

**THIS AGREEMENT** made in quadruplicate **B E T W E E N:**

**THE CORPORATION OF THE CITY OF OWEN SOUND,**

a municipality within the meaning of the Municipal Act, 2001.

hereinafter called the "City" of the FIRST PART,

-and-

**HWY 26 & 20<sup>th</sup> COMMERCIAL INC.**

a corporation provincially incorporated under the laws of the Province of Ontario

hereinafter called the "Owners" of the SECOND PART.

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**SERVICING AGREEMENT**

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WHEREAS the Owner represent to be the registered Owners of those lands in the City of Owen Sound, County of Grey, described in Schedule "A" attached hereto and the Owners represent to have signing authority with respect to the said lands and the development described by Schedule "C"

AND WHEREAS the City requires The Owner to construct and install certain services (hereinafter be referred to as the "Works" or "Services") within the City road allowance and to make financial arrangements with the City for the installation and construction of the required Works or Services before undertaking the approved Plan

AND WHEREAS the parties hereto agree that the lands affected by this Agreement are as set out in Schedule "A" attached hereto

AND WHEREAS the City has enacted a Site Plan Control Area By-law pursuant to the provisions of Section 41 of the *Planning Act*, R.S.O. 1990, c. P.13

AND WHEREAS the City provided approval of the Developer's Application subject to the Developer entering into an Agreement as permitted by subsection 41(7) of the *Planning Act*, R.S.O. 1990, c. P.13

AND WHEREAS the Lands are within an area of site plan control and this agreement is an agreement authorized to be registered pursuant to section 47(10) of the *Planning Act*, R.S.O. 1990, c. P.13

AND WHEREAS by an application dated on or about December8, 2021 the Developer applied to the City for Site Plan Approval in respect of its development of the lands described in Schedule "A"

AND WHEREAS the City approved the Plans and Drawings submitted with the Owner's application subject to certain conditions on February 14, 2022

AND WHEREAS the covenants in this Agreement are binding upon the Owner and when registered on title are binding upon all successors in title

AND WHEREAS any successor in title may enter into an agreement with the City amending the terms of this Agreement

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other good and valuable consideration and the sum of ONE (\$1.00) DOLLAR of lawful money

of Canada, now paid by each of the parties hereto to each of the other parties hereto (the receipt whereof is hereby acknowledged), the parties hereto hereby covenant, promise, and agree with each other as follows:

**1. REGISTRATION OF THIS AGREEMENT**

- a) The Owner consents to the registration of this Agreement by the City upon the title to the Lands as set out in **Schedule 'A'** herein.
- b) The Mortgagee acknowledges that the requirements of the Owner set forth in this Agreement come in priority to the obligations of the Owner to the Mortgagee pursuant to the Charge registered on the Lands in favour of the Mortgagee. In the event that the Mortgagee conveys or otherwise enforces its rights against the Lands, such conveyance or other enforcement shall be subject to the terms of this Agreement.
- c) The Mortgagee consents to the registration of this Agreement by the City upon the title to the Lands as set out in **Schedule 'A'** herein

**2. ATTACHED SCHEDULES**

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

Schedule 'A' Description of Lands

Schedule 'B' Approved Construction Plans

Schedule 'C' Engineering Standards

Schedule 'D' List and Timing of Works to be Constructed

Schedule 'E' Itemized Estimate of Costs of Construction of Each Part of the Works

Schedule 'F' Taxes in Arrears, Local Improvement Charges, and Other Charges

Schedule 'G' Easements to be Granted to the City

Schedule 'H' Lands to be Deeded to the City

Schedule 'I' Release of Lands; Drainage Requirements for the Lands

Schedule 'J' Sample Letter of Credit

**3. CITY'S LEGAL, ADMINISTRATIVE AND ENGINEERING COSTS**

The Owner shall pay to the City prior to or at the time of execution of this Agreement such fees as set out in **Schedule 'F'** to cover the City's expenses related to inspections and approvals by the City's Engineering Division, and any legal and administrative costs related to the development of the Plan.

**4. THE OWNER'S EXPENSE**

Every provision of this Agreement by which The Owner is obligated in any way shall be deemed to include the words "**at the expense of The Owner**" unless specifically stated otherwise.

**5. THE OWNER'S CONSULTING ENGINEER**

The Owner shall retain the services of a Professional Engineer or firm of Professional Engineers with Certificate of Authorization registered with the Professional Engineers of Ontario (hereinafter called the "Consulting Engineer"), who shall:

- i) Prepare designs;
- ii) Prepare and furnish all required drawings as per City of Owen Sound's standards;
- iii) Submit to the City for approval as **Schedule 'E'**, an estimate of the costs of the Works, which said estimate, when approved by the City shall become the basis for the required securities;
- iv) Obtain the necessary approvals from the City, the Ministry of Environment, Conservation and Parks, the Ministry of Natural Resources, Grey Sauble Conservation, and other utilities, authorities or governmental agencies as required by law;
- v) Provide construction review;
- vi) Maintain all records of construction and, upon completion, advise the City Engineer of all construction changes and prepare final "as constructed" drawings and provide the same to the City Engineer

(original drawings one printed set of drawings on 24 x 36 bond as per City of Owen Sound's standards and on CD in DWG or DXF format);

- vii) Act as The Owner's representative in all matters pertaining to the construction of the Works;
- viii) Provide co-ordination and scheduling to comply with the timing provisions of this Agreement and the requirements of the City for all Works specified in this Agreement;
- ix) Furnish to the City a certificate, upon completion of the Works, that all works were completed in conformance with the design and to the applicable standards and specifications.

## 6. **THE OWNER'S CONTRACTOR(S)**

The Services shall be installed by Contractor(s) retained by The Owner.

