The Corporation of the Municipality of Brockton

By-Law 2021-084

Being a By-Law to Authorize the Signing of a Lease Agreement With EH!Tel Networks Inc. for the Purpose of Leasing 999 Greenock-Brant Townline, Cargill, Ontario for Broadband Internet Access.

Whereas The Council for the Corporation of the Municipality of Brockton deems it expedient to enter into a Lease Agreement with EH!Tel Networks Inc. with respect to leasing the property identified as 999 Greenock-Brant Townline, Cargill, Ontario for broadband internet access;

Now Therefore the Council of the Corporation of the Municipality of Brockton enacts as follows;

1.0 That the Corporation of the Municipality of Brockton Council hereby enter into a Lease Agreement with EH!Tel Networks Inc. which is attached as "Schedule A" and forms part of this By-Law;

2.0 The execution by the Mayor and Clerk of said agreement dated June 22, 2021, between the Corporation of the Municipality of Brockton and EH!Tel Networks Inc. is hereby authorized, ratified, and confirmed.

3.0 This By-Law shall come into full force and effect upon final passage.

4.0 This By-Law may be cited as the "EH!Tel Networks Inc. Cargill Community Centre Lease Agreement By-Law".

Read, Enacted, Signed and Sealed this 22nd day of June, 2021.

_____
Mayor – Chris Peabody

_____
Clerk – Fiona Hamilton

This LEASE AGREEMENT made in duplicate this 4th day of June, 2021.

BETWEEN:

THE MUNICIPALITY OF BROCKTON

(the "Lessor")

and

EH!TEL NETWORKS INC.

(the "Lessee")

WHEREAS the Lessor and the Lessee wish to enter into a lease of a portion of the property situated at 999 Greenock Brant, Cargill, Ontario as depicted within the location shown on Schedule "A" (the "Property"), subject to the terms and conditions contained herein;

NOW, THEREFORE, THIS AGREEMENT WITNESSES THAT, in consideration of the rents, covenants and obligations stipulated herein (the receipt and sufficiency of which is acknowledged) the Lessor and the Lessee agree as follows:

GRANT OF THE LEASE

1. The Lessor leases the Property to the Lessee:
a. at the rent set forth in Section 4;
b. for the Term set forth in Section 5 and, if applicable, the renewal term set forth in Section 7; and
c. subject to the conditions and in accordance with the covenants, obligations and agreements herein.

2. The Lessor covenants that it has the right to grant the leasehold interest in the Property free from encumbrances except as disclosed on title.

3. The Lessor further grants to the Lessee the right to install, repair and access a Point of Presence (POP) installation on the Property as depicted in Schedule "B" and the Lessee may at its own expense, maintain or construct in a good and workmanlike manner, an access route to the POP installation as it requires.

4. The Lessor grants the Lessee to color match the POP accordingly to the other structures within the parcel lot.

RENT

4. The Lessee covenants to pay the Lessor, during the Term of this Lease, Rent in the sum of $500.00 per annum, payable in advance, with the first payment on the first day of the Term. Also to include a FREE of Charge Internet Service to the Cargill Community Centre located at 999 Greenock Brant Townline, Cargill ON, for the duration of the agreement and/or any renewals thereof.

TERM AND POSSESSION

5. The Lessee shall have possession of the Property for a period of 10 years, commencing on the 1st day of July, 2021 and ending on the 31st day of June 2030 (the "Term").

6. Subject to the Lessor's right under this Lease, and as long as the Lease is in good standing the Lessor covenants that the Lessee shall have quiet enjoyment of the Property during the Term of the Lease without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming through the Lessor.

7. Provided the Lessee shall be in full compliance with the Lessee's obligations under the terms of this Lease at the relevant time, the Lessee shall have a right of renewal for a further 10 years, exercisable by advance written notice to the Lessor not later then 90 days before the end of the Term. If such renewal is exercised, all the provisions of this Lease shall remain the same.

ASSIGNMENT

8. Provided the Leasor consents, such consent not to be unreasonably withheld, the lease shall have the right to assign the lease and provided that any assignee confirms in writing its obligations to be bound by the Terms of this Lease, the Lessee shall cease to be obligated to the lessor hereunder.

USE

9. During the Term of this Lease the Property shall not be used for any purposes other then the use of the structure depicted in Schedule "B" as a POP installation and access by its employees/agents to the POP installation.

10. The Lessee shall not do or permit to be done at the Property anything which may:

a. constitutes a nuisance;
b. cause damage to the Property;
c. cause injury or annoyance to persons at the Property;
d. make void or voidable any insurance upon the Property;
e. constitute a breach of any by-law, statute, order or regulation or any municipal, provincial or other competent authority relating to the Property.

REPAIR AND MAINTENANCE

11. The Lessee covenants that during the term of this Lease and any renewal thereof the Lessee shall maintain, clean, operate, upkeep, repair and keep in good condition the interior of the Property including all alterations and additions mad thereto, and shall, with or without notice, promptly make all repairs and all necessary replacements as would a prudent owner.

