

# SERVICE FINANCING AGREEMENT

THIS AGREEMENT made this 5th day of April 2022.

## BETWEEN:

MEX DEVELOPMENTS INC.  
(hereinafter called the “Developer”)

PARTY OF THE FIRST PART

-and-

THE CORPORATION OF THE TOWN OF MINTO  
(hereinafter called the “Town”)

PARTY OF THE SECOND PART

## WHEREAS:

- A. The Developer is the owner of certain lands described in Schedule “A” hereto for which Site Plan Approval has been approved;
- B. The development of the Developer’s lands requires, *inter alia*, (i) the construction, installation and provision of certain Required External Services, identified in Schedule “B” attached hereto, and (ii) the payment of development charges in accordance with applicable law.
- C. The conditions of the Site Plan Approval Agreement, require that *inter alia* the Developer and Town enter into this Service Financing Agreement to provide for all of the financing required for the construction of the works, facilities and services described on Schedule “B”.

**NOW THEREFORE**, in consideration of the matters agreed to herein and in consideration of One Dollar (\$1.00) paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged, the Developer and the Town agree as follows:

### 1. Definitions

In this Agreement:

“Agreement” means this Agreement and all Schedules thereto and any documents incorporated herein by reference.

“Benefiting Area” means those lands that will derive a benefit from the construction, installation and/or provision of the Required External Services defined herein;

“Benefiting Owner” means any owner of land within the Benefiting Area, other than the Owner of those lands as described in Schedule “A” of this Agreement.

“Development Charge By-law” or “DC By-law” means the Town’s Development Charge By-law 2021-26 passed under the authority of the *Development Charges Act, 1997*, as amended.

“Development Charge” means a charge for development as defined in the Development Charge By-law, as amended or its successor by-law.

“Lands” means the lands described in Schedule “A” attached hereto.

“Parties” means the Developer and the Town, and “Party” means one of the parties.

“Required External Services” means the services and facilities described on Schedule “B” attached and in part consist of local services outside the development which are required for the development.

“Town’s Costs” means the Town’s reasonable costs in preparing this Agreement, including without limitation, the costs of consultants and legal counsel relating thereto.

“Town’s Engineers” means the consulting engineering firm retained by the Town.

## **2. Application of Agreement**

The Parties agree that this Agreement shall apply to the development of the entire Lands.

## **3. Required External Services**

The Parties agree that the Required External Services identified in Schedule “B” hereto are required to service the Lands.

## **4. Developer’s Obligation for Required External Services**

### **4.1 Costs of Services**

The Developer agrees to:

- a) construct and install the Required External Services in accordance with Schedule “B”; and
- b) be solely responsible for the financing of the Required External Services in the manner set out herein and subject to the Developer’s entitlement to repayments and/or credits.
- c) It being expressly understood that the Required External Services are to be designed, inspected and constructed at the Developer’s sole cost. The cost of the Required External Services to be funded by the Developer shall include, without limitation, the construction costs, all related taxes, all related engineering services, and the Town’s expenses.

### **4.2 Design and Approvals**

The Developer agrees:

- a) to be responsible for the design of all the Required External Services as approved by the Town’s Engineers, with the Town’s Engineers to act reasonably in all instances;
- b) to obtain the approval of all other necessary authorities to the design of the Required External Services;
- c) that the Required External Services shall be installed and constructed strictly in accordance with the designs as approved by the Town’s Engineer and all other necessary authorities in accordance with the terms of this Agreement;
- d) that all of the Required External Services shall be designed and their installation supervised by consulting engineers satisfactory to the Town’s Engineers, acting reasonably;
- e) that the Developer’s agreements or contracts with their consulting engineers shall include design, general supervision and resident supervision and shall provide that the Town’s Engineers or their representative may personally review the installation of the Required External Services and shall have the power to stop the work in the event that in their reasonable opinion the work is being performed in a manner that may result in a completed installation that would not be satisfactory to the Town.
- f) that all design drawings shall be approved by the Town, acting reasonably, before the construction of the Required External Services; and
- g) that all design drawings shall carry the seal of the professional engineer who is responsible for the designs and shall be signed by them.

