

**TELECOMMUNICATIONS FACILITY AGREEMENT**

THIS AGREEMENT made the       day of       , 2019

BETWEEN:       **METROLINX**

hereinafter called the "Facility Provider"

- and -

**THE CORPORATION OF THE CITY OF KAWARTHA LAKES**

hereinafter called the "City"

WHEREAS the lands affected by this Agreement, are described in Schedule "A" hereto and hereinafter referred to as the "Land";

AND WHEREAS proponents of telecommunication towers require approval of Industry Canada of behalf of the Government of Canada, and as part of the approval, Industry Canada requires such proponents to consult with local land use authorities as provided for in CPC-2-0-03 (Issue 5) ("CPC");

AND WHEREAS the City is the local land use authority;

AND WHEREAS the City has expressed no objection to the tower siting proposal subject to the Facility Provider complying with the specifications set out in this Agreement;

AND WHEREAS the Facility Provider proposes to construct an 80.0 metre self-supported telecommunication facility at 3818 Boundary Road (hereinafter referred to as the "Project") on the Land and has requested the City to approve the Project pursuant to the provisions of the Telecommunications System Protocol C178 PLAN 001;

AND WHEREAS the Facility Provider is a Crown agency and is voluntarily entering into this Agreement. For greater certainty, the Facility Provider does not attorn to municipal jurisdiction;

NOW THEREFORE, in consideration of the mutual agreements and covenants hereinafter contained, the parties hereto agree as follows:

1.       **SCHEDULES**

The following Schedules are attached hereto and form part of this Agreement:

- 1.1. **SCHEDULE "A"** being a description of the Land affected by this Agreement.
- 1.2. **SCHEDULE "B"** being the schedule (referred to as the "Site Plans") setting out the development obligations and specifications of the Facility Provider relating to the Land.

2. **DEFINITIONS**

- 2.1 A "Facility Provider" has the meaning ascribed thereto on page 1 of this Agreement and in accordance with its operations erects telecommunications towers for the purposes of mounting telecommunications equipment, either for their own use as a "Service Provider" or for co-location with other "Service Providers" and public telecommunications users.

A "Service Provider" is defined as a company that erects telecommunication equipment on an existing telecommunication tower, building, or other structure.

"Telecommunications Infrastructure" is defined as the entire telecommunication installation including the tower and related telecommunications equipment, lighting, fencing compound, electrical connections, driveway, and landscaping.

3. **SITE PLAN DRAWINGS**

- 3.1 Following execution of this Agreement by the City, the Facility Provider shall at its expense complete all the services and works required in this Agreement, in substantial conformity with the Site Plans or any amendments thereto or new drawings which may be mutually agreed upon by the parties.
- 3.2 The City hereby approves the following Schedules which are available for inspection at the Planning Division Office (180 Kent Street West, Lindsay) and shall form part of this Agreement:
  - 3.2.1 Schedule "B" Plan Showing Topography and Site Layout Design (Drawing No. 17-15-051-00), prepared by J.D. Barnes Limited, dated June 7, 2017, last revised October 12, 2017.

4. **ACKNOWLEDGEMENT OF PURPOSE**

- 4.1 The Facility Provider acknowledges that the Land is to be used by the Facility Provider for the purpose of placing, installing, constructing, maintaining, operating, repairing, replacing and removing an 80.0 metre self-supported telecommunication facility. The Project shall be designed and constructed in conformity with the Site Plans in accordance with Section 3 of this Agreement.

5. **REPRESENTATION AND WARRANTY – NOT APPLICABLE**

6. **COMPLIANCE WITH ONTARIO BUILDING CODE**

- 6.1 The Facility Provider acknowledges that where required, it shall comply with the *Ontario Building Code* and regulations thereunder. When required under the *Ontario Building Code Act*, a building permit shall be obtained by the Facility Provider for any buildings and structures which fall under the jurisdiction of and are required by the *Ontario Building Code*. The Facility Provider or their contractor shall contact the City's Building Division to confirm which buildings and structures are exempt from the *Ontario Building Code Act*.