12. The Lessee shall permit the Lessor or a person authorized by the Lessor to enter the Property, to examine the condition thereof and view the state of repair at reasonable time:

a. and if upon such examination repairs are found to be necessary, written notice of the repairs required shall be given to the Lessee by or on behalf of the Lessor and the Lessee shall make the necessary repairs within the time-frame specified in the notice;

b. and if the Lessee refuses or neglects to keep the Property in good repair the Lessor may, but shall not be obliged to, make any necessary repairs, and shall be permitted to enter the Property, by himself or his servants or agents, for the purpose of effecting the repairs without being liable to the Lessee for any loss, damage or inconvenience to the Lessee in connection with the Lessor's entry and repairs and if the Lessor makes repairs the Lessee shall pay the cost of them immediately as Additional Rent.

c. The Lessee shall immediately give written notice to the Lessor of any substantial damage that occurs to the Property from any cause.

ALTERATIONS AND ADDITIONS

13. If the Lessee, during the Term of this Lease or any renewal of it, desires to make any alterations or additions to the Property aside from those depicted in Schedule "B", the Lessee may do so at his own expense, at any time and from time to time, if the following conditions are met:

a. before undertaking any alterations or addition the Lessee shall submit to the Lessor a plan showing the proposed alterations or additions and the Lessee shall not proceed to make any alteration or addition unless the Lessor has approved the plan, and the Lessor shall not unreasonably or arbitrarily withhold its approval;

b. any and all alterations or additions to the Property made by the Lessee must comply with all applicable Building Code standards and by-laws of the Lessor.

c. The Lessee shall be responsible for an pay the cost of any alterations, additions, installations or improvements that any governing authority, municipal, provincial or otherwise, may require to be made in, on or to the Property.

d. No sign, advertisement or notice shall be inscribed, painted or affixed by the Lessee, or any other person on the Lessee's behalf, on any part of the inside or outside of the building in which the Property are located unless the sign, advertisement or notice has been approved in every respect by the Lessor. All signs, advertisements or notices shall comply with all relevant by-laws.

INSURANCE

14. Throughout the entire term of this Lease and any renewals thereof, the Lessee shall, as its own cost and expense, to take out and keep in full force the following insurance coverage. The insurance shall be primary, non-contributing with and not excess of any other insurance available to the Lessor.

a. Commercial General liability insurance on an occurrence basis for an amount of not less than Five Million Dollars ($5,000,000) and shall include the Lessor as Additional Insured with respect to the Lessee's operations, acts and omissions relating to its obligations under this Lease, such policy to include, but not

be limited to, non-owned automobile liability, liquor liability, personal injury; broad from property damage; blanket contractual liability; owners and contractors protective liability; products and completed operations liability; contingent employers liability; and, shall include cross liability and severability of interest clauses. This policy shall not be invalidated as respects the interests of the Lessor by reason of any breach or violation on any warranties, representations, declarations or conditions.

b. Automobile liability insurance for an amount not less than Two Million Dollars ($2,000,000) on forms meeting statutory requirements covering all licensed vehicles used in any manner in connection with the performance of the terms of this Lease.

c. Insurance upon property of every description owned by the Lessee, or for which the Lessee is legally liable, on an All-Risk basis for the full replacement cost thereof. This insurance shall contain a waiver of any subrogation rights, which the Lessee's insurers may have against the Lessor or those whom the Lessor is in law responsible.

d. The Lessee shall provide Certificates of Insurance, or copies of the insurance policies if required by the Lessor, with provision for 30 days prior notice by registered mail in the event of cancellation or material change, which reduces or restricts the insurance provided.

e. The Lessee agrees that if they fail to take out or keep in force any such insurance referred to in this clause or should any such insurance not be approved by the Lessor, and should the Lessee not commence and proceed to diligently rectify the situation within forty-eight (48) hours after written notice by the Lessor, the Lessor has the right without assuming any obligation in connection therewith, to affect such insurance at the sole cost of the Lessee. The Lessor shall be reimbursed as set out under the terms of this Lease.

f. The Lessee shall indemnify and hold the Lessor, its elected officials, officers employees and agents (each an "Indemnitee") harmless from and against all actions, causes of action, liabilities (weather accrued, actual or contingent or otherwise), claims, judgements (including legal fees on a solicitor/client basis and all other costs of defense thereof) and demands made by any person including the Lessee's own employees arising out of activates under tis Lease by the Lessee, its agents, servants, employees, or invitees, arising from or in connection with the Lessee's action or failure to take action with respect to the matters subject of this Lease existing or incurred as at or subsequent to the date of this Lease.

g. An Indemnitee shall give the Lessee notice of any action, cause of action, liability, claim or demand for which the Lessee may be liable within ten (10) days of such action, cause of action, liability, claim or demand coming to the Indemnitee's attention. Each Indemnitee shall permit the Lessee, at its expense, to participate in any negotiations, to assume the defense of any action or proceeding and to settle any claim in respect of which indemnification is sought under this Lease.

