

TELECOMMUNICATIONS FACILITY DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT made the _____ day of _____, 2021
Appendix " D "
BETWEEN: **OWNER**
to
hereinafter called the "Owner" Report PLAN2021-036
- and - File No: D44 General

FACILITY PROVIDER
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 Innovation, Science and Economic Development (ISED) Canada of behalf of the Government of Canada, and as part of the approval, ISED 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 (LUA);

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 85.3 metre self-supported telecommunication facility at _____ Road (hereinafter referred to as the "Project") on the Land and has requested the City to provide concurrence with the Project pursuant to the provisions of the Telecommunications and Antenna System Siting Policy CP2018-014, as amended;

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 a schedule indicating the financial obligations of the Facility Provider/Service Provider payable upon execution of this Agreement or as otherwise noted and the amount of the Financial Security as herein after defined in Section 10 to be obtained and filed with the City by the Facility Provider upon execution of this Agreement or as otherwise noted.

- 1.3. **SCHEDULES “C”, “D”, and “E”** being the schedules (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” is defined as a company that 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 or person who owns or operates a transmission facility used by that business or person or by another business or person, to provide telecommunications services to the public for compensation, and 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, including, without limiting the generality of the foregoing, grading, drainage and asphalt paving, concrete curbs, lighting, sodding and landscaping, 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, in a manner satisfactory to the Director of Development Services (hereinafter referred to as the “Director”) in accordance with the City’s standards and design specifications and shall properly maintain all such services and works at all times.

- 3.2 The City hereby provides concurrence with 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 “C”** Site Plan (Drawing No. C-1), prepared by Applicant, dated _____, 202_, last revised _____, 202_

3.2.2 **Schedule “D”** Grading & Drainage Plan (Drawing No. C-2), prepared by Applicant, dated _____, 202_, last revised _____, 202_

3.2.3 **Schedule “E”** Tower Elevation (Drawing No. C-2), prepared by Applicant, dated _____, 202_, last revised _____, 202_

4. **ACKNOWLEDGEMENT OF PURPOSE**

- 4.1 The Owner and the Facility Provider acknowledge that the Land is to be used for the purpose of constructing an 85.3 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**

- 5.1 The Facility Provider represents and warrants to the City that no deviations or changes shall be made from the Site Plans, without the written approval of the City.

6. **COMPLIANCE WITH ONTARIO BUILDING CODE**

- 6.1 The Facility Provider acknowledges that where required, compliance with the *Ontario Building Code* and regulations thereunder is mandatory. When required under the *Ontario Building Code*, 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 shall contact the City's Building Division to confirm which buildings and structures are exempt from the *Ontario Building Code*.

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, including, without limiting the generality of the foregoing, entrance construction, grading, drainage and asphalt paving, lighting, sodding, and landscaping, required in this Agreement, in conformity with the Site Plans.
- 7.2 In the event the Facility Provider fails to install the aforesaid site development works, including landscaping, as required, or having commenced to install the said services and works fails to proceed with reasonable speed, or in the event the services and works are not being installed in the manner required by the City, upon the City giving seven (7) days written notice by prepaid registered mail to the Facility Provider, the City may draw upon all or any part of the appropriate Financial Security (refer to Section 1.2) for its estimate of cost of the services and works in question and may without further notice enter upon the Land and proceed to supply all materials and to do all necessary work, including the repair or reconstruction of faulty work and the replacement of materials not in accordance with the City's applicable specifications, and to charge the cost thereof together with an engineering fee in accordance with the current P.E.O. Tariff to the Facility Provider. If the Financial Security is not sufficient to cover such cost the City may recover same by action or in like manner as municipal taxes as a charge upon the Land. It is understood between the parties hereto that such entry upon the Land shall be as agent for the Facility Provider and shall not be deemed for any purpose whatsoever as an acceptance or assumption of the services and works by the City. The Owner and the Facility Provider hereby grants to the City a right to enter upon the Land for the purposes of this Article. In the event that a claim is made against the City under the *Construction Act* in respect of any of the services and works required to be performed pursuant to this Agreement, in addition to any other remedy the City may have, upon the Director giving forty-eight (48) hours written notice by prepaid registered mail to the Facility Provider, the City may, without further notice, draw upon the Financial Security referred to in Section 1.2 for the amount of the claim plus security for costs as provided for in Section 44 of the *Construction Act*.
- 7.3 All the services and works required to be done by the Facility Provider shall be constructed in a good and workmanlike manner in accordance with specifications of the City. Any contract made for the services and works on the Land or on public property shall provide that the Director or his representative may personally inspect the installation of the said services and works and shall have the power to stop any work in the event that in his opinion the services and works are being performed in a manner which is not satisfactory to the City. The Facility Provider, at its expense shall repair any damage to streets, curbs, boulevards or other public works, including utilities where damage has resulted from work on the site. The Facility Provider shall also be responsible for removing dirt or debris from public streets where same is a result of works on the site.
- 7.4 Unless otherwise provided, all works on public lands shall be constructed at the expense of the Facility Provider.