### **4.3 Construction of Required External Services**

The Developer agrees:

- a) that the Required External Services shall be constructed in accordance with the approved design drawings;
- b) to file copies of all contracts and change orders with the Town's Engineers and shall provide work schedules for his or her approval before any work commences and that all work shall be carried out in accordance with the submitted contracts, work orders and approved work schedules; and
- c) that the Town's Engineers may conduct, at the expense of the Developer, any tests that he or she in his or her reasonable opinion considers necessary to satisfy themselves as to the proper installation of the Required External Services.

### **4.4 Indemnity**

The Developer shall indemnify and save harmless the Town and its servants, agents and employees from all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly by reason of the design, installation, construction, operation or existence of any of the Required External Services required under this Agreement, save and except for any actions, causes of actions, suits, claims or demands that arise in whole or in part by reason of the negligence or willful acts or omissions of the Town, its servants, agents or employees or those for whom any of them are responsible at law.

### **4.5 Failure to Comply**

In the event that the Developer fails to install the Required External Services as and when required by the Town's Engineers or having commenced to install the Required External Services, fails or neglects to proceed with reasonable speed or, in the event that the Required External Services are not being installed according to the specifications and requirements of the Town and of this Agreement, in addition to any other remedy the Town may have, upon the Town's Engineers giving at least five (5) business days' written notice by prepaid registered mail to the Developer and following the expiry of such five (5) business day period the Developer failing to take any action to remedy the matters set out in such notice, the Town may, but is not obligated to, without further notice, draw upon the Letter of Credit referred to in Section 6.2 for the estimated cost of the works and enter upon the Lands and proceed to supply all materials and to do all necessary works in connection with the installation of the Required External Services, including the repair or reconstruction of faulty work and the replacement of materials not in accordance with the Specifications, and to charge the cost thereof, including engineering services, to the Developer. In the event that the Letter of Credit is not sufficient to cover such costs, the Developer shall pay the deficit upon demand by the Town and the deficit shall be a charge upon the Lands until paid save for any lands which shall now or hereafter be deeded or dedicated to the Town or any other public authority. Such entry by the Town shall be as agent for the Developer and shall not be deemed, for any purposes whatsoever, as an acceptance or assumption of the Required External Services by the Town. If the delay is caused by a strike, lockout, labour disturbance, Act of God or similar occurrence, the Developer shall be deemed not to be in default under this Section until a reasonable time after such occurrence. In the event that a claim is made against the Town under the Construction Lien Act in respect of work that is done or to be done by the Developer pursuant to this Agreement, in addition to any other remedy the Town may have, upon the Town's Engineers giving 48 hours written notice by prepaid registered mail to the Developer, the Town may, without further notice, draw upon the Letter of Credit referred to in Section 6.2 for the amount of the claim plus security for costs as provided for in s.44 of the Construction Lien Act, as may be amended.

### **4.6 Emergency Repairs**

At any time prior to the assumption of the Required External Services by the Town, if any of the Required External Services provided by the Developer do not function properly and, in the reasonable opinion of the Town's Engineers, repairs are necessary immediately to prevent damage or hardship to any persons or any property, the Town may, but is not obligated to, make whatever repairs may be deemed necessary and the Developer shall pay to the Town,

immediately upon receipt of a written demand, all expenses including engineering fees, based upon the cost of the work, incurred in making the said repairs. Such repairs shall not be deemed an acceptance of the Required External Services by the Town or an assumption by the Town of any liability in connection therewith and shall not release the Developer from any of its obligations under this Agreement.

#### **4.7 Applicable Laws**

The Developer agrees:

- a) to comply with all statutes, laws, by-laws, regulations, ordinances, orders and requirements of governmental or other public authorities having jurisdiction at any time and from time to time in force (“Applicable Laws”) in constructing and installing the Required External Services and, without limiting the foregoing, to comply with, and cause to be complied with, the provisions of the Occupational Health and Safety Act, the Environmental Protection Act and the Ontario Water Resources Act and any regulations, policies and guidelines relating thereto, including all obligations of the constructor and employer under the Occupational Health and Safety Act and regulations as applicable, and any obligation to obtain any approval or permit required under the Environmental Protection Act or the Ontario Water Resources Act or any regulations, policies and guideline relating thereto; and
- b) to do, cause to be done or refrain from doing any act or thing as directed by the Town or the Town’s Engineers if at any time the Town or the Town’s Engineers considers that any situation or condition is unsafe, damaging to the environment or contrary to the provisions of any Applicable Laws and that if, within five (5) business days of receipt of such direction from the Town’s Engineers, the Developer fails to comply with such direction or commence to comply with such direction in the event that such direction is incapable of being complied with within the five (5) business day period, the Town may take action to remedy the situation at the expense of the Developer and in this regard the Town shall also be entitled to draw upon the Letter of Credit referred to in Section 6.2, provided that if any delay in the Developer’s compliance is caused by a strike, lockout, labour disturbance, Act of God or similar occurrence, the Developer shall be deemed not to be in default under this Section until a reasonable time after such occurrence.

