



BY-LAW

NO. 2024 –

Being a By-law to Authorize an Agreement with Lakeside Radio Broadcasting Corp. for the Ward 1 Water Tower, Municipality of Kincardine

Whereas Section 8 (1) and 9 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provide that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues and 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 the Corporation of The Municipality owns the Ward 1 Water Tower located at P 61 Pt Lots O & T P3R3680 Part 3 RP 3R3885, Municipality of Kincardine; and

Whereas Council of The Corporation of the Municipality of Kincardine deems it advisable to enter into an Agreement with Lakeside Radio Broadcasting Corp., to facilitate the placement of antennas on, and a backup generator at the Ward 1 Water Tower located on P 61 Pt Lots O & T P3R3680 Part 3 RP 3R3885; now therefore be it

Resolved that the Council of The Corporation of the Municipality of Kincardine **Enacts** as follows:

1. That The Corporation of the Municipality of Kincardine enter into an Agreement with the Lakeside Radio Broadcasting Corp., to facilitate the placement of antennas on, and a backup generator at the Ward 1 Water Tower, P 61 Pt Lots O & T P3R3680 Part 3 RP 3R3885, Municipality of Kincardine, in accordance with the terms and conditions outlined in the Agreement attached hereto as Schedule 'A' and forming part of this By-law.
2. That the Mayor and Clerk be authorized to sign and execute, on behalf of The Corporation of the Municipality of Kincardine, the Agreement with the Lakeside Radio Broadcasting Corp.
3. That this By-law shall come into full force and effect upon its final passage.
4. That this By-law be cited as "Lakeside Radio Broadcasting Corp. Agreement (2024) By-law".

Read a First, Second and Third Time and Finally passed this 11th day of September, 2024.

Mayor

Clerk

This AGREEMENT made this 11th day of September 2024.

BETWEEN:

The Corporation of the Municipality of Kincardine
(hereinafter called "Kincardine")

And

Lakeside Radio Broadcasting Corp.
C/O Greg Hetherington
520 James Street
Wallaceburg, Ontario
N8A 2N9
(hereinafter called the "Lakeside Radio")

WHEREAS:

- A. Kincardine owns and operates a water tower for the municipal water system in the town of Kincardine (the "Water Tower") on the property being;
 - i) Roll Number 41 08 220 003 10401, P 61 Pt lots O & T P3R3680 part 3 RP 3R3885
- B. Lakeside Radio is in the commercial radio business, broadcasting from downtown Kincardine as far as Port Elgin in the North and Goderich to the South and wishes to place antennas on top of the Water Tower, and a backup generator at the base of the Water Tower to facilitate their services.

1. TERMINATION AT WILL

Either party may terminate this Agreement at any time upon the giving of 180 days notices of such termination. The notice shall be given by registered mail (in which case the 180-day period commences upon the date of mailing) to Kincardine at 1475 Concession 5, RR#5, Kincardine, Ontario N2Z 2X6 and to Lakeside radio at Shoreline Classics FM, 756 Queen Street, Kincardine, Ontario N2Z 2Y2. In the case of such personal delivery, the 180-notice period shall commence on the date of delivery.

2. LAKESIDE RADIO RIGHTS

- i) Lakeside Radio may have access at all reasonable times to and from the Water Tower, and may use up to 35 feet of space on the top of the Water Tower, to erect, hold and maintain the following equipment:
 - a) On the Kincardine Water Tower, Lakeside radio is permitted a 35 foot pole and 4 bay radio antenna. The gross weight for all necessary equipment shall not exceed more than 175 pounds on the Water Tower. Lakeside Radio further agrees to secure existing equipment at the Water Tower location to ensure the safety of Kincardine employees and Kincardine residents. All work is to be completed at no monetary cost to Kincardine.
 - b) Lakeside Radio may further use a 1metre x 4metre space located inside the fenced area at the Water Tower in the south-east corner for a self-contained, air cooled, Propane fueled, Eleven Kilowatt Genrac generator for a standby power and the installation of buried cable from the above noted generator to the auto transfer switch (approximate size is .5m x .5m) located in the Water Tower control building. The standby power package shall not interfere with any existing works and further Lakeside Radio is fully responsible for the fueling, operation, maintenance and testing to meet all applicable standards.