8. **COMPLIANCE WITH DEVELOPMENT AGREEMENT**

8.1 The City, by its officers, servants and agents, may enter on 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**

9.1 The Facility Provider shall file with the City a guarantee for the performance of any municipal services and development obligations for the period of one (1) year after the date of completion of the municipal services and development obligations. The guarantee shall be in the form of a Letter of Credit, Certified Cheque or Cash approved by the City for the estimated total costs for the municipal services and development obligations as set out in Section 3 and the Site Plan Drawings. A reduction of the Financial Security set out in Section 10 hereto, by an amount equal to ninety percent (90%) of the estimated total costs for the municipal services and development obligations will be granted at completion of the municipal services and development obligations, and the remaining ten percent (10%) shall be returned to the Facility Provider at the expiration of the guarantee period, provided that the City may draw upon such Financial Security for its estimate of the costs of maintaining, repairing, servicing, replacing such municipal services and development obligations.

9.2 Prior to the expiration of a guarantee period, an inspection of the municipal services and development obligations shall be made by the Director and any defects shall be corrected by the Facility Provider. If the inspection of the municipal services and development obligations reveals that they or any part thereof require cleaning, replacement or repair, then this shall be carried out by the Facility Provider forthwith.

10. **FINANCIAL SECURITY**

10.1 Upon execution of this Agreement the Facility Provider shall provide financial securities in a form satisfactory to the City in the total amount of \$6,750.00 referred to as the "Financial Security" to ensure the proper completion of all services and works referred to in Section 3, including landscaping and sodding. Such security shall be returned to the Facility Provider when the designer provides, to the Director, a certificate of completion from the professional overseeing the work (i.e. Engineer, Architect, Designer, etc.) outlining that the said services and works have been completed in accordance with the supported plans and specifications or any changes to them authorized by the Director. The landscaping shall be deemed not to have been completed until the expiration of one (1) year after planting.

10.2 The Financial Security referred to in Section 10 hereto shall be kept in full force until the completion of the services and works referred to in Section 3 and if it is obvious to the City that the Facility Provider will not be able to complete the work prior to the expiry of the appropriate Letter of Credit the City may draw all or any part of the funds so secured and hold those monies as security to guarantee completion unless it is provided with a renewal of the Letter of Credit forthwith.

11. **RETURN OF FINANCIAL SECURITY**

11.1 The City covenants and agrees to return the Financial Security for the aforementioned matters upon notification by the Facility Provider or its agent that all required works for which Financial Security was submitted, have been completed. Upon confirmation by the City or its agent that the Facility Provider's obligations under this Agreement have been completed, the City will reduce said Financial Security by ninety percent (90%) on a proportional basis of the cost of the items based on the values contained in the original Letter of Credit for \$6,750.00. The remaining ten percent (10%) shall be held by the City for a period of one (1) year

after the date of final completion in order to ensure compliance with all conditions contained herein.