#### **4.8 General Liability Insurance Policy**

The Developer agrees:

- a) to take out and keep in force comprehensive general liability insurance against claims for personal injury, death or property damage resulting from any accident or occurrence relating to the Required External Services;
- b) to deliver with this Agreement (if not previously delivered) a certified copy of the policy of liability insurance or a certificate of insurance setting out the essential terms and conditions of insurance, the form and content of which shall be satisfactory to the Town’s Engineers or their designate, all acting reasonably, naming the Town and its agents as an additional insured; and
- c) that such policy shall be kept in full force and effect until all of the Required External Services have been assumed by the Town and shall comply with the following provisions:
  - i. the minimum limit shall be \$5,000,000, all inclusive, for property damage and personal liability;
  - ii. it shall not contain a clause for exclusion for blasting;
  - iii. the premium must be paid initially for a period of one year and the policy shall be renewed for further one-year periods until all Required External Services are installed and assumed by the Town;
  - iv. if the policy contains a deductible clause, the Developer agrees to deposit a certified cheque or a Letter of Credit with the Town in the deductible amount, as a deposit, together with a letter from the Developer authorizing the Town to appoint an independent adjuster and to investigate claims less than the deductible amount and authorizing the Town to pay such claims determined to

- be valid by the adjuster out of the said deposit. The Developer is responsible for all adjustment service costs and shall maintain the deposits in the amount of the deductible;
- v. the policy shall provide for cross-liability and severability of interest protecting the Town against claims by the Developer as if they were separately insured and providing that the Town shall be insured notwithstanding any breach of any condition in the policy by any other insured; and
  - vi. the policy shall provide that the insurer shall not cancel or refuse to renew it without first giving the Town at least sixty (60) days prior written notice.

#### 4.9 No Relief

The issuance of such policy of insurance shall not be construed as relieving the Developer from responsibility for other or larger claims, if any, for which the Developer is or may be liable under this Agreement or at law.

#### 4.10 Notice of Cancellation

If the Town receives notice from the insurer that it has cancelled or refused to renew the insurance, or that it intends to do so, or if the Town otherwise determines that the insurance has lapsed or is about to lapse without renewal or replacement, the Town may, at the sole cost and expense of the Developer, obtain insurance in accordance with this section. In such circumstances, the Town shall be entitled to obtain new insurance or add the necessary insurance coverage to the Town's blanket insurance. The Developer shall forthwith, upon receipt of written notice therefore from the Town, reimburse the Town for the cost of such insurance payable as noted above. In addition, the Town shall, at its sole discretion and option, be entitled to draw upon the Letter of Credit referred to in Section 6.1 to cover the costs of the insurance.

### 5. Agreement to Reimburse Developer for Services

The Parties acknowledge that there is an agreement for the Town to reimburse the Developer for certain aspects of the Required External Services in accordance with the **Required External Services and Cost Sharing** table set out in Schedule B, attached hereto. Reimbursement will be made when the Required External Services have been completed to the satisfaction of the Town, in its sole discretion.

The Town agrees to reimburse the Developer a lump sum payment of \$275,000.00.

### 6. Securities

#### 6.1 Type and amount of security

The Developer shall deposit with the Town cash, or an irrevocable standby letter of credit from a Canadian chartered bank acceptable to the Town and in a form approved by the Town based upon Form 2 attached to this Agreement [the "security"] to secure and guarantee to the Town due performance of the Developer's obligations under this Agreement and the security shall be in an amount equal to either:

- One hundred and (110%) of the cost of Required External Services based on the Total Estimated Cost of such services as outlined in Schedule "B" including all applicable taxes, engineering fees, and contingency allowances, but would exclude the Town's Portion of the project. This security amount equates to \$361,292.74.
- The amount of Security held may be reduced upon the completion of components of the project, as approved by the Town's Engineer, but is not to be reduced to less than 10% of the Total Estimated Cost for a 1 year maintenance period after this project has been completed. Upon the expiration of the maintenance period and the project being accepted by the Town, the remaining security amount will be released.