REPAIR AND MAINTENANCE

15. The Lessee covenants that during the term of this Lease and any renewal thereof that the Lessee shall ensure that all buildings, structures, towers and transmission facilities erected on the Property shall be erected and in compliance with all municipal, provincial and federal laws and regulations and that after erection or construction shall and will be maintained and kept in a good state of repair.

EXPIRATION, TERMINATION

16. The Lessor may terminate this Agreement upon notice to the Lessee to take effect immediately if:

a. The Lessee fails to pay rent when due;
b. The goods and chattels of the Lessee or any assignee or sub-lessee are at any time, seized or taken in execution or attachment;
c. The Lessee or any assignee or sub-lessee makes an assignment for the benefits of its creditors generally, or files an intention to make or makes a proposal under the *Bankruptcy and Insolvency Act* (Canada);
d. The Lessee or any assignee or sub-lessee becomes bankrupt;
e. The Lessee or any assignee or sub-lessee makes a sale under the *Bulk Sales Act* in respect of goods on the Property without the prior written consent of the Lessor;
f. The Lessee ceases to operate or voluntarily winds up; or
g. The Lessee becomes subject to any statutory provision that requires winding up of the Lessee.
h. Upon the termination of this Lease pursuant to subsection (1) above, the Lessee shall pay the Lessor, forthwith, an amount equivalent to three (3) months Rent.

17. Upon expiration or termination of this Lease or any renewal thereof, the Lessee shall immediately remove at its own expense, any and all of its' structures and buildings from the Property that it shall as far as practicable, restore the Property to the same condition as prior to the construction of the buildings or structures.

18. If the Lessee remains in possession of the Property after the termination of this Lease, or any renewal thereof, without the written agreement of the Lessor, and the Lessor then accepts Rent for the Property, it is agreed that such overholding by the Lessee and acceptance of Rent by the Lessor shall create a monthly tenancy only, by the tenancy shall remain subject to all the terms and conditions of this Lease except those regarding the Term. Where a monthly basis as a rate equal to one-twelfth of the rate of annual Rent in effect at the time immediately prior to the commencement of the monthly tenancy.

NOTICE

19. Any notice or communication required to be given under this Lease shall be in writing and will be served personally, delivered by courier or sent by ordinary prepaid, certified or registered mail, or transmitted by facsimile or other similar means of electronic communication, addressed as provided below or at such other address as the parties will later indicate to the other in writing.

To The Lessor:

Municipality of Brockton, Parks and Recreation
290 Durham Street West, P.O. Box 850
Walkerton, ON N0G 2V0

To the Lessee:

EH!tel Networks Inc.

392058 Grey Road 109
Holstein, Ontario, N0G 2A0

20. Notice by mail will be deemed to have been received on the fifth (5^{th}) day after the date of mailing. Notice by any other method will be deemed to have been received at the time of the delivery or transmission if received during regular business hours. Notice received after regular business hours will be deemed as received the next business day following.

REGISTRATION

21. The Lessee shall not at any time register of or a copy of this Lease on title to the property of which the Property form part without consent of the Lessor.

WORKPLACE SAFETY AND INSURANCE BOARD and *ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005* AND REGULATIONS

22. The Lessee must supply proof that it is in good standing with the WSIB by:

a. prior to the commencement of this Lease, providing to the Lessor a certificate from the Workplace Safety and Insurance Board (the "WSIB") indicating that all payments by the Lessee to the WSIB in conjunction with this Lease have been made and that the Lessor will not be liable to the WSIB for future payments in connection with the Lessees fulfilment of obligations pursuant to the Lease; and

b. the Lessee shall file a "Certificate of Clearance" from the WSIB every sixty (60) days during the Term, with the first such Certificate of Clearance to be provided as of the first day of the Term.

GENERAL

23. The part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Lease.

24. The Lessee and the Lessor agree that all covenants and conditions in this Lease shall be servable, and that should any covenant or condition in this Lease be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of this lease shall remain valid and not terminate thereby.

25. This Lease shall be governed by and constructed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

26. The words importing the singular number only shall include plural, and vice versa, and words importing the masculine gender shall include the feminine gender, and words importing persons shall include firms and corporations and vice versa.

27. Unless the context otherwise requires, the word "Lessor" and the word "Lessee" wherever used herein shall be constructed to include the executers, administrators, successors and assigns of the Lessor and the Lessee, respectively.

28. When there are two or more Lessees bound by the same covenants herein contained, their obligations shall be joint and several.

29. The Lessee acknowledges that the Lessor, in addition to any other remedy it may have at law, shall also be entitled to enforce this Lease in accordance with s. 446 of the Municipal Act, 2001.

IN WITNESS WHEREOF the parties hereto have executed this Lease as of the day and year set out above:

THE MUNICIPALITY OF BROCKTON

per: _____

Title: Mayor - Chris Peabody

per: _____

Title: Clerk - Fiona Hamilton

We have authority to bind the Corporation

EH!TEL NETWORKS INC.

per: _____

Title:

per: _____

Title:

I/We have authority to bind the Corporation

SCHEDULE “A”

[Insert survey or ariel photo with area subject to lease]

Ariel Photo:



Actual Photo:



SCHEDULE “B”

[Insert details of POP installation]