12. **VEHICULAR ACCESS**

- 12.1 The Facility Provider agrees to obtain the required entrance permit from the City/Ministry of Transportation Ontario (MTO) for site access from Micro Road and provide and maintain vehicular access to and from the Land only as shown on the said Site Plan and to the satisfaction of the City/MTO. The Facility Provider agrees to implement all specified entrance improvements as approved by the City/MTO, including entrance upgrades or replacement, road ditching, and brush cutting.

13. **MAINTENANCE OF SUPPORTED LOT GRADING AND DRAINAGE WORKS**

- 13.1 The Facility Provider agrees to implement and maintain all supported lot grading and drainage works concurred with by the City and contained on the drawings attached in Schedules "C" and "D" to this Agreement. The Facility Provider further agrees that stormwater runoff generated from the development shall not impact adjacent properties or the operation and integrity of adjacent roads owned by the City or MTO.

14. **SITE ILLUMINATION**

- 14.1 The Facility Provider agrees to provide illumination of the said lands and building in accordance with plans and specifications supported by the Director and to refrain from erecting or using any form of illumination which, in the opinion of the City, would cause any traffic hazard or would cause a disturbance to residential uses adjacent to the said lands.

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, in the opinion of the City, would cause a disturbance to residential uses adjacent to the said lands.
- 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**

- 16.1 The Facility Provider agrees to grade and sod/seed the Land and provide and maintain walls and fences and healthy trees, shrubs, hedges and other ground-cover facilities, for the landscaping of the Land and the protection of adjoining lands in conformity with the Site Plans in accordance with Section 3 of this Agreement, all to the satisfaction of the City.

17. **HOARDING/CONSTRUCTION FENCING**

- 17.1 All hoarding/construction fencing shall be solid and well maintained until final completion of the Project.

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 telecommunications facility has been granted on the subject lands, the Facility Provider is not required to obtain a permit under By-law 2019-105, 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 2019-105, as amended, by ensuring that any fill materials removed from the subject lands or any materials imported to the subject lands are not contaminated. Any contaminated materials being removed from the subject lands shall be done so in accordance with By-law 2019-105, as amended, and Ministry of the Environment, Conservation and Parks (MECP) requirements. Any claims with respect to contamination of materials originating from the subject 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 said lands clear of mud and/or debris originating from construction traffic from the said lands through the construction period. Should any mud and/or debris be deposited on any public road in the area from the said lands through the construction period, 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 said lands, the City will assess all street cleaning charges to the property tax bill of the said lands.

21. **PERMITS**

- 21.1 Upon the Facility Provider complying with the provisions of this Agreement respecting concurrence of all plans and specifications required herein, the City agrees to support the issuance of building and/or entrance permits in accordance with the 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* when required, and any other Municipal By-laws which may be relevant, including but not limited to an Entrance Permit, when required.

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 any final Transport Canada, NAV Canada, and/or ISED Canada approvals for the facility.

23. **CO-LOCATION OF CITY TELECOMMUNICATIONS INFRASTRUCTURE**

- 23.1 The Facility Provider shall permit the City, upon prior written notification, to co-locate its telecommunications infrastructure on the telecommunications tower at the City's expense. This shall only include telecommunications infrastructure for the sole and dedicated use of the City and its personnel ("City Infrastructure"). The Facility Provider and/or Owner shall not charge the City any rent for use of the

telecommunications tower for such use. The City will be solely responsible for the maintenance of this telecommunications equipment. If any upgrades are required to reinforce the telecommunications tower in order to accommodate the City Infrastructure, the City will be responsible for any costs incurred for the reinforcement upgrades. Prior to installation, the parties shall enter into a co-location agreement wherein the City will abide by the processes set out by the Facility Provider as otherwise constrained by the provisions contained in the balance of this paragraph. The location and method of installation will be approved by the Facility Provider pursuant to terms to be set out in the co-location agreement.