## 7. **SECURITY FOR COMPLETION OF WORK**

- a) As a condition precedent to the issuance of any building or development permit of any kind pertaining to the Lands by the City to the Owner, its successors or assigns, the works to be constructed shall be completed to the satisfaction of the City in accordance with this Agreement including proof of payment in full by The Owner for all materials and labour.
- b) The City shall hold 100% of the cost of the Off-site Works (to be assumed by the City) required to be constructed as estimated by The Owner's Consulting Engineer in **Schedule 'E'** as a security deposit in the form of a Letter of Credit (or cash deposit) as set out in **Schedule 'J'** or cash with the Clerk of the City, to cover the faithful performance of this Agreement for the installation of the Services and the payment and provision of all obligations arising hereunder.
- c) If The Owner fails to perform any of his/her obligations pursuant to this Agreement, the City may deduct the cost thereof from the security deposit and may use the deposit to perform all Works hereunder, or to pay, at the option of the City, the cost of any works, materials, or other charges related to the Works, including the cost of removing or defending any construction liens, certificates of action, or defending or removing any actions or judgements affecting the City or lands or services either dedicated to the City or which are intended to become the property of the City pursuant to this agreement.

## 8. **DISCHARGE OF SECURITIES**

- a) The Owner shall have the ability to apply to the City, after the completion of ninety percent (90%) of the Works and Services and upon submission of a Property Inquiry Request form with fee together with a Statutory Declaration of Accounts Paid as provided for in Clause 17 hereto, to obtain reductions or discharges of the securities, subject to the provisions of Clause 8b) of this agreement and the Certificate of the City Engineer. Any such request by the Owner shall not be unreasonably withheld by the City.
- b) The City shall retain at all times sufficient security in the form of cash or a Letter of Credit to finance the completion of the Works and maintenance of the Works as provided for in Clause 18 of this agreement, and completion of any requirements pursuant to **Schedule 'I'**.
- c) Upon the issuance of the Certificate of Substantial Completion for the Works, all securities will be released except the Letter of Credit referred to in Clause 8b) hereto which, in all cases, shall be held until the end of the Maintenance Period as provided for in Clause 18 hereto and until completion of any requirements pursuant to **Schedule 'I'**.
- d) The City will not agree to any cancellation or reduction of the required securities if The Owner is in default in any way of any provision, requirement or obligation of The Owner under this Agreement.

**9. APPROVAL OF PLANS FOR THE REQUISITE WORKS**

- a) The Owner and its Consulting Engineer shall acquire any Ministry of Environment Approvals if required.
- b) The Owner and its Consulting Engineer shall have the plans and specifications for the Works approved by the City and the other authorities as required.
- c) The engineering plans prepared in accordance with the City's engineering standards and approved by the City Engineer are listed on **Schedule 'B'** (hereinafter called the "approved construction plan drawings").
- d) No changes to the approved construction plan drawings shall be made unless prior approval is first obtained from the City Engineer.

**10. REQUISITE SERVICES**

Where such works are required and are set out in this Agreement under the approved construction plan drawings, The Owner shall construct, install, arrange, or otherwise provide for storm, water and wastewater services, in accordance with the provisions and standards as are set out in **Schedule 'C'**.

**11. WORKPLACE SAFETY AND INSURANCE BOARD CERTIFICATION**

If required by the City, The Owner will furnish to the City proof of certification by the Workplace Safety and Insurance Board (WSIB) prior to commencement of the construction of the work and supply a letter of clearance from the WSIB upon completion of construction of the services.

**12. TIMING OF WORKS TO BE CONSTRUCTED**

The Owner shall cause to be constructed all requisite Works in accordance with **Schedule 'D'**. This schedule sets out the works in general terms only and shall not be construed as covering all items in detail.

**13. NOTIFICATION OF COMMENCEMENT OF CONSTRUCTION OF THE WORKS**

- a) The Owner shall not commence the construction of any of the Works until The Owner has provided ninety-six (96) hours written notice to the City Engineer of his/her intent to commence work and has completed and submitted, the City Street Occupation Permit and Special Services Application.
- b) It is the intent of this Agreement that work be performed expeditiously and continuously, that all underground and all above-ground services be installed in accordance with **Schedule 'D'**, unless extended by the City. Should, for any reason, there be a cessation or interruption of construction, The Owner shall provide ninety-six (96) hours written notification to the City Engineer before work is resumed.

**14. SCHEDULING OF CONSTRUCTION OF THE WORKS**

Prior to the start of construction of the Works, The Owner shall supply to the City Engineer for his approval, a schedule of works setting out the order in which he considers the various Works will be built.

**15. PROGRESS OF CONSTRUCTION OF THE WORKS**

- a) The Owner shall install all Works in accordance with the Schedule of Works provided for in Clause 14 hereof or as directed by the City. If he fails to do so, or having commenced to install the aforesaid Works, fails or neglects to proceed with reasonable speed, or in the event that the aforesaid Works are not being installed in the manner required by the City, then, upon the City giving seven (7) days written notice by prepaid registered mail to The Owner, the City may without further notice proceed to supply all materials and to do all the necessary works in connection with the installation of the required Works, 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 together with the cost of engineering to The Owner who shall forthwith pay the same upon demand. If The Owner fails to pay

the City within thirty (30) days of the date of billing, the money owing may be deducted from the deposited securities.

- b) In the event that the City must have the Works completed or repaired due to situations as outlined in Clause 15a) hereof, all original drawings and specifications prepared by The Owner's Consulting Engineer must be turned over to the City.
- c) It is understood and agreed between the parties hereto that such intercession by the City shall be as agent for The Owner and shall not be deemed for any purpose whatsoever, as an acceptance or assumption of the Works by the City. The City, in addition to all other remedies it may have, may refuse to issue building permits for the Lands until such Works are completely installed in accordance with the requirements of the City.