In the event that a letter of credit is provided then the Town shall be named as beneficiary/secured party therein.

#### 6.2 Reduction of security

The security shall remain in place until the Required External Services have been completed to the satisfaction of the Town in its sole opinion.

### **6.3 Authority to draw upon security**

The Developer specifically authorizes the Treasurer of the Town to draw upon the security provided pursuant this Agreement and to use such monies to pay for any costs or expenses incurred by the Town including without limitation costs or expenses arising from damages or deficiencies caused by the Developer or the Developer's contractors or agents, successors or assigns, in connection with or relating to the development governed by this Agreement and/or to satisfy any financial obligation or other obligation of the Developer to the Town pursuant to the terms of this Agreement when due.

### **6.5 Stop Work Order**

If the Town makes a demand for additional security or Letter of Credit pursuant to the provision of this Agreement, or if the Town has drawn upon the security or Letter of Credit pursuant to this Agreement, and the Developer has failed to deposit such additional security or Letter of Credit with the Town within fourteen (14) days or to replenish such security or Letter of Credit within (14) days, the Developer shall be deemed to be in breach of this agreement and the Town may issue a stop work order.

### **7. Cost Sharing**

The Developer and the Town agree that the Town will reimburse the Developer in three (3) annual installments totaling the amount of \$275,000.00 for the Town's portion of the reconstruction work as outlined in Schedule B. The first payment will be made one year after the date of Substantial Completion of the prescribed King Street North reconstruction work.

### **8. Registration on Title**

The Developer acknowledges that the covenants herein contained shall be considered covenants that run with the Lands and hereby consents to the registration of this Agreement on title to any part of the Lands of which the Developer is the owner at the time of execution of this Agreement. The Developer agrees to provide a complete and accurate legal description of the Lands to the Town and to execute all further documents as may be necessary to register this Agreement against the Lands.

### **9. Effective Date of this Agreement**

This Agreement shall become effective on the date of the execution of this Agreement by the Town and the Developer (the "Effective Date").

### **10. Estoppel**

The Developer shall be and are hereby estopped from asserting in any proceeding at any time and in any forum that the Town does not or did not have lawful authority to enter into this Agreement, or that any of the terms of this Agreement are not within the jurisdiction or capacity of the Town to enter into. The Developer acknowledges that it has voluntarily entered into this Agreement.

### **11. Time of Essence**

Time shall be of the essence in this Agreement.

### **12. Amendments Only in Writing**

No modification, variation, amendment or termination by mutual consent of this Agreement, and no waiver of the performance of any of the responsibilities of the Parties shall be effective unless such action is taken in writing by instrument or document executed by the Parties, excepting that the foregoing shall not apply where an express provision of this Agreement permits such modification, variation, amendment or termination pursuant to any other means, and in such instance the said provision shall apply. All representations and understandings of the Parties with respect to the Lands and the subject matter of this Agreement are

contained in this Agreement, and there are no other representations or understandings between the Parties. This Agreement supersedes any and all prior agreements and understandings between the Parties with respect to the subject matter of this Agreement.

### **13. Notices**

- (i) Except as otherwise specified herein, any notice hereunder shall be given in writing, by delivery in person, or by registered mail (return receipt requested) or by facsimile transmission, properly addressed to the Party to whom such notice is given, with postage or charges, if any, prepaid. A notice shall be deemed to have been given only when received by the Party to whom such notice is directed.
- (ii) Any notice, invoice or other writing required or permitted to be given pursuant to this Agreement (including notice of a change of address) shall be deemed to have been given if delivered personally to the party or to an officer of the applicable corporation or, if delivered by registered mail, on the third (3<sup>rd</sup>) day after mailing. The address for service of each of the parties is as follows:

MEX Developments Inc.  
6297 Wellington Road 109  
Harriston, ON  
N0G 1Z0

The Corporation of the Town of Minto  
5941 Highway 89  
Harriston, ON  
N0G 1Z0

### **14. Schedules**

Attached hereto and forming part of this Agreement are the following Schedules:

- “A” Description of the Lands
- “B” Required External Services (to be funded by Developer)
- “C” Details for Letter of Credit

### **15. Successors and Assigns**

This Agreement shall ensure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, subject only to any limitations explicit in this Agreement.