- 23.2 The City Infrastructure remains the personal property of the City.
- 23.3 Upon 45 days prior written notification by the City, the Facility Provider shall permit the City to remove the City Infrastructure from the telecommunications tower. The City will not be liable to repair inconsequential damage (as to be determined by the Facility Provider and concurred with by the City, and include such things as minor scratches and wear and tear, but not to include any structural damage) to the telecommunications tower necessarily arising from affixing the City Infrastructure to it.
- 23.4 The Facility Provider, upon receipt of notice from the City, will provide the City with full and unimpeded access to the telecommunications tower for the purposes of installation, maintenance and removal of the City Infrastructure. The City will ensure that all City or contract forces will have the appropriate training and certification in accordance with all relevant legislation to conduct works on the Telecommunications Infrastructure and City Infrastructure. The City will provide the Facility Provider with a work schedule and insurance certificate upon demand.

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 an Owner. Within 90 days after the termination date of the lease agreement between the Facility Provider and the Owner, the Facility Provider or Owner will remove, entirely at its expense, the telecommunications infrastructure from the property and return the property to its original grade. The disturbed land area shall be reseeded at the Facility Provider or Owner's expense to ensure that erosion does not occur. Should the Facility Provider or Owner 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.
- 24.2 If this agreement has been assigned to the Owner or a subsequent tenant of the Owner, who assumes all of the rights and responsibilities of the Facility Provider upon the termination of this agreement, then the Facility Provider or Owner will not be required to remove the telecommunications infrastructure from the property at the termination of the Facility Provider's obligations under the agreement.

25. **INDEMNIFICATION**

- 25.1 The Facility Provider shall indemnify and save harmless the City at all times from any loss or liability resulting directly or indirectly from the development of the Land or the improper maintenance thereof, including any damage caused by the drainage of the Land save and except for loss or liability arising from the negligence of the City, its servants, agents or employees.

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 Owner, 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 Owner or the Facility Provider pursuant to this Agreement shall be deemed to have been effectively given when mailed by prepaid registered mail to:

Owner
Address
Town, Ontario
L9P 1N6

Facility Provider
Address
Town, Ontario
L9P 1N6

Attention: Chief Executive Officer

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 Owner and his heirs, executors, administrators, successors, tenants and assigns, the Facility Provider, and the Owner or Owners from time to time of the Land.

27.3 This Agreement may be amended at any time with the written consent of the City, the Facility Provider, and the registered Owner of the Land at the time of such amendment.

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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