**16. INSPECTION AND ACCEPTANCE OF THE WORKS**

- a) Subject to Clause 15 hereof, upon completion of all the Services, the Consulting Engineer shall furnish the City with a certificate that all works were completed in conformance with the design and to the applicable standards and specifications.
- b) Upon receipt of said certificate, the City shall make an inspection of the Works. When the City is satisfied that work is substantially complete and in conformance with the applicable standards and specifications, the City shall issue a Certificate of Substantial Completion. The Certificate may contain a list of minor deficiencies which have to be corrected by The Owner, but which are not considered of sufficient importance to delay the issuance of the Certificate of Substantial Completion.
- c) The maintenance Period provided for in Clause 18 hereof will commence when the Certificate of Substantial Completion is issued and accepted by the City.

**17. STATUTORY DECLARATION OF ACCOUNTS PAID**

The Developer agrees that upon applying for a discharge of securities, a release from this Agreement, a Certificate of Substantial Completion or a Certificate of Assumption of Works and Facilities, a Statutory Declaration shall be supplied to the City stating that all accounts for work and materials for the Works and Services:

- a) have been paid except normal guarantee holdbacks;
- b) that there are no claims for liens or otherwise in connection with such work done or materials supplied for or on behalf of the Developer

**18. MAINTENANCE OF WORKS**

- a) The Owner, or in the event of transfer of ownership, any subsequent owner, will be responsible for the repair and maintenance of all constructed works for a period of two (2) years from the date of issuance of the Certificate of Substantial Completion for the works to which the same relates, which period of time shall be called the "Maintenance Period".
- b) If, during the Maintenance Period, The Owner, or any subsequent owner, fails to carry out maintenance work within twenty-four (24) hours after receipt of a request from the City, the City may, without further notice, undertake such maintenance work and the total cost of such maintenance work shall be borne by The Owner. If The Owner fails to pay for such work within thirty (30) days of the date of billing, then the money owing may be deducted from the deposited securities.
- c) Towards the end of the Maintenance Period, The Owner shall make a written request to the City for a final inspection to be made and notwithstanding the two (2) year period noted above, the Maintenance Period will continue for the original two (2) years or for thirty (30) days after the receipt of The Owner' written request for a final inspection, whichever period of time is the greater.
- d) During the Maintenance Period, securities sufficient to cover the

maintenance of the works shall be retained by the City.

**19. FINAL ACCEPTANCE OF WORKS**

- a) On receipt of The Owner's request for a final inspection as provided for in Clause 16 hereof, the City will again inspect the Works, and if the City is satisfied and provided that The Owner has otherwise complied with this Agreement including Clause 9b) hereof, the City will issue a Certificate of Assumption of Works and Facilities.
- b) Prior to issuance of a Certificate of Assumption of Works and Facilities by the City, the Consulting Engineer shall supply to the City final "AS CONSTRUCTED" versions delivered as stipulated in Schedule 'C', Clauses 11 and 13.

**20. ASSUMPTION OF WORKS AND SERVICES**

The City shall not assume or be deemed to have assumed any Services provided under this Agreement until a Certificate of Assumption of Works and Facilities has been issued therefore by the City.

**21. USE OF WORKS BY CITY**

The Owner agrees that the Works may be used prior to acceptance by the City, for the purpose for which such Works are designed, and such use shall not be deemed an acceptance of the Works by the City, nor shall such use in any way relieve The Owner of his/her obligations in respect of the Works so used.

**22. EMERGENCY REPAIRS**

- a) Employees or agents of the City may make emergency repairs to any of the Works as necessary from time to time. Such repairing shall not be deemed an acceptance of any of the Works by the City, or an assumption by the City, of any liability in connection therewith or release of The Owner from any of its obligations under this Agreement.
- b) All costs of such work shall be paid by The Owner within thirty (30) days of the date of billing. If unpaid within thirty (30) days of the date of billing, after thirty (30) days the City shall have the right to deduct the cost of emergency repairs from any financial securities held;
- c) The Owner shall be responsible for payment to the City of Owen Sound Engineering Services Division for outstanding amount due after use of securities.

**23. THE OWNER'S LIABILITIES**

The Owner and subsequent owner(s) of the land shall indemnify the City, their agents and employees, against all actions, causes of action, suits, claims and demands whatsoever which may arise either directly or indirectly by reason of The Owner undertaking the construction of the Works, during the two (2) year maintenance period.

**24. INSURANCE**

- a) The Owner shall insure against all damages or claims for damage with an insurance company satisfactory to the City. Such insurance policy shall be issued in the joint names of The Owner and the City, and the form and content shall be subject to the approval of the City. The policy shall remain in the custody of the City during the lesser of the life of this agreement or **the two (2) year maintenance** period. The minimum limits of such policy shall be \$5,000,000.00 all inclusive.
- b) The insurance policy as required by Clause 24a) of this Agreement shall be in effect for the period of this Agreement including the Maintenance Period. The issuance of such insurance policy shall not be construed as relieving The Owner from responsibility for other or larger claims, if any, for which he/she may be held responsible.
- d) The Owner shall insure that the Contractor undertaken to construct the work within the municipal road allowance provides proof of public liability and property damage insurance coverage in the amount of \$5,000,000.00

or greater, prior to commencement of work, and that such policy names the City of Owen Sound as an additional insured. The Contractor shall indemnify and hold harmless the City, its officers and employees from and against any and all liabilities, damages, costs, claims, suits or actions by third parties directly or indirectly arising out of the project. A copy of the policy shall be provided to the City prior to commencement of work.

