

SETTLEMENT AGREEMENT

This Settlement Agreement (“*Agreement*”) is entered into between Attic Angel Prairie Point, Inc., a nonstock corporation organized and existing under the laws of the State of Wisconsin (“*AAPP*”), and the City of Madison, Wisconsin, a municipal corporation organized and existing under the laws of the State of Wisconsin (the “*City*”).

1. **Definitions.** In this Agreement:

(a) The “*Properties*” means the land and improvements on the parcels listed on Exhibit A which is attached hereto and incorporated herein by reference, all located in the City of Madison, Wisconsin.

(b) “*Cases*” means the consolidated actions pending in the Court titled *Attic Angel Prairie Point, Inc. v. City of Madison*, Case No. 12 CV 1191, consolidated with 13 CV 1004, 14 CV 1453, and 15 CV 946.

(c) “*Court*” means the Circuit Court for Dane County, Branch 14.

(d) “*Petition for Review*” means the Petition to Review a Decision of the Court of Appeals, District IV dated March 5, 2015, and Order Denying City’s Motion for Reconsideration dated March 30, 2015, Case No. 2012 AP 2095.

(e) A “*tax year*” means a calendar year.

2. **Refund of Taxes.** The City shall issue a refund payable to Attic Angel Prairie Point, Inc., pursuant to Wis. Stat. § 74.35, in the amount of \$_____ as a refund of property taxes previously paid by AAPP on the Properties for the tax years 2011, 2012, 2013, and 2014. AAPP expressly waives any right to receive monthly interest of 0.8% from the date of the filing of each claim against the City under Wis. Stat. § 74.35(4), which as of August 31, 2015, is \$_____.

3. **Waiver of Costs.** Each party waives all claims for costs.

4. **Time of Payment.** The City shall pay the refund of taxes provided in Section 2 of this Agreement in full, within thirty (30) days after the execution of this Agreement by both parties.

5. **Stipulation for Dismissal.** Within ten (10) days after AAPP receives payment in full of the refund of taxes, the parties shall:

(a) Enter into a stipulation, in the form attached as Exhibit B to this Agreement and signed by their respective attorneys, for the dismissal of the Cases on the merits, with prejudice, and without costs to either party; and

(b) File the stipulation with the Court.

6. **Voluntary Dismissal.** Within ten (10) days after AAPP and the City have executed this Agreement, the City shall file with the Wisconsin Supreme Court a notice of voluntary dismissal of Case No. 2012 AP 2095, which is before the Supreme Court on the Petition for Review, in the form attached as Exhibit C to this Agreement.

7. **Recognition of Tax Exemption.** The City recognizes and acknowledges that the Properties are exempt from general property taxes pursuant to Wis. Stat. § 70.11(4d) for tax years 2010, 2011, 2012, 2013, and 2014. The City also recognizes and acknowledges that absent a change in the law, the Properties will continue to be exempt from general property taxes unless, pursuant to Wis. Stat. § 70.11(intro) their use, occupancy or ownership changes in a way that makes the Properties taxable.

8. **Payment for Municipal Services Agreement.** Within ten (10) days after AAPP receives payment in full of the refund of taxes, the parties shall enter into a Payment for Municipal Services Agreement in the form attached as Exhibit D to this Agreement.

9. **Payment for Prior Municipal Services.** AAPP recognizes that the City provided certain municipal services to AAPP during the 2011, 2012, 2013 and 2014 tax years. Even though the Properties were exempt from general property taxes during those tax years, AAPP shall pay the City \$175,000.00 in recognition of those services being previously provided.

10. **Responsibility for Fees and Expenses of Attorneys.** Each party shall be solely responsible for the fees of its attorneys.

11. **No Representations.** Each party acknowledges and agrees that no representation or promise not expressly contained in this Agreement has been made by the opposing party or any of its employees, attorneys, agents, or representatives. Each party acknowledges that it is not entering into this Agreement on the basis of any such representation or promise, express or implied.

12. **Binding on Successors.** This Agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors, and assigns.

13. **Governing Law.** This Agreement shall be governed and interpreted by the laws of the State of Wisconsin.