7. **COMPLETION OF SITE DEVELOPMENT WORKS**

- 7.1 Following execution of this Agreement by the City, the Facility Provider shall at its expense complete all necessary site development works as set out in this Agreement, in conformity with the Site Plans.

8. **COMPLIANCE WITH DEVELOPMENT AGREEMENT**

- 8.1 Provided that the City obtains the requisite approval and/or permission from the Owner of the Land, the City, by its officers, servants and agents, may enter upon the Land or any part thereof, and any building(s) erected thereon to ensure the proper compliance herewith, of any works required to be constructed and maintained by the Facility Provider.

9. **DEVELOPMENT SERVICES GUARANTEE – NOT APPLICABLE**

10. **FINANCIAL SECURITY – NOT APPLICABLE**

11. **RETURN OF FINANCIAL SECURITY – NOT APPLICABLE**

12. **VEHICULAR ACCESS – NOT APPLICABLE**

13. **MAINTENANCE OF APPROVED LOT GRADING AND DRAINAGE WORKS – NOT APPLICABLE**

14. **SITE ILLUMINATION**

- 14.1 The Facility Provider agrees to provide illumination of the said lands and building in accordance with plans and specifications submitted to and endorsed by Council.

15. **TELECOMMUNICATION TOWER ILLUMINATION**

- 15.1 The Facility Provider agrees to provide the necessary illumination of the telecommunications tower in accordance with the approved Transport Canada standards and specifications and to refrain from erecting or using any form of illumination, which would cause a disturbance to residential uses adjacent to the Land.
- 15.2 Notwithstanding the foregoing, nothing herein shall prevent any illumination required for the health and safety of the Facility Provider's agents and employees.
- 15.3 Notwithstanding the foregoing, nothing herein shall prevent any tower illumination required by Transport Canada and/or NAV Canada.

16. **LANDSCAPING – NOT APPLICABLE**

17. **HOARDING/CONSTRUCTION FENCING**

- 17.1 The Facility Provider shall install construction fencing, where practicable. Such fencing should minimize or reduce street views.

18. **ADVERTISING**

- 18.1 No portion of the telecommunications infrastructure shall be used for advertising purposes.

19. **ADHERANCE TO THE CITY'S SITE ALTERATION AND FILL BY-LAW**

- 19.1 Since approval for the Project has been granted on the Lands, the Facility Provider is not required to obtain a permit under By-law 2018-214, as amended, which is a By-law Regulating the Removal of Soil, Placement of Fill, and the Alteration of Grades. Notwithstanding, the Facility Provider agrees to adhere to principles of By-law 2018-214, as amended, by ensuring that any fill materials removed from the Lands or any materials imported to the Lands are not contaminated. Any contaminated materials

being removed from the Lands shall be done so in accordance with By-law 2018-214, as amended, and Ministry of the Environment, Conservation and Parks (MECP) requirements. Any claims with respect to contamination of materials originating from the Lands in conjunction with this approval will be the Facility Provider's responsibility.

20. **MAINTENANCE OF CLEAN ROADS**

- 20.1 The Facility Provider agrees to maintain the municipal roads abutting the Land clear of mud and/or debris originating from construction traffic from the Land through the construction period. Should any mud and/or debris be deposited on any public road in the area from the Land through the construction period of the Telecommunication Infrastructure, the Facility Provider shall be requested by the City to clean up the mud and/or debris within a 24 hour period. Should the City be required to clean the abutting municipal roads of mud and/or debris originating from the Land and as a result of the Facility Provider's work during the construction period, the City will assess all street cleaning charges to the property tax bill of the Land.

21. **PERMITS**

- 21.1 The City agrees to support the issuance of building permits in accordance with the Site Plans, subject to payment of the required permit fees and other fees as are payable under the By-laws currently in force and effect in the City, and provided that all building plans comply with the *Ontario Building Code*.

22. **OTHER APPROVALS**

- 22.1 The Facility Provider agrees to obtain any necessary approvals or permits from any other Government Ministry, Agency, Authority or any such body, which may require approval prior to commencing construction of the Project. The Facility Provider shall provide the City with a copy of the final Transport Canada and Industry Canada approvals for the facility.