**25. BLASTING AND VIBRATION MONITORING**

- a) Any blasting carried out by The Owner or its contractors shall be under the supervision of the Consulting Engineer, or other consulting engineer approved by the City who has experience with blasting operations and procedures.
- b) If required by the City or Grey Sauble Conservation, a geo-technical study shall be conducted at The Owner's sole expense prior to any blasting, such study to be approved by the City and the Conservation Authority, and all blasting shall be carried out in accordance with any directives of the approved geo-technical study.
- c) Before any blasting is proceeded with by The Owner, The Owner shall:
  - i) conduct a pre-blast survey of adjacent and surrounding structures;
  - ii) discuss the procedure, location, and extent of such blasting with the City Engineer;
  - iii) obtain from the City Engineer written permission for carrying out the blasting operation;
  - iv) show proof of insurance for all damage or claims for damage resulting from the blasting operation; the issuance of such an insurance policy shall not be construed as relieving The Owner from responsibility for other or larger claims, if any, for which he/she may be held responsible.
- d) If driven steel piles are used in the construction of the development, the Owner shall engage a qualified consultant to determine safe vibration limits for any City structures in close proximity to the development and to monitor the impact of construction activities on the identified structures by use of appropriately placed vibration monitors accompanied by a daily review of the logged data. If the vibrations exceed maximum criteria, as determined by the vibration consultant, the contractor, at the City's discretion, shall be required to revise the construction methods causing excessive vibration in order to avoid damage to the structures.
- e) The Owner shall be held liable for any damage to City owned structures or infrastructure caused by the construction activities conducted by the Owner or Subcontractors employed by the Owner or any agent working for the Owner.

**26. ROAD CONDITIONS**

- a) The Contractor or The Owner shall be required to obtain a Street Occupation Permit from the City for Works to be constructed on the Municipal road allowance.
- b) All roads must be maintained by The Owner in good repair acceptable to the City Engineer during the time of construction of the Works, and no roadway may be closed without the written consent the City Engineer or his/her delegate. For the purpose of obtaining such consent, The Owner shall advise the City Engineer of the date and time and the length of time for which he/she wishes to close the road.
- c) The Owner agrees that all roads to be used for access during the construction of the Works shall be kept in good and usable condition throughout the period of construction, and if damaged due to construction of the Works, The Owner agrees to restore the same immediately in accordance with Clause 27 hereof.
- d) All trucks used in completing the Services shall be adequately covered and not unreasonably loaded so as not to scatter refuse, rubbish or debris on any roads.

- e) The provisions of the City's by-law to regulate and control the tracking and depositing mud and other debris on City streets and highways shall apply. Debris or mud deposited on any street by vehicles involved in installing the Services shall be removed immediately by The Owner. If not so removed, in addition to remedies provided for in the said by-law, the deposited material may be removed by the City at The Owner' sole expense; all costs of such works shall be paid by The Owner within thirty (30) days of the date of billing or otherwise may be deducted from the deposited securities.

**27. DAMAGES OR CHANGES TO EXISTING PLANT**

- a) The Owner shall repair any damage caused to any existing road, structure or plant located on or under any road allowance, as a result of the construction of the Works. All costs of such repairs shall be paid by The Owner. If not repaired in accordance with the requirements of the City Engineer, the City may complete such repairs as are deemed necessary by the City at their sole discretion. If The Owner fails to pay for repairs completed by the City within thirty (30) days of the date of billing, the costs may be deducted from the deposited securities.
- b) The Owner shall pay for any costs involved in the relocation of existing services, such as hydrants, utility poles, or other services or plant, which may become necessary. If The Owner fails to pay for such works completed by the City within thirty (30) days of the date of billing, the costs may be deducted from the deposited securities.

**28. DUST CONTROL**

- a) During all construction of the Works, The Owner shall apply approved dust retardants in sufficient quantities or undertake any other actions approved by the City Engineer to prevent any dust problem to traffic or nearby properties. All costs of such works shall be paid by The Owner.
- b) If dust is not controlled in accordance with the requirements of the City Engineer, the City may apply such retardants as are deemed necessary by the City Engineer at his/her sole discretion.
- c) If The Owner fails to pay for such works completed by the City within thirty (30) days of the date of billing, the costs may be deducted from the deposited securities.

**29. EROSION AND SEDIMENT CONTROL WORKS**

- a) The Owner shall install and maintain at his/her sole expense all necessary erosion control works and structures (i.e. sediment traps, silt fence, check dams, etc.) shown on the approved construction plan drawings, and any additional erosion control works required by the City Engineer from time to time necessary to minimize erosion on and off the subject lands.
- b) Should the Owner default in constructing or maintaining any required erosion control works and structures, the City at its sole option may enter the lands and carry out the required erosion control works with the costs being charged to The Owner.

**30. LANDS FOR MUNICIPAL PURPOSES**

The Owner agrees to grant in fee simple to the City, lands for municipal purposes according to the particulars set out in **Schedule 'H'**.

**31. EASEMENTS FOR MUNICIPAL PURPOSES**

The Owner agrees to grant and convey to the City, easements over the Lands for municipal purposes according to the particulars set out in **Schedule 'G'**.

**32. CONSTRUCTION REFUSE**

- a) All construction refuse and debris from the construction of the Works must be disposed of in an orderly and sanitary fashion in a dumping area provided by The Owner off the Lands and approved by the City. The City is not responsible for the removal or disposal of refuse and debris.



- b) The Owner shall, at all times, keep the streets and boulevards clear and free of all materials and obstructions which might interfere with the installation of hydro, telephone, gas or other utilities, movement of traffic, or present any public safety hazard.
- c) The Owner shall remove all mud and debris from any road allowance or easement at the end of each working day or immediately as directed by the City.

**33. DRAINAGE REQUIREMENTS FOR THE LANDS**

The Owner agrees to abide by the requirements of the City (if any) respecting grading and drainage of the Lands as may be set out in **Schedule 'I'** to this Agreement.

**34. REQUIREMENTS FOR BUILDING PERMITS**

- a) The entering into of this Agreement by the City or the acceptance by the City of the Works shall not be deemed to give any assurance that municipal building permits, when applied for, will be issued in respect of the Lands.
- b) The Owner agrees and acknowledges that building permits for the Lands will not be available until the requirements as set out in **Schedules 'F' and 'I'** (if any) have been met.