14. **Interpretation of Agreement.** The parties acknowledge that this Agreement is the product of joint negotiations. If any dispute arises concerning the interpretation of this Agreement:

(a) Neither party shall be deemed the drafter of this Agreement for purposes of its interpretation.

(b) The parties shall attempt in good faith to resolve the dispute.

(c) If the parties cannot resolve the dispute after reasonable efforts, the dispute shall be submitted to mediation, at the request of either party. The mediator shall be

jointly agreed on by the parties or, if they are unable to agree, shall be appointed by the Court at the request of either party. The cost of the mediator shall be shared equally by the parties.

15. **Representation By Counsel; Reliance.** Each party acknowledges that it has been represented throughout all negotiations leading up to this Agreement by attorneys of its choice and that its attorneys have approved this Agreement. Each party represents that in entering into this Agreement, the party has relied on its own judgment and on the advice of its attorneys, and that no statements or representations made by the other party or any of its agents, except statements or representations expressly made in this Agreement, have influenced or induced the party to sign this Agreement.

16. **No Assignment or Transfer.** AAPP represents and warrants that it has not assigned or transferred to anyone and will not assign or transfer to anyone any of the claims in the Cases.

17. **Entire Agreement.** This Agreement states and constitutes the entire agreement of the parties concerning its subject matter and supersedes all prior or contemporaneous agreements (written or oral), representations, negotiations, and discussions concerning its subject matter.

18. **Waiver.** No waiver of any breach of this Agreement shall be deemed a continuing waiver of that breach or a waiver of any other breach of this Agreement.

19. **Amendments or Modifications.** This Agreement may not be amended, modified or altered in any manner whatsoever, except by a further written agreement duly authorized and signed by the parties.

20. **Authorization to Sign Agreement.** Each person signing this Agreement on behalf of either party represents and warrants that the person holds the position indicated beneath the person's signature and that the person has the requisite corporate or other authority to sign this Agreement on behalf of the party. Each party represents that entry into this Agreement is not in contravention of any agreement or undertaking to which the party is bound. The City has authorized the City Attorney to enter into this Agreement pursuant to Resolution No. _____, File No. _____, approved on September ____, 2015.

21. **Reading of Agreement.** Each person signing this Agreement on behalf of either party acknowledges that the person has read this Agreement, that the person understands the terms and conditions of this Agreement, that the person (if other than an attorney for the party) has been advised by legal counsel concerning this Agreement, and that the person freely and voluntarily signs this Agreement.

ATTIC ANGEL PRAIRIE POINT, INC.

CITY OF MADISON

By: _____
Mary Ann Drescher, President
Date: September ____, 2015

By: _____
Michael P. May, City Attorney
Date: September ____, 2015

EXHIBIT A

Parcels

Parcel No.	Street Address
0708-222-0301-7	502 Samuel Drive
0708-222-0302-5	8604 Blackwolf Drive
0708-222-0303-3	8612 Blackwolf Drive
0708-222-0401-5	517 Samuel Drive
0708-222-0501-3	8601 Blackwolf Drive
0708-222-0502-1	8602 Wood Violet Way
0708-222-0503-9	8609 Blackwolf Drive
0708-222-0504-7	8619 Blackwolf Drive
0708-222-0505-5	8627 Blackwolf Drive
0708-222-0506-3	8635 Blackwolf Drive
0708-222-0507-1	515 Meadow Rose Lane
0708-222-0508-9	503 Meadow Rose Lane
0708-222-0509-7	8626 Wood Violet Way
0708-222-0510-4	8618 Wood Violet Way
0708-222-0511-2	8610 Wood Violet Way
0708-222-0601-1	406 Samuel Drive
0708-222-0602-9	8613 Wood Violet Way
0708-222-0603-7	8625 Wood Violet Way
0708-222-0604-5	427 Meadow Rose Lane
0708-222-0605-3	419 Meadow Rose Lane
0708-222-0606-1	411 Meadow Rose Lane
0708-222-0607-9	403 Meadow Rose Lane
0708-222-0701-9	327 Samuel Drive
0708-222-0801-7	437 Samuel Drive
0708-222-0802-5	401 Wild Indigo Lane
0708-222-1001-2	424 Meadow Rose Lane
0708-222-1002-0	432 Meadow Rose Lane
0708-222-1003-8	504 Meadow Rose Lane
0708-222-1004-6	512 Meadow Rose Lane
0708-222-1005-4	520 Meadow Rose Lane
0708-222-1006-2	8640 Blackwolf Drive
0708-222-1007-0	8632 Blackwolf Drive
0708-222-1008-8	8624 Blackwolf Drive
0708-222-1101-0	406 Meadow Rose Lane

