and (1)(b) to (1)(e), either the lump sum payment or the annual or periodic payments option shall be made prior to construction of the Tower AND Termination box installation.

- (2) Should the exercise of the rights set out in 2(1) above result in an increase in utility charges (the “Additional Utility Charges”) incurred by the Municipality for the properties listed as the “Lands”, the costs of such Additional Utility Charges shall be paid as compensation to the Municipality. The parties agree that the Additional Utility Charges shall consist of any utility charges incurred by the Municipality exceeding the average of such costs for the previous twelve (12) month period as evidenced by utility invoicing received by the Municipality for such period.

5. Title to Telecom Assets

- (1) The Municipality acknowledges that in exercising the rights granted to Leepfrog in section 2(1) of this agreement, Leepfrog may install Telecom Assets on the Lands in such a manner that they may become affixed to the Lands or building(s) situate thereon. The Municipality agrees that title to all such Telecom Assets shall, until surrendered, remain with Leepfrog and that Leepfrog may, at its sole expense, remove such Telecom Assets as remains un-surrendered.
- (2) Upon termination of this agreement for any reason, Leepfrog shall, at its sole expense, promptly remove all un-surrendered Telecom Assets and any other property owned by Leepfrog from the Lands.

6. Continuing Use of Lands by the Municipality

- (1) Nothing in this agreement shall be construed as derogating from the Municipality’s right to use the Land as it, in its sole and absolute discretion, sees fit.
- (2) Should it be reasonably expected that any use by the Municipality of the Lands will interfere with the exercise of the rights granted to Leepfrog herein, the Municipality will provide Leepfrog with at least thirty days’ (30) prior written notice and work collaboratively with Leepfrog to minimize such interference to the extent possible.

7. Leepfrog Responsibilities

- (1) In addition to any other obligation under this agreement, Leepfrog shall be responsible for:
 - (a) any damage caused at any time by its agents or employees to the Lands and to repair such damage, at its sole expense, to the Municipality's satisfaction; and
 - (b) all maintenance required for its use or operation of the Telecom Assets.

8. Assignment

- (1) Either party shall have the absolute right to assign this Agreement in whole or in part, and upon such assignment, shall give to the other party written notice thereof within ten (10) days, but Leepfrog need not give such notice upon assignment in the course of its corporate financing by way of a deed of trust, mortgage, debenture or a floating charge or upon assignment arising out of an amalgamation or merger.

9. Indemnification of the Municipality

- (1) Leepfrog shall indemnify and hold harmless the Municipality and its servants, agents, employees, officers, councillors, and representatives from and against all claims, demands, damages, payments, suits, actions, recoveries and judgments of any nature and description brought against the Municipality for or by reason of the exercise by Leepfrog of the rights granted to Leepfrog under this agreement and this indemnification shall survive the expiry or termination of this agreement.

10. Insurance

- (1) Leepfrog shall take out and keep in force until the date of expiry of this Agreement the following insurance coverage:
 - (a) A comprehensive policy of public liability and property damage insurance acceptable to the Municipality providing insurance coverage in respect of any one accident to the limit of not less than FIVE MILLION DOLLARS (\$5,000,000) against loss or damage resulting from bodily injury to or death of a person or persons and loss of or damage to property. Such policy shall name the Municipality of Temagami as an additional insured thereunder for any and all claims of whatever nature for all damage to any property, public or private, resulting from or arising out of any act or omission on the part of Leepfrog or any of its servants or agents in exercising any of the rights granted to Leepfrog under this Agreement.
 - (b) This policy to state it will be the primary and will not require pro rata sharing of any loss by the Municipality's insurers.
- (2) The Certificate of Insurance shall be provided to the Municipality by Leepfrog promptly upon request.

11. Force Majeure

- (1) Except as expressly provided otherwise in this agreement, neither party will be liable for any failure or delay in its performance under this agreement due to any cause beyond its reasonable control that could not have been avoided by the exercise of reasonable foresight, such as acts of war, rebellion, acts of God, earthquake, flood, embargo, pandemic, riot, sabotage, terrorism, or governmental act, provided that the party affected by such failure or delay gives the other party prompt written notice of such cause, and uses its reasonable commercial efforts to promptly correct such failure or delay in performance. For greater clarity, strikes, lock outs and other labour disruptions are events that can be avoided by the exercise of reasonable foresight.

12. Registration of Agreement

- (1) Leepfrog may, at its expense, register this agreement on title to the Lands in the relevant Land Titles Office.

13. Miscellaneous

- (1) This agreement shall be binding upon the parties hereto and their respective estate trustees, beneficiaries, heirs and successors.
- (2) This agreement constitutes the entire agreement between Leepfrog and the Municipality and no understanding or agreements, oral or otherwise, exist between Leepfrog and the Municipality with respect to the matters herein.
- (3) If any part of this agreement is determined unenforceable or invalid for any reason whatsoever, that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this agreement, and such unenforceable or invalid portion shall be severed from the remainder of this agreement.
- (4) The failure of the Municipality to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment or the Municipality's rights to thereafter enforce the same in accordance with this agreement in the event of a continuing or subsequent default on the part of Leepfrog.
- (5) All notices to be given hereunder may be given by registered letter addressed to:
 - (a) LEEPFROG TELECOM LTD.,
8889 Yonge Street, Box 31008
Richmond Hill, Ontario L4C 0V3,
 - (b) and to the Municipality at:

MUNICIPALITY OF TEMAGAMI,
7 Lakeshore Drive, PO Box 220,
Temagami, Ontario POH 2H0

or such other address as LEEPFROG TELECOM LTD. and the Owner(s) may respectively appoint, from time to time, in writing, and any such notice shall be deemed to be given to and received seven (7) days after the mailing thereof, postage prepaid.

- (6) This agreement shall be governed by the laws of the province of Ontario and the federal laws of Canada applicable therein.
- (7) The headings in this agreement are for reference purposes only and cannot be used to construe the terms of the agreement.
- (8) This agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall be but one and the same instrument.
- (9) The parties agree that the agreement may be transmitted electronically and that the reproduction of signatures electronically will be treated as binding as if originals and each Party hereto undertakes to provide each and every other party hereto with a copy of the agreement bearing original signatures forthwith upon demand.

IN WITNESS THEREOF the parties hereto have duly executed this agreement as of the date first above written.

SIGNED, SEALED AND DELIVERED
in the presence of

as to the signature of _____)



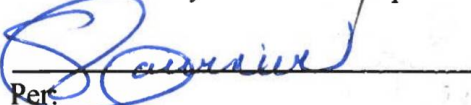
as to the signature of _____)

MUNICIPALITY OF TEMAGAMI



Per:

I have authority to bind the corporation



Per:

I have authority to bind the corporation

SIGNED, SEALED AND DELIVERED
in the presence of

as to the signature of _____)

LEEPFROG TELECOM LTD.

Per:

I have authority to bind the corporation

Schedule “A”

Stevens Road Property Tower/Equipment Location

7 Stevens Road, Temagami, ON, POH 2H0

Schedule “B”

Temagami Fire Tower Property/Equipment Location

a property located at the following GPS coordinates, 47.058254° -79.779324°, known
as the Temagami Fire Tower Property

Schedule “C”

North Temagami Water Tower Property/Equipment Location

a property located at the following GPS coordinates, 47.114059° -79.788573°, located on Birch Crescent, known as the North Temagami Water Tower Property

Schedule “D”

Temagami Water Tower Property/Equipment Location

a property located at the following GPS coordinates, 47.067032° -79.787880°, known as
the Temagami Water Tower Property