### **16. Developer’s Acceptance of Agreement**

The Developer shall not call into question, directly or indirectly, in any proceedings whatsoever in law or in equity or before any administrative tribunal the right of the Town to enter into this Agreement and to enforce each and every term of this Agreement and this Agreement may be pleaded as estoppel against the Developer in any such proceedings.

### **17. Further Assurances**

The Parties shall from time to time and at all times do such further acts and things, and execute all such further documents and instruments, as may be reasonably required to carry out and implement the true intent and meaning of this Agreement.

**REMAINDER OF PAGE INTENTIONALLY LEFT IN BLANK**

**IN WITNESS WHEREOF** the parties hereto have affixed their corporate seal under the hand of their proper officers or set their hand and seal.

**MEX Developments Inc.**

Per: \_\_\_\_\_ Date: \_\_\_\_\_  
Owner – Jerry Robous

**THE CORPORATION OF THE TOWN OF MINTO**

Per: \_\_\_\_\_ Date: \_\_\_\_\_  
Mayor – George Bridge

Per: \_\_\_\_\_ Date: \_\_\_\_\_  
Clerk – Annilene McRobb

We have authority to bind the Corporation



## SCHEDULE "A"

### LEGAL DESCRIPTION

108 Queen Street North, within the former Town of Harriston, Town of Minto

FIRSTLY: PART LOTS 84 & 85, CONCESSION C, HARRISTON, MINTO, PARTS 1 & 2 PLAN 61R21627; SECONDLY: PART LOTS 84 & 85, CONCESSION C MINTO, PART 3 PLAN 61R21627; TOWN OF MINTO

**SCHEDULE "B"**  
**REQUIRED EXTERNAL SERVICES AND COST SHARING TABLE**

External Services, as described in project King Street North, Rail Land Development, Harriston, ON, Town of Minto, prepared by Moorefield Excavating, project no. 191-102, latest revision.

The limits of the Town portion of the King Street North right-of-way works are from William Street East intersection - Station 0+340, north to CB11 - Station 258.26 per the King Street North Reconstruction Plans, as approved by the Town.

TOWN OF MINTO/MEX RAIL LANDS COST-SHARING				
<u>Component</u>	<u>MEX Portion</u>	<u>Town Portion</u>	<u>Total</u>	
Roads & Drainage	147,925.82	184,567.70	332,493.52	
Sanitary sewers	47,007.35	47,312.54	94,319.89	
Water	<u>108,296.03</u>	<u>45,521.29</u>	<u>153,817.32</u>	
	<u>303,229.20</u>	<u>277,401.54</u>	<u>580,630.74</u>	

**SCHEDULE "C"**

**NOTE:** Town policy requires that the Letter of Credit be issued by any one of the following financial institutions:

**APPROVED FORM FOR LETTER OF CREDIT**

Your Name & Address	Date of Issue: Irrevocable Standby Letter of Credit
	Reference No:
APPLICANT BENEFICIARY:	THE CORPORATION OF THE TOWN OF MINTO

We hereby authorize you to draw on (Financial Institution & Address) for Account of (Applicant), up to an aggregate amount of (amount) (CAD) of lawful money of Canada available by Draft(s) on demand.

Pursuant to the request of our customer, (applicant), we, (Financial Institution) hereby establish and give to you an irrevocable standby letter of credit (the "credit") in your favour in the total amount of (amount) Canadian dollars pursuant to the agreement between the Town of Minto and (applicant) dated (date) with respect to *the total cost of all development works and engineering costs* **[wording to be amended as necessary to identify purpose of the Letter of Credit i.e. as an assurance that required works will be completed]**

This credit may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you which demand we shall honour without enquiring whether you have a right as between yourself and our said customer to make such demand and without recognizing any claim of our said customer.

The amount of this credit shall be reduced from time to time as advised by notice in writing given to us from time to time by you.

This credit will continue up to the (date), subject to the following condition:

It is a condition of this credit that it shall be deemed to be automatically extended without amendment for one year from the present or any future expiry date hereof, unless at least 30 days prior to such expiry date, we notify you in writing by registered mail, that we elect not to consider this credit to be renewable for an additional period. Upon receipt by you of such notice, you may draw hereunder by means of your signed written demand for payment.

Partial Drawings are permitted.

Drafts must be shown and negotiated not later than the (date) or automatically extended date.