EXHIBIT B

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 14

DANE COUNTY

ATTIC ANGEL PRAIRIE POINT, INC.,
640 Junction Road
Madison, Wisconsin 53717,

Plaintiff,

Case No.: 12 CV 1191
(Consolidated with 13 CV 1004,
14 CV 1453 and 15 CV 946)
Case Code: 30701

v.

CITY OF MADISON,
210 Martin Luther King Jr., Blvd.
Madison, Wisconsin 53703,

Defendant.

STIPULATION AND ORDER FOR DISMISSAL

NOW COME Plaintiff, Attic Angel Prairie Point, Inc., and Defendant, City of Madison, by their undersigned counsel, and stipulate that the claims of Plaintiff and any counterclaims which were or could have been asserted in this matter as between Plaintiff and Defendant may be dismissed with prejudice and without costs to either party. The parties have entered into a settlement agreement setting forth the terms on which these consolidated actions have been resolved, and nothing in this stipulation shall alter, amend, or modify any terms of such settlement agreement.

Dated this _____ day of September, 2015.

AXLEY BRYNELSON, LLP

Attorney Gregory C. Collins
WI State Bar No. 1018195
Attorney for Plaintiff Attic Angel Prairie Point, Inc.
2 East Mifflin Street, Suite 200
Madison, WI 53703
Telephone: 608-257-5661
Facsimile: 608-257-5444
Email: gcollins@axley.com

Dated this _____ day of September, 2015.

CITY OF MADISON

Attorney Michael P. May
WI State Bar No. 1011610
City Attorney for Defendant City of Madison
210 Martin Luther King Jr., Blvd., Room 401
Madison, WI 53703
Telephone: 608-266-4511
Facsimile: 608-267-8715
Email: mmay@cityofmadison.com

Based upon the foregoing stipulation of the parties,

IT IS SO ORDERED this _____ day of _____, 2015.

BY THE COURT:

Honorable C. William Foust
Dane County Circuit Court Branch 14

EXHIBIT C

STATE OF WISCONSIN
COURT OF APPEALS
APPELLATE DISTRICT IV

ATTIC ANGEL PRAIRIE POINT, INC.,

Plaintiff-Respondent,

vs.

Appeal No. 2012-AP-002095

CITY OF MADISON,

Petitioner-Defendant-Appellant.

On Appeal from the Honorable Peter C. Anderson
Dane County Circuit Court Judge
Dane County Circuit Court Case No. 2011-CV-2746

NOTICE OF VOLUNTARY DISMISSAL

The Petitioner-Defendant-Appellant, City of Madison, by the City Attorney and pursuant to Article II, L.4 of the Wisconsin Supreme Court Internal Operating Procedures hereby notifies the Wisconsin Supreme Court of Petitioner-Defendant-Appellant's voluntary dismissal of its Petition for Review in the

above captioned case that was filed on April 28, 2015, and respectfully requests that the Supreme Court consent to this voluntary dismissal.

Dated this _____ day of September, 2015.

CITY OF MADISON

By: _____
Michael P. May
State Bar No. 1011610
City Attorney
210 Martin Luther King Jr. Blvd.
Room 401
Madison, WI 53703

EXHIBIT D

AGREEMENT RE: PAYMENT FOR MUNICIPAL SERVICES

THIS AGREEMENT is made effective this ___ day of September, 2015 by and between Attic Angel Prairie Point, Inc., a Wisconsin nonstock, not for profit corporation (“**AAPP**”) having offices at the address hereinafter described; and the City of Madison (the “**City**”), a Wisconsin municipal corporation, having offices at the address hereinafter described.