)
)
)
) _____
) Andy Letham, MAYOR

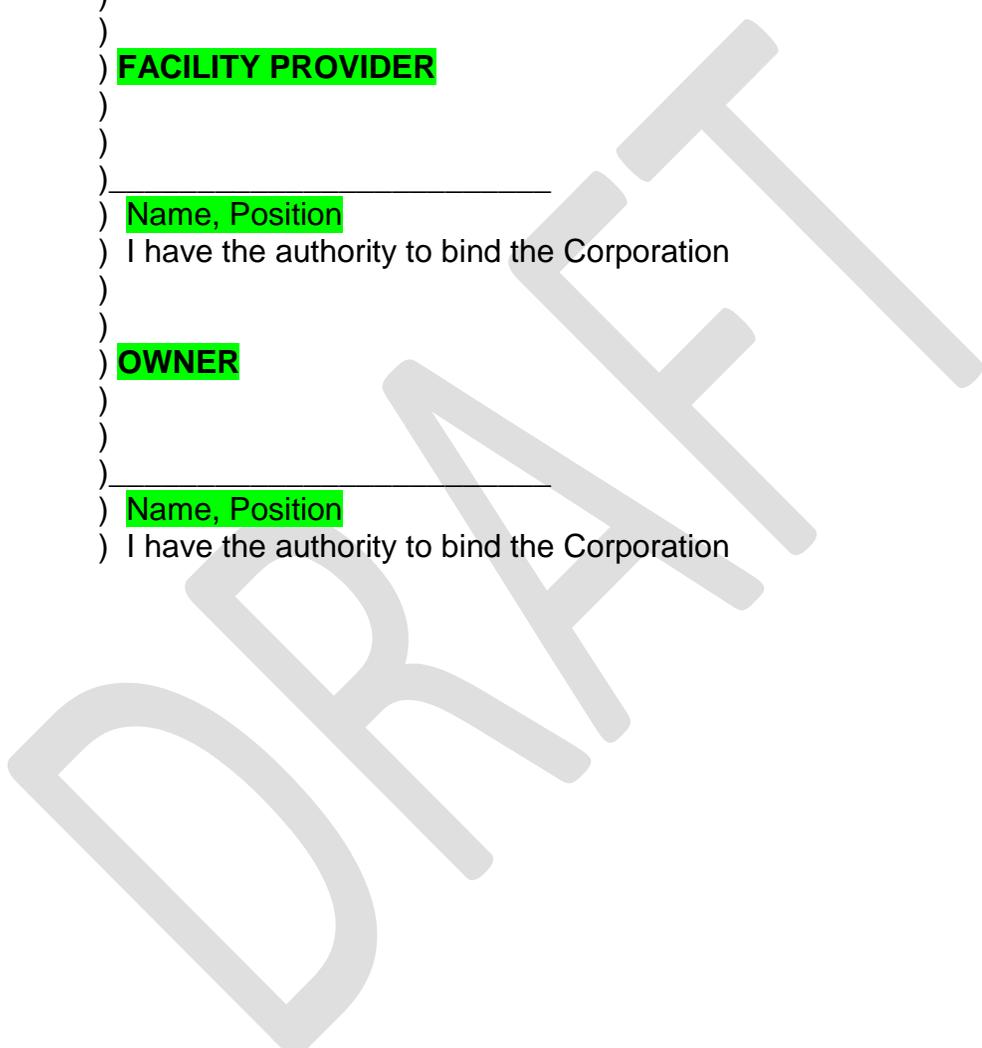
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) _____
) Cathie Richie, CITY CLERK

) **FACILITY PROVIDER**

)
)
) _____
) **Name, Position**
) I have the authority to bind the Corporation

) **OWNER**

)
)
) _____
) **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 – 63XXX-XXXX (LT)

Part of Lot XX, Concession X, Geographic Township of XXXX, now City of Kawartha Lakes.

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SCHEDULE "B"

FEES AND FINANCIAL SECURITIES

A. CASH PAYMENTS: AMOUNT

Current outstanding realty taxes,
or business taxes not including
supplementary assessment under
The Assessment Act.
Roll No. 1651 **XXX XXX XXXXX**

\$ **_____**

B. FINANCIAL SECURITY AMOUNT

Financial Security to be provided by the
Facility Provider to ensure completion of all
works required under the terms of this
Agreement, as noted in Section 10 herein.

\$ **_____**

SITE WORKS COST ESTIMATE

ITEM	DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	AMOUNT
	ROAD				
1	Entrance construction on XXXX Road	1			\$3,000.00
	LANDSCAPING				
2	Colorado or Blue Spruce Trees (minimum height of X.X m)	15		\$250.00	\$3,750.00
	TOTAL COST ESTIMATE				\$6,750.00

SCHEDULE "C"

Schedule "C"

Site Plan (Drawing No. C-1), prepared by Applicant, dated _____,
202_, last revised _____, 202_

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SCHEDULE "D"

Schedule "D" Grading & Drainage Plan (Drawing No. C-2), prepared by Applicant, dated
_____, 202____, last revised _____, 202_____

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SCHEDULE "E"

Schedule "E" Tower Elevation (Drawing No. C-2), prepared by Applicant, dated _____, 202_, last revised _____, 202_

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