23. **CO-LOCATION OF CITY TELECOMMUNICATIONS INFRASTRUCTURE – NOT APPLICABLE**

24. **FINAL REMOVAL OF THE TELECOMMUNICATIONS INFRASTRUCTURE**

- 24.1 The Facility Provider shall advise the City in writing 30 days prior to the termination of the lease agreement between the Facility Provider and MTO. ~~Within 90 days after the termination date of the lease agreement between the Facility Provider and the Owner, the Facility Provider will remove, entirely at its expense, the~~

~~telecommunications infrastructure from the property and return the property to its original grade. Should the Facility Provider fail to remove the telecommunications infrastructure from the property to the satisfaction of the City, then the City may exercise its right to remove the telecommunications infrastructure from the property at the Owner's expense.~~

25. **INDEMNIFICATION – NOT APPLICABLE**

26. **INTERPRETATION NOT AFFECTED BY HEADINGS**

- 26.1 The division of this Agreement into articles and the insertion of headings are for convenience of reference only and shall not in any way affect the interpretation of this Agreement.
- 26.2 This Agreement and the provisions hereof do not give to the Facility Provider or any person acquiring any interest in the Land (each hereinafter in this paragraph called "such person") any rights against the City with respect to the failure of any such person to perform or fully perform any obligation under this Agreement, or the failure of the City to force any such person to perform or fully perform any obligation under this Agreement, or any negligence of any such person in the performance of the said obligation.
- 26.3 The parties agree and acknowledge that the City has the authority and jurisdiction to enter into, perform and enforce the provisions of this Agreement, including its Schedules. ~~The parties agree that they are forever estopped and forbidden to challenge the appropriateness, legality or enforceability of any of the Agreement's provisions before a court or tribunal or approval authority for whatever reason.~~
- 26.4 If for any reason whatsoever any term, covenant or condition of this Agreement or their application thereof to any Person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then such term, covenant or condition is deemed to be independent of the remainder of the Agreement and to be severable and dividable therefrom, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of the Agreement or any part thereof and it continues to be applicable to and enforceable to the fullest extent permitted by law against any person and circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.

27. **NOTICES**

- 27.1 Any notice given to the Facility Provider pursuant to this Agreement shall be deemed to have been effectively given when mailed by prepaid registered mail to:

Metrolinx  
97 Front Street West  
Toronto, Ontario  
M5J 1E6

Attention: Assistant Manager, Maintenance, Radio Systems

Any notice given to the City pursuant to this Agreement shall be deemed to have been effectively given when mailed by prepaid registered mail to:

City of Kawartha Lakes  
180 Kent Street West  
Development Services Dept. – Planning Division  
Lindsay, ON K9V 2Y6

Attention: Director of Development Services

- 27.2 This Agreement shall be binding upon the Facility Provider and his heirs, executors, administrators, successors, tenants and assigns.
- 27.3 This Agreement may be amended at any time with the written consent of the City and the Facility Provider.

IN WITNESS WHEREOF the parties have hereunto affixed their corporate seals under the hand of their proper signing officers duly authorized in that behalf.

SIGNED, SEALED AND DELIVERED, in the presence of:

**THE CORPORATION OF THE CITY OF KAWARTHA LAKES**

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Andy Letham, MAYOR

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Cathie Richie, CITY CLERK

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) **METROLINX**

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) \_\_\_\_\_  
Name, Position

) I have the authority to bind the Corporation



**SCHEDULE "A"****LEGAL DESCRIPTION OF SUBJECT LANDS**

ALL AND SINGULAR THAT certain parcel or tract of land and premises situate, lying and being in the City of Kawartha Lakes and described as follows:

PIN – 63269-0554 (LT)

Part of Lot 10, Concession 1, geographic Township of Manvers, now City of Kawartha Lakes.

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**SCHEDULE "B"**

Plan Showing Topography and Site Layout Design (Drawing No. 17-15-051-00), prepared by J.D. Barnes Limited, dated June 7, 2017, last revised October 12, 2017.

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