WITNESSETH:

WHEREAS, AAPP is the fee simple owner of the real estate parcels listed on Exhibit 1 (the “**Premises**”); and

WHEREAS, the Premises consists of _____ residential dwelling units (each a “**Unit**” and collectively, the “**Units**”) that are occupied by individuals age 55 and older (the Premises and Units are collectively referred to as the “**Project**”); and

WHEREAS, the Project is exempt from real estate taxation under the provisions of Section 70.11(4d), of the Wisconsin Statutes, as a benevolent retirement home for the aged; and

WHEREAS, the Parties recognize that valuable government services and benefits that relate directly or indirectly to health, safety, and welfare will be provided to the Residents of the Project, and that these services may include, but are not limited to, fire and police protection, emergency medical service, street maintenance, and public transportation; and

WHEREAS, AAPP desires to make an annual voluntary payment to the City to support the provision of the valuable government services to the Residents of the Project.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, as well as other good and valuable consideration moving from each party to the other, it is hereby agreed as follows:

1. **Recitals**. The recitals hereto are hereby incorporated by reference.
2. **Term**. The term of this Agreement shall commence upon the date of execution hereof; and shall continue indefinitely thereafter, unless and until terminated as provided for herein.
3. **Definitions**. As used in this Agreement, the following terms shall have the following meanings:
 - (a) “**Resident(s)**” shall mean those individual(s) occupying a Unit in the Project pursuant to an Occupancy and Services Agreement.
 - (b) “**Occupancy and Services Agreement**” shall mean the occupancy and services agreement utilized from time to time by AAPP relative to Units comprising the

Project, which occupancy and services agreement has been approved by the Office of the Commissioner of Insurance pursuant to the provisions of Chapter 647 of the Wisconsin Statutes, as amended from time to time.

(c) “*PMS*” shall mean “Payment for Municipal Services,” which consists of an annual fee for each Unit of the Project as determined in accordance with Section 5 below.

(d) “*Municipal Services*” shall mean those public health, safety, transportation and other governmental services more particularly described on Exhibit 2 attached hereto and incorporated herein, which services shall be made available to the Residents by the City.

(e) “*Party*” or “*Parties*” shall mean AAPP and/or the City, as the case may be.

Other terms shall have the definitions assigned to them as elsewhere provided for herein or in the recitals hereto.

4. **Payment and Collection of PMS or Real Estate Taxes.** During the term of this Agreement, AAPP shall pay to the City either a PMS payment as calculated herein for Units exempt from property taxation, or a property tax payment for each Unit subject to property taxation. The type of payment to be made for each Unit will be determined annually by its tax status for that year. Depending on the applicable tax status, a Unit may move between paying a PMS payment or a property tax payment.

(a) **PMS Payment.** During the term of this Agreement, the City agrees to make available to the Residents the Municipal Services; and in consideration therefor, AAPP agrees to pay to the City the annual PMS provided for herein. The City shall invoice AAPP directly for PMS as provided for in Section 5 of this Agreement, on or before December 31 of each year commencing with the year 2015. AAPP shall pay such invoice on or before January 31 of the following year, subject however, to the provisions of this Agreement. AAPP shall not be charged interest or any late fees on any PMS paid subsequent to the date it is due. In the event any provision of this Agreement requires that there be a credit applied to PMS, it shall be applied against the then current payment of PMS and if there is still a credit owing after applying it to the current PMS, then the credit shall be applied against the payment of PMS for the subsequent calendar year. On or before December 1 and each year (beginning with the year 2015), AAPP shall notify the City in writing of all circumstances giving rise to credit(s) or other adjustments to PMS as required under the terms of this Agreement.

(b) **Property Taxes.** For any Units subject to property taxes, AAPP will pay the applicable tax. Each Party retains all of its respective rights and obligations under state and federal law with respect to property taxation.

5. **Determination and Administration of PMS Payments.** In connection with the administration and imposition of PMS relating to the Units comprising the Project, the Parties agree as follows:

(a) The total PMS payments for any calendar year shall be determined by the City no later than December 15 of the prior calendar year (*i.e.* the PMS payment for 2015 shall be determined no later than December 15, 2015, invoiced no later than December 31, 2015, and paid no later than January 31, 2016). AAPP shall pay the PMS in the manner provided for in Section 4 above. The total PMS shall initially be calculated based on the City's approved and adopted budget for the particular Municipal Services for the year in which the first payment shall be made. The total PMS shall be adjusted annually based on the net increase or decrease in the City tax levy. In addition, the Parties agree that on or about October 15, 2020 and every five (5) years thereafter during the term of this Agreement, the Parties shall meet to review the scope of services as reflected in the "Municipal Services Fee Calculation Methodology", shown in Exhibit 2. The Parties further agree that, upon mutual agreement, adjustments to the total PMS may be made based on the review of the history of the use of services by the Residents. Upon agreement of the Parties, they shall execute an amendment to Exhibit 2, indicating any services added or removed, as well as any changes in the "calculation methodology". Any amendment shall be the basis for calculating the PMS that shall be adjusted annually until the next review.