**36. RELEASE OF LANDS**

- a) The Owner shall be entitled to an effective release in a form for registration in the County Registry Office in accordance with the provisions as set out in **Schedule 'I'**.
- b) Every release issued pursuant to this Agreement shall operate as a discharge by the City in respect only to the lands described in the release.

**37. DEVELOPMENT CHARGES, TAXES, LOCAL IMPROVEMENTS, AND OTHER CHARGES**

- a) Taxes  
The Owner agrees to pay for all arrears of taxes outstanding against the Lands before or at the time of execution of this Agreement, as set out on **Schedule 'F'**.
- b) Development (Lot Levies/Charges)  
The Owner agrees to pay all Development Charges applicable under the City's Development Charge By-Law at the time of issuance of Building permits.

**38. PLEDGE OF TITLE TO LANDS**

The Owner hereby charges and pledges as security for levy payments and service charges, all his/her rights, title and interest in the Lands and agrees that this Agreement may be registered against the Lands and it is agreed that such payments and costs shall be a lien against the Lands.

**39. COVENANTS**

- a) The Owner hereby covenants and agrees with the City at his/her sole cost and expense in the manner and within the time limited by this Agreement to comply in full with any requirements of governmental agencies having jurisdiction with respect to the Works.
- b) The Owner hereby covenants and agrees to execute all deeds, contracts, agreements or assurances, whether under seal or otherwise, as may be necessary or appropriate and reasonably required by the City in the circumstances in order to give effect to all provisions of this Agreement.
- c) The Owner covenants and agrees to comply with all relevant building, zoning and other by-laws of the City including the Building Code of the Province of Ontario in connection with the implementation of all of the provisions of this Agreement including the construction of the Works herein required to be made as well as in connection with the issuance of a building

permit for the services provided under this Agreement.

- d) The Owner covenants and agrees that any changes to the works and services in the <LOCATION> road allowance required as a condition of approval of the ECA shall be the sole responsibility of the Owner.

**40. LEGAL NOTICE TO THE OWNER AND THE CITY**

- a) Any notice required to be given to The Owner hereunder may be given by registered mail addressed to The Owner at his/her principal place of business, or according to the address of The Owner as shown in the last revised assessment roll in the possession of the City Clerk, and shall be effective as of the date of the deposit thereof in the Post Office.
- b) Any notice required to be given to the City hereunder shall be given to the City by registered mail to:

Corporation of the City of Owen Sound,  
Owen Sound City Hall,  
808 2nd Avenue East,  
Owen Sound, ON, N4K 2H4  
Attn: City Clerk

**41. MORTGAGEE BECOMING OWNER**

In consideration of the sum of ONE (\$1.00) DOLLAR, receipt whereof is acknowledged by the Mortgagee, the Mortgagee hereby agrees that in the event of the Mortgagee becoming the owner of the lands under the mortgage by way of foreclosure, purchase or otherwise, either beneficially or in trust, then the mortgage shall be deemed to be postponed to this Agreement. The Mortgagee shall be subject to the terms of this Agreement as though the Mortgagee had executed this Agreement in the capacity of The Owner, and if the Mortgagee sells the lands described herein by power of sale contained in the said mortgage, the same shall be subject to the terms of this Agreement.

**42. ASSIGNMENT OR TRANSFER OF MORTGAGE**

The Mortgagee agrees that in the event of the Mortgagee assigning or transferring the mortgage on the lands under the mortgage, the assignment or transfer shall be subject to the terms hereof in the same manner as if the assignee or transferee had executed this Agreement.

**43. REIMBURSEMENT of COSTS for the WORKS DESCRIBED IN SCHEDULE 'E'**

The payment schedule detailed below will take effect from the date that the City issues a Certificate of Assumption of Works and Facilities for the works.

- a) 20<sup>th</sup> Avenue East – Developer pays 100% of actual construction costs with 75% eventual reimbursement as follows:
  - i) 37.5% in 5 years, or sooner, reimbursed by the City (to be recovered by City from developers on the east side of 20<sup>th</sup> Avenue East (1 property) and the north side of 17<sup>th</sup> Street East (2 properties))
  - ii) 37.5% in 10 years, or sooner, reimbursed by the City (to be recovered by City from developers on the east side of 20<sup>th</sup> Avenue East (1 property) and the north side of 17<sup>th</sup> Street East (2 properties))
- b) 17<sup>th</sup> Street East – Developer has access to the existing road and municipal services with no Capital Contribution or Cost Recovery for past or future upgrading. The avoided cost of the potential contribution for 17<sup>th</sup> Street East by the Developer is estimated at \$165,000.00 based on current costs for existing and proposed infrastructure (future reconstruction to upgrade the road cross-section to the Owen Sound Standard Drawing OSS-107C road design with bike lanes plus updated costs for existing services). Additionally:

- i) The Developer will construct an entrance to City standards including a new ditch and culvert for their 17<sup>th</sup> Street East driveway and reinstate and landscape the boulevard as per other recent developments on 17<sup>th</sup> Street East.
- c) 16<sup>th</sup> Street East / 20<sup>th</sup> Avenue East Intersection
  - i) INTERSECTION UPGRADING – Developer to pay 100% of upgrade and with 50% reimbursement in 5 years or sooner by the City (to be recovered by the City from the developer on the east side of 20th Ave E at 50%).
  - ii) EXISTING TRAFFIC SIGNALS – Developer to pay 1/3 of existing intersection cost as per agreement with Heritage Grove Centre Inc. (\$139,460.00), with the City to reimburse this amount to Heritage Grove Centre Inc. accordingly. The City to reimburse, to the Developer, 50% of this contribution in 10 years, or sooner. This will reduce the overall contribution for the traffic signals by \$69,730.00.  
  
