

TELECOMMUNICATIONS FACILITY DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT made the            day of            , 202X  
Appendix " E "  
BETWEEN:            INSERT OWNER NAME            to  
hereinafter called the "Owner"            Report PLAN2022-028  
File No: D44-General

- and -

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 6) ("CPC");

AND WHEREAS the City is the Local Land-use Authority (LUA);

AND WHEREAS the City has passed Council Policy CP2018-014: Telecommunications and Antenna Siting Policy, most recently amended on September 27, 2022;

AND WHEREAS the aim of the consultation is to discuss site options; ensure that local processes related to antenna systems are respected; address reasonable and relevant concerns as defined in the CPC from both the land-use authority and the community they represent; and to obtain land-use authority concurrence in writing;

AND WHEREAS the Facility Provider proposes to construct an 85.3 metre insert tower type telecommunication facility at insert address (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.

## 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, agreed to 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. With respect to entrance works on City Land, vegetative buffers and grading plans only, this shall be 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 and the parties have agreed the Facility Provider shall comply with the following (referred to as the “Site Plans”) which are available for inspection at the Planning Division Office (180 Kent Street West, Lindsay) during business hours, Monday to Friday:

3.2.1 **Site Plan (Drawing No. C-1)**, prepared by **Applicant**, dated **Month XX, 202X**, last revised **Month XX, 202X**

3.2.2 **Grading & Drainage Plan (Drawing No. C-2)**, prepared by **Applicant**, dated **Month XX, 202X**, last revised **Month XX, 202X**

3.2.3 **Tower Elevation (Drawing No. C-2)**, prepared by **Applicant**, dated **Month XX, 202X**, last revised **Month XX, 202X**

## 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 **insert tower type** 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, other than as allowed by federal law, without the written approval of the City.

6. **COMPLIANCE WITH ONTARIO BUILDING CODE**

- 6.1 The Facility Provider acknowledges that for any structures not relating to the telecommunications equipment (i.e. Electronics-house of a certain size) which are confirmed to be subject to the Ontario Building Code (OBC) and where required, compliance with the OBC and regulations thereunder is mandatory. When required under the OBC, 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 OBC. The Facility Provider is encouraged to contact the City's Building Division to confirm which buildings and structures are exempt from the OBC.

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 landscaping, as required, or having commenced to install the said landscaping fails to proceed with reasonable speed, or in the event the landscaping or entrance works on City Land 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. 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.
- 7.3 All the services and works 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 grading or landscaping works required to be constructed and maintained by the Facility Provider.

9. **FINANCIAL SECURITY**

- 9.1 Upon execution of this Agreement the Facility Provider shall provide financial securities in a form satisfactory to the City in the total amount of \$**NIL or X,XXX.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.
- 9.2 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.

10. **RETURN OF FINANCIAL SECURITY**

- 10.1 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 \$**NIL or X,XXX.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.

11. **TAXES AND FEES**

- 11.1 Upon execution of this Agreement, the Owner covenants and agrees to pay all outstanding realty taxes on the Land as set out in Schedule "B" of this Agreement.

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 insert 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 concurred with 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. Any claims with respect to contaminated materials originating from the subject lands in conjunction with this concurrence will be the Facility Provider's responsibility. For clarity, Facility Provider shall have no responsibility for the effects of any environmental spills or releases that may have occurred or Environmental Contamination that may have existed prior to the Facility Provider's use or occupation of the property. Facility Provider shall only be responsible for the management of the excavated soil, contaminated or not, which are to be transported and disposed of in compliance with applicable standards.

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 invoice the Facility Provider and draw down on the security to satisfy the invoices.

## 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 OBC when valid, applicable, operative and required, and any constitutionally valid, applicable and operative 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 City may request to co-locate its telecommunications infrastructure on the telecommunications tower at the City's expense. The Facility Provider will consider this request in accordance with the applicable ISED directives, including the CPC-2-0-17 – *Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*. This shall only include telecommunications infrastructure for the sole and dedicated use of the City and its personnel ("City Infrastructure"). In accordance with CPC-2-0-17, the Facility Provider shall charge the City a reasonable commercial rate for use of the telecommunications tower. 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 will provide the City with access to the telecommunications tower for the purposes of installation, maintenance and removal of the City Infrastructure subject to the provisions of the Facility Provider's lease agreement with the Owner and subject to the terms of the Facility Provider's co-location agreement with the City. 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 1 year 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 Facility Provider's or 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 from the Project 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.
- 25.2 The City shall indemnify and save harmless the Facility Provider at all times from any loss or liability resulting directly from any matter related to the Land, including the City's access onto the Land, save and except for loss or liability arising from the negligence of the Owner or Facility Provider, their servants, agents or employees.
- 25.3 Neither the Facility Provider nor the City nor the Owner will be liable to the other (regardless of any other provision of this Agreement), in respect of any indirect, special, incidental or consequential damages including loss of revenue, loss of profits, loss of business opportunity or loss of use of any facilities or property, even if advised of the possibility of such damages.

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 Each Party shall at all times act reasonably in the performance of its obligations and the exercise of its rights and discretion under this Agreement.

- 26.3 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.
- 26.4 The parties agree and acknowledge that to the extent that any parts of this Agreement conflicts with federal law, regulations, directives, policies or guidances, notably, any present or future ISED policy, they will be inoperative.
- 26.5 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.
- 26.6 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  
L#L #L#

Facility Provider  
Address  
Town, Ontario  
L#L #L#

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

## 28. **FORCE MAJEURE**

- 28.1 Notwithstanding anything in this Agreement to the contrary, if any party is bona fide delayed or hindered in or prevented from the performance of any term, covenant or

act required hereunder by reason of strikes, labour troubles; inability to procure materials or services; power failure; restrictive governmental laws or regulations; riots; insurrection; sabotage; rebellion; war; act of God; health emergency or pandemic/epidemic (and associated closures or delays); or other reason whether of a like nature or not which is not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then the performance of that term, covenant or act is excused for the period of the delay and the party delayed will be entitled to perform that term, covenant or act within the appropriate time period after the expiration of the period of the delay.

- 28.2 The Parties acknowledge that the existence of the present Agreement and its content are strictly confidential and may not be made public or revealed to third parties without the written consent of the other party, unless such disclosure is mandated by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 or decision of the Information and Privacy Commissioner thereto.
- 28.3 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, and on the City.
- 28.4 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.
- 28.5 This agreement may be executed and transmitted electronically. Such copies and electronic versions of signatures will be deemed to be original signatures.

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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

)  
)  
\_\_\_\_\_

) 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     |
|------|---|----------|-------|------------|------------|
|      |   |          |       |            |            |
|      | <b>ROAD</b>   |          |       |            |            |
| 1    | Entrance construction on XXXX Road                      | 1        |       |            | \$3,000.00 |
|      |   |          |       |            |            |
|      | <b>LANDSCAPING</b>                                      |          |       |            |            |
| 2    | Colorado or Blue Spruce Trees (minimum height of X.X m) | 15       |       | \$250.00   | \$3,750.00 |
|      |   |          |       |            |            |
|      | <b>TOTAL COST ESTIMATE</b>                              |          |       |            | \$6,750.00 |