(b) Subject to the following, PMS payments shall be applicable only to those Units which have been issued a certificate of occupancy by the City or for which a certificate of occupancy is issuable by the City. For each Unit, PMS payments shall commence for the calendar year following the date on which a certificate of occupancy is issued by the City or for which a certificate of occupancy is issuable by the City. The aggregate amount of PMS for all Units in the Project for which certificates of occupancy have been issued by the City or for which certificates of occupancy are issuable by the City for the calendar year following the date of that the certificates of occupancy have been issued by the City or are issuable by the City and for each calendar year thereafter during the term of this Agreement, shall be determined for each such year in accordance with the methodology set forth on Exhibit 2 attached hereto and incorporated herein.

6. **Adjustment of PMS.** In addition to any adjustment made pursuant to Section 5 during the term of this Agreement, the obligation of AAPP to pay PMS to the City is subject to the following:

(a) In the event the average monthly occupancy rate of Units in the Project for which certificates of occupancy have been issued by the City or for which certificates of occupancy are issuable by the City falls below 95.0%, then in such event, the PMS for such period of time shall be reduced in an amount equal to the vacancy rate of the Project for those Units for which certificates of occupancy have been issued by the City or for which certificates of occupancy are issuable by the City for such period of time. For purposes hereof, the "average monthly occupancy rate" is determined by (i) adding together the monthly occupancy rate of the Units in the Project calculated on the first day

of each month beginning in January and ending in December of each year, and (ii) dividing the sum by twelve (12). For purposes hereof, the vacancy rate equals the difference between 100% and the average monthly occupancy rate. At any point in time, a Unit shall be considered occupied if the Unit is subject to an Occupancy and Services Agreement for which the contractual amount has been paid for such point in time or is due and owing for such point in time. The reduction in the PMS shall then be applied in the form of a credit against subsequent PMS, as provided for in Section 4(a) above.

(b) In the event (i) any Unit comprising the Project should subsequently be licensed as a community based residential facility (“**CBRF**”) unit, a residential care apartment complex (“**RCAC**”) unit or a skilled nursing facility (“**SNF**”) or (ii) in the event AAPP utilizes any or all of the Units comprising the Project for uses other than a retirement home for the aged, or (iii) in the event any Unit comprising the Project is no longer subject to an Occupancy and Services Agreement form of tenancy, then in any such events, the Parties shall meet and negotiate in good faith, an agreement for the reduction to PMS for the subsequent periods of time following any changes as aforesaid. The Parties recognize and agree that any such changes affect the level of Municipal Services to be provided by the City; and that correspondingly, there should be a reduction in the level of PMS. All such reductions so agreed to shall be applied as a credit in the manner provided for in Section 4 above.

7. **Occupancy and Services Agreements.**

(a) **Occupancy and Services Agreement Provisions.** AAPP intends to include, a provision in all Occupancy and Services Agreements covering each of the Units, a provision to the effect that Residents of the Units comprising the Project shall be required to reimburse AAPP for a proportionate share of PMS on a periodic basis in such amounts as AAPP may from time to time determine in its sole discretion. The exact form of the provision in the Occupancy and Services Agreement shall be prepared by AAPP. Payment of any portion of PMS by any Resident is subject to the terms and provisions set forth in the Occupancy and Services Agreement.

(b) **Risk of Loss.** The Parties recognize that there may be Residents who cannot or will not pay PMS; but AAPP nevertheless assumes all risk of loss in the collection of said amounts. In the event any Resident shall fail to pay any portion of the PMS, such failure shall not reduce the payments AAPP is required to make under Section 5 above. AAPP may, in such event, pursue such collection remedies against said Resident as it deems appropriate in its sole discretion.