This amount may be recovered by the City from the development of two properties on the north side of 17<sup>th</sup> Street East  
  
Reimbursement does not include future sidewalks required along the frontage of each property. Each Developer will be solely responsible to cover the costs of the required sidewalks that front each of their respective properties.
- d) The Developer acknowledges that the City will use its best efforts to collect inflation costs based on the Construction Price Index from the time of construction to the time the Services are used or accessed.
- e) The Developer agrees that the maximum amount recoverable from future development abutting the road allowance described above shall be the total actual cost of designing and constructing the Services payable by the Developer and adjusted for inflation based on the Construction Price Index from the time of construction to the time the Services are used or accessed.
- f) The City's financial commitment to these works shall not exceed \$855,000.00 plus HST adjusted for inflation based on the Construction Price Index.

**44. COUNTERPARTS**

This Agreement and any amendment or other document related to the Agreement may be executed in counterparts, each of which will constitute an original, and all of which will constitute one agreement.

**45. PHOTOGRAPHIC, FACSIMILE, ELECTRONIC SIGNATURES AND ELECTRONIC DELIVERY**

- a) Each party agrees that a photographic or facsimile copy of a signature evidencing a party's execution of this Agreement or any amendment or other document related to the Agreement, will have the same force and effect as a manual signature.
- b) This Agreement and any amendment or other document related to the Agreement may be signed electronically. Each Party agrees that electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.
- c) Electronic signature means any symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record. Delivery of an executed copy of this Agreement or any amendment or other document related to the Agreement, by facsimile or electronic transmission constitutes valid and effective delivery.

THIS AGREEMENT shall be binding upon and enure to the benefits of the parties hereto and their respective heirs, executors, administrators, successors, and assigns

It is agreed and understood that **Schedules 'A'** through **'J'** inclusive, affixed hereto, form part of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

SIGNED, SEALED AND DELIVERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022 A.D.

THE CORPORATION OF THE CITY OF OWEN SOUND

Per: \_\_\_\_\_  
Tim Simmonds, City Manager

Per: \_\_\_\_\_  
Kate Allan, Director of Corporate Services  
We have authority to bind the Corporation

OWNERS

HWY 26 & 20<sup>th</sup> COMMERCIAL INC.

Per: \_\_\_\_\_  
Lou Meandro, Authorized Signing Officer  
I have authority to bind the Corporation.

## SCHEDULE 'A' TO THE SERVICING AGREEMENT

### Description of the Lands

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the City of Owen Sound, County of Grey, Province of Ontario, municipally known as **1960 16<sup>th</sup> Street East** and comprised of:

PT PARK LOT B RANGE 6 EGR PL OWEN SOUND PT 1, 16R-712, PT 2 & 3,  
16R-722 & AS IN R494294 (FIRSTLY) EXCEPT 16R-8430 & 16R-8472; S/T  
R171578, R36921, R362850; OWEN SOUND

PIN: 37061-0117 (LT)

**SCHEDULE 'B' TO THE SERVICING AGREEMENT**

**APPROVED CONSTRUCTION DRAWINGS**

The "approved construction drawings" shall be the following drawings as indicated by the signature of the City Engineer for the City of Owen Sound thereon, and on file in the Engineering Services Division office:

Schedule of Plans

<u>Drawing Number</u>	<u>Drawing Name</u>	<u>Revision Date</u>
22-017-01	Condeland Consulting Engineers Plan and Profile 20 <sup>th</sup> Avenue East	June 2022
22-017-02	Condeland Consulting Engineers Pavement Marking, Signage & Traffic Island Construction for 16 <sup>th</sup> Street East & 20 <sup>th</sup> Avenue East	June 2022
22-017-03	Condeland Consulting Engineers General Notes, OPSD and Standard Details	June 2022
05472-01 SL-1	RTG Systems Inc. 20 <sup>th</sup> Avenue E Municipal Streetlighting  16 <sup>th</sup> Street East/ 20 <sup>th</sup> Avenue East Intersection Improvements	July 2022   August 2022

Note: The plans and drawing noted above reflect the list of approved drawings and reports at the time of approval of this Agreement by City Council. The latest "revised" plans, drawings and reports approved by the Community Services Department, Planning Division or Public Works & Engineering Department, Engineering Services Division, if applicable, shall replace those listed above should such revisions be required during the construction of the works pursuant to this Agreement.

## SCHEDULE 'C' TO THE SERVICING AGREEMENT

### Engineering Standards

Engineering Standards:

1. General:

- a) The Owner shall save harmless the Engineering Services Division, its agents and employees from and against all claims, demands, losses, costs, damages, actions, suits and proceedings arising out of or attributable to any act or omission in connection with the development and servicing of this agreement, and without limiting the generality of the foregoing including design, review of plans and specifications and acceptance of the servicing, inspections and final acceptance of the servicing, inspections and final acceptance of the completed servicing Works arising out of or attributable to the development of this agreement.
- b) The Owner acknowledges and agrees that the City has the right to request a surveyor to verify the final installation and vertical reference control for the Works covered by this agreement. This information should be provided in a form satisfactory to the City.

2. Engineering Studies:

The Owner and Consulting Engineer shall undertake sufficient engineering studies, including drainage and soil investigations, to ensure that the proposed municipal works and services are compatible with existing site and servicing constraints and can be carried out in a manner which would satisfy all City standards and conform with good engineering practice.

3. OPSS & OPSD, City Design and Water Distribution Standards:

The applicable Ontario Provincial Standard Specifications and Drawings shall apply to all work, subject to the direction of the City's Engineering Services Division.

4. Field Revisions:

The City Engineer reserves the right to order field revisions at the sole expense of The Owner.