3. LAKESIDE RADIO OBLIGATIONS

- i) Lakeside Radio shall provide the Municipality of Kincardine with the anticipated Radio Frequency (RF) Energy Levels and their locations and provide an assessment against the RF energy reference levels for Uncontrolled and Controlled Environments as outlined in Safety Code 6 (2015). RF Energy Levels should be provided and assessed for areas within 0-2m of water storage tower roof (i.e. occupational working height area). Should the anticipated RF Energy Levels exceed those stated in Safety Code 6 for Controlled Environments, Lakeside Radio shall be prepared to complete an output power reduction of the antenna whenever the Municipality of Kincardine has work scheduled within the vicinity of the antenna. Lakeside Radio shall be responsible for all direct and indirect costs associated with this power reduction and shall provide RF Energy Level monitoring while any work is completed within the vicinity of their antenna.
- ii) Lakeside radio agrees to pay \$10,000 per year plus annual Ontario CPI for the use of the Kincardine Water Tower, which will be put into water reserve account RF 68. The Municipality will invoice Lakeshore Radio Broadcasting \$5,000 twice a year for this service.

4. INTERFERENCE

Lakeside Radio shall not cause any interference to the broadcast reception quality to any of Kincardine or other users of the Water Tower space as of the date of this agreement. If there is any interference to the broadcast or reception quality at any time of Kincardine, or any other licensee of space on the tower and Lakeside Radio cannot remedy it, as of the date of this agreement, then Kincardine may give notice as provided for above, of the immediate termination of this agreement to be effective upon the giving of the notice of termination.

5. ASSIGNABILITY

Lakeside Radio may not assign this agreement without the approval and consent of Kincardine.

6. OTHER TERMINATION

This agreement shall terminate immediately if the Water Tower becomes damaged, so as to make the continued use of the Water Tower impractical or impossible for the purposes of Lakeside Radio. Further, there shall be no obligation whatsoever upon Kincardine to effect repairs or to carry out maintenance on the Water Tower in order to make such use the Lakeside Radio practical or possible at anytime. Kincardine shall not be responsible for any damage or loss which may be incurred by Lakeside Radio due to such use being made or becoming impractical or possible.

7. OWN RISK

It is agreed and understood that Lakeside Radio's antenna(s), equipment and lines placed on the Water Tower shall be there at the sole and only risk of Lakeside Radio. Kincardine shall not be responsible for them in anyway, including the provisions of any security, whatsoever, with the exception only of willful and deliberate damage caused by employees of Kincardine.

Lakeside Radio Broadcasting Corp. acknowledge that the Municipality of Kincardine is not responsible for any form of working at heights, or rescue for working at heights at the Kincardine tower, and that Lakeshore Radio will ensure all its staff and sub-contractors will be responsible for all emergency plans in the event or required maintenance.

8. REMOVAL

If this Agreement is terminated pursuant to the 180 days notice, and if Lakeside Radio has not removed its antenna(s), equipment and lines upon expiration of such notice, then any of the said items remaining on the property of Kincardine, shall be deemed abandoned and may be dealt with by Kincardine as it sees fit. If this agreement is terminated immediately, then Lakeside Radio shall have 30 days calculated from the day of such termination to effect such removal failing which any items remaining shall be deemed abandoned and may be dealt with by Kincardine as it sees fit.

9. REAL PROPERTY TAX IMPLICATIONS

In the event there are any municipal, county, or education tax implications arising as a result of the exercise of rights of Lakeside Radio under this Agreement, then any such burden shall be borne by and paid by Lakeside Radio either directly or by way of reimbursement to Kincardine.

10. LIABILITY

Lakeside Radio shall be liable for any damage to the Water Tower arising out of or in connection with its exercise of its rights under this Agreement. Kincardine shall not be liable to Lakeside Radio for any interference, or inconvenience caused by damage to any part of the Water Tower, or by repairs, alterations, improvement or construction to the Water Tower.

11. INSURANCE

During the term of this Agreement, Lakeside Radio shall provide and keep in force for the benefit of Kincardine, a general liability insurance in an amount of not less than \$5,000,000 in respect of injury to or death of any one person or property damage connected with the exercise of the rights of Lakeside Radio pursuant to this agreement.

12. TERM

Lakeside Radio and the Municipality of Kincardine agree to the terms of a three-year contract from January 1st, 2024, to December 31st, 2026. It is agreed that both parties will have the option to review and renegotiate the terms of this contract. It is also agreed that both parties, if agreeable could agree to a three-year extension of the existing contract.

IN WITNESS WHEREOF the parties hereto have signed under the hands of their proper officers duly authorized in that behalf.

LAKESIDE RADIO

Greg Heatherington

Witness

I/We have the authority to bind the Corporation.

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

Mayor

Clerk

We have the authority to bind the Corporation.