(c) **Voluntary Payment.** The Parties recognize that AAPP’s payment of PMS is voluntary and it has no legal obligation to enter into this Agreement or pay any amount of PMS. Notwithstanding the foregoing, AAPP recognizes the valuable governmental services the City provides to the Residents and the Project.

8. **Effect of Agreement.** Nothing contained herein shall obligate Residents of the Units comprising the Project to make PMS directly to the City. Rather, AAPP has such

obligation; and all obligations of the Residents shall run in favor of AAPP pursuant to the Occupancy and Services Agreements. This Agreement and the obligations contained herein relate only to the Units comprising the Project; and shall have no effect upon any other property of AAPP or its parent or affiliated corporations.

9. **Termination of the Agreement.** Notwithstanding anything to the contrary contained herein, this Agreement shall immediately terminate and be of no further force and effect (and all applicable PMS payments shall cease as of such date), in the event of the occurrence of any of the following:

(a) In the event any court of competent jurisdiction determines that the City does not have the authority to charge, assess, levy or collect PMS;

(b) In the event the City shall fail, on and after the date hereof, to impose upon any subsequent developer of real property within the City, which property:

(i) is or is intended to be exempt from taxation under Section 70.11(4d), Stats., as amended, as a “retirement home(s) for the aged,” and

(ii) requires a rezone to a Planned Development District, a PMS requirement as contained herein (or any payment in lieu of taxes (“*PILOT*”) requirements, if so applicable); or

(c) In the event the State of Wisconsin enacts any legislation requiring payment of a service fee (or similar fee) upon owners or occupants of property that is exempt from real estate taxation under applicable provisions of Wisconsin law.

10. **Miscellaneous.** The Parties agree as follows:

(a) This Agreement has been negotiated and executed in the State of Wisconsin; and shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

(b) In the event any notice is required to be given under the terms of this Agreement to a Party, then in such event, such notice shall be deemed given when deposited in the mail, postage prepaid, or when faxed or otherwise electronically transmitted, to the Parties at the address as indicated below:

AAPP:

Attic Angel Prairie Point, Inc.
Attn: President
640 Junction Road
Madison, WI 53717

City of Madison:

City Clerk
210 Martin Luther King Jr. Boulevard
Madison, WI 53709

(c) In the event any provision of this Agreement is determined to be unenforceable or invalid, then in such event, such declaration of unenforceability or invalidity shall not affect any other provisions hereof which can be given effect.

11. **Binding Effect.** This Agreement is binding upon the successors and assigns of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first written above.

CITY OF MADISON

ATTIC ANGEL PRAIRIE POINT, INC.

By: _____
Paul R. Soglin, Mayor

By: _____
Mary Ann Drescher, President

Attest: _____
Maribeth Witzel-Behl, City Clerk

By: _____
David Schmiedicke, Finance Director

Approved as to form:

By: _____
Michael P. May, City Attorney

EXHIBIT 1

Parcels

Parcel No.	Street Address
0708-222-0301-7	502 Samuel Drive
0708-222-0302-5	8604 Blackwolf Drive
0708-222-0303-3	8612 Blackwolf Drive
0708-222-0401-5	517 Samuel Drive
0708-222-0501-3	8601 Blackwolf Drive
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0708-222-0505-5	8627 Blackwolf Drive
0708-222-0506-3	8635 Blackwolf Drive
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0708-222-0607-9	403 Meadow Rose Lane
0708-222-0701-9	327 Samuel Drive
0708-222-0801-7	437 Samuel Drive
0708-222-0802-5	401 Wild Indigo Lane
0708-222-1001-2	424 Meadow Rose Lane
0708-222-1002-0	432 Meadow Rose Lane
0708-222-1003-8	504 Meadow Rose Lane
0708-222-1004-6	512 Meadow Rose Lane
0708-222-1005-4	520 Meadow Rose Lane
0708-222-1006-2	8640 Blackwolf Drive
0708-222-1007-0	8632 Blackwolf Drive
0708-222-1008-8	8624 Blackwolf Drive
0708-222-1101-0	406 Meadow Rose Lane

EXHIBIT 2

Municipal Service Fee Calculation Methodology