5. Testing:

The City Engineer reserves the right to call for qualitative and quantitative tests to verify conformance to specifications and drawings, at the expense of The Owner.

6. Storm and Wastewater Sewers:

The Owner shall construct all wastewater sewers, laterals and appurtenances thereto in accordance with the Environmental Compliance Approval as issued by the Ministry of Environment, Conservation and Parks (if applicable) and in accordance with the approved construction plan drawings and standards.

7. Watermains:

- a) The Owner shall construct watermains, service laterals and appurtenances thereto in accordance with the City approval of water works under its licensing authority granted by the Ministry of Environment, Conservation and Parks and in accordance with the approved construction plan drawings and standards.
- b) All materials used for this work are to be selected from the City's Approved Manufacturers' Product list for Water Distribution Systems.
- c) The Developer shall construct water mains, service laterals and appurtenances in accordance to the Owen Sound Specifications for Water Main Construction document and the approved construction plan drawings and standards.
- d) The Owner acknowledges and agrees that the proposed development must be serviced from the municipal water distribution system.
- e) The Owner shall supply and install at his/her own expense the required water

service laterals and appurtenances from the watermain to the property line within the Plan.

- f) The Owner acknowledges and agrees that no connections to the municipal water system will be permitted prior to approval of the works by the City.

8. Temporary Construction Fencing:

The Owner shall install temporary construction fencing on the Lands in accordance with sound construction practise and in accordance with the requirements the City Engineer, from the time of commencement of construction of the Works to the time of completion of construction of the Works.

9. Working on Grey County property:

The Owner covenants to fill in all excavations and as far as practicable restore the surface to the same condition as prior to the commencement of construction or of any subsequent work thereto to the satisfaction of the Clerk / Director of Council Services, County of Grey (if applicable).

10. Approved Construction Plan Drawings:

The approved Construction Plan Drawings, listed in Schedule 'C' of this agreement, as prepared by the Consulting Engineer in accordance with the City's engineering standards and approved by the City Engineer to form part of this Agreement will be provided by The Owner prior to commencement of construction of the work and services. Revisions to any of these drawings or specifications must be approved and initialled by authorized representatives of The Owner and the City.

11. As Constructed Drawings:

a) General

The AS CONSTRUCTED drawings are comprised of the engineering design drawings, approved by the Engineering Services Division, which have been amended to incorporate any construction changes and variances in order to provide accurate information of the works installed in the development.

As Constructed drawing revisions shall be based upon the final survey of **ALL** the constructed Works and Services and the Consultant's construction records. The final survey of the development shall include a field check of the following items (if applicable):

- Location and invert elevations of all sewer maintenance holes
- Distance and grade of pipes between all sewer maintenance holes
- Location of all roadway catch basins
- Location, rim, and invert elevations for all on-site catch basins
- Location of all sidewalks and curbs
- Location of all watermain appurtenances (hydrants, valve boxes, valve chambers, blow-offs, flushing hydrants) and other special watermain appurtenances
- Road centerline elevations as shown on the original drawings
- Site benchmarks
- Changes in sewer pipe sizes, materials and class, along with revised design sheets
- Locations of street poles and transformers
- Location of all service connection clean outs, curb stops or plugs

- b) The original engineering drawings shall be revised to illustrate the recorded changes and variances found in the field survey. Ties (3 per item) should be used to readily locate all underground Works and Services. The As Constructed drawings will be submitted to the Engineering Services Division within thirty (30) days of project completion.

- c) The recalculated sewer and road grade shall be to two (2) decimal places.

- d) The street line inverts of cleanouts, curb stops and plugs are to be included on the Record drawings.

- e) The Contractor shall note on the General Plan of Works and Services only, the



dates of construction commencement and completion.

- f) The "AS CONSTRUCTED" label shall be placed on all drawings in the revision block.
- g) The City of Owen Sound contract number (if applicable) shall be added to the Record drawings.
- h) As Constructed drawings are to include the following disclaimer:

**AS CONSTRUCTED DRAWING  
NOTICE TO USER**

THIS AS CONSTRUCTED DRAWING MAY INCLUDE INFORMATION PROVIDED BY OTHERS. THE CITY OF OWEN SOUND BELIEVES THIS INFORMATION IS RELIABLE BUT, HAS NOT VERIFIED ITS ACCURACY AND/OR COMPLETENESS AND, ACCORDINGLY, SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS WHICH MAY RESULT FROM ITS INCORPORATION HEREIN.

- i) Tolerances

All vertical information shall have a maximum tolerance of 0.2m within the 1:50 scale. All horizontal information shall have a maximum tolerance of 1.0m within the 1:500 scale.

All sewer lengths shall be shown to the nearest 0.1m.

The Consultant shall be responsible to clarify, in writing, any major differences between the original engineering drawings and the "As Constructed" information and verify that the deviations do not negatively affect the approved design of the Works and Services.

- j) Submissions

Upon the completion of all construction work and the As Constructed Revisions, All as constructed drawings shall be submitted to the City of Owen Sound Engineering Services Division in digital form, as full size .pdf files and an AutoCAD (.dwg) format compiled using the AutoCAD eTransmit function to ensure the digital version can be plotted as the Consulting Engineer intended.

AutoCAD files shall be compatible with the current version of AutoCAD used by the City of Owen Sound and shall be geodetically referenced or, surveyed with "real world" coordinates and elevations in conjunction with NAD83, Zone 17 North.

- k) Municipal Service Sheets

A municipal service sheet shall be completed for all properties receiving new services during construction.

The service sheet is available from Engineering Services in AutoCAD form. The sheet has been devised so that each property and the infrastructure by which it is serviced can be shown through the viewport provided on the sheet. The viewport is to be at one (1) of the following scales: 1:100, 1:200 or 1:250 whichever delineates the property and its services the best.

As well as filling out the information defined on the service sheet, dimensions are to be provided for the following:

- The watermain is to be located perpendicular to the street line
- The wastewater sewer is to be located perpendicular to the street line
- The storm sewer is to be located perpendicular to the street line
- The curb stop is to be located to one side of a dwelling or permanent structure
- The main stop, if different than the curb stop is to be located to one side of a dwelling or permanent structure
- The cleanout is to be located to one side of a dwelling or permanent structure
- The storm service is to be located to one side of a dwelling or permanent structure to where it crosses the street line

- The curb stop is to be located perpendicular to the face of the dwelling or permanent structure
- The cleanout is to be located perpendicular to the face of the dwelling or permanent structure

12. Engineering Specifications and Standard Drawings:

All works undertaken by the Owner or by agents appointed by the Owner shall conform to the following (if applicable):

a) Miscellaneous Equipment Specifications:

All fire hydrants and valves shall be as specified by the City of Owen Sound City Engineer.

All wastewater and storm sewer connections shall be as specified by the City of Owen Sound City Engineer.

All signal poles and street lamps shall be as specified by the City of Owen Sound City Engineer.

All traffic control equipment and appurtenances shall be as specified by the City of Owen Sound City Engineer.

b) All works constructed within the municipal road allowance shall conform to the relevant ONTARIO PROVINCIAL STANDARD SPECIFICATIONS and ONTARIO PROVINCIAL STANDARD DRAWINGS

c) Additional Construction Specifications

-NONE-

13. Supplemental Conditions – Constructed Asset Data Submission

The City has developed a number of sheets, blocks, linetypes and procedures to ensure that engineering contract drawings are comprehensive and consistent.

The standards as outlined below shall apply to the Consultant working on a project where the City is the designated 'Owner' of the works being constructed.

1. All submitted drawings will be in the UTM NAD 83 CSRS Zone 17 Coordinate system.
2. Special care will be taken to ensure all lines are properly snapped, extended or lengthened together.
3. Polylines will be used to limit the amount of "segments" that are in the drawing. eg. One polyline will connect two manholes (points)
4. One complete CAD drawing (of the plan) made in Model space and segmented in Layout space.
5. A Point will be placed at the centre and/or intersection point of all structures (i.e. manholes, valves, tees, cleanouts, curb stops, etc.) on the appropriate layers.
6. The as constructed drawings will have the updated locations of all structures and services.
7. Descriptive layers will be required that clearly identify the objects. This will apply to existing, proposed and future objects included in the CAD submission.

Use the following examples as references to create the layers to provide similar information:

- For proposed 200mm dia. PVC DR18 watermain:  
N-200mmWM-PVC-DR18
- For proposed 1800mm dia. Storm CBMH:  
N-1800mmSTM-CBMH
- For existing 900mm dia. PE PS320 Perforated Storm Sewer:  
E-900mmSTM-PE-PS320-PERF
- For future OPSD 600.040 Concrete Curb and Gutter:  
F-CG-600.04

## **SCHEDULE 'D' TO THE SERVICING AGREEMENT**

### **List and Timing of Works to be Constructed**

The following is a list of the Works to be constructed and the timing of such construction:

1. Underground Services (wastewater sewer, storm sewer, watermain and fire protection), base course asphalt and road signage are to be completed within eight (8) weeks following mobilization.
2. Boulevard restoration, top lift asphalt, concrete curb, gutter and sidewalk, final pavement markings are to be completed within forty (40) weeks following mobilization or prior to occupancy of the development.

Total time from mobilization to completion (including restoration) for all works is within 2 years following execution of this Agreement by the Mayor and Clerk of the City of Owen Sound.

**SCHEDULE 'E' TO THE SERVICING AGREEMENT**

**Itemized Estimate of Cost of  
Construction of Each Part of the Works  
To be assumed by the City of Owen Sound**

NOTE: The construction costs listed for the purposes of this Agreement are estimates only. The financial obligations of all parties to this agreement are to be reconciled with the actual costs incurred for the construction of the works.

	Item	Qty	Unit	Unit Price (\$)	Total (\$)
<b>1.0 SITE PREPARATION</b>					
1.1	- Siltation Control Fence	160	L.m.	22.00	3,520.00
1.2	- Clear & Grub	1	L.S.	15,000.00	15,000.00
1.3	-Topsoil stripping and dispose off-site	1,700	m <sup>3</sup>	40.00	68,000.00
1.4	- Site Cut/Fill operations	600	m <sup>3</sup>	6.50	3,900.00
1.5	- Import, place and compact	1,100	m <sup>3</sup>	38.00	41,800.00
<b>Sub-Total</b>					<b>132,220.00</b>
<b>2.0 20<sup>th</sup> AVENUE EAST STORM SEWER</b>					
2.1	250 mm dia. PVC pipe	29	L.m.	250.00	7,250.00
2.2	300 mm dia. PVC pipe	14.6	L.m.	325.00	4,758.00
2.3	375 mm dia. PVC pipe	40	L.m.	375.00	15,000.00
2.4	450 mm dia. PVC pipe	62.1	L.m.	550.00	34,149.50
2.5	450 mm dia. HDPE Boss 2000 Culvert	29	L.m.	650.00	18,850.00
2.6	precast concrete single catchbasins	2	Each	1,100.00	2,200.00
2.7	precast concrete double catchbasins	2	Each	2,200.00	4,400.00
2.8	precast catchbasin manhole	2	Each	3,500.00	7,000.00
2.9	precast manhole	1	Each	7,500.00	7,500.00
<b>Sub-Total</b>					<b>101,107.50</b>
<b>3.0 20<sup>th</sup> AVENUE EAST ROADWORKS</b>					
3.1	fine grading truck routes and paved areas	3,600	m <sup>2</sup>	2.50	9,000.00
3.2	adjusting single CB (base course).	2	Each	475.00	950.00
3.3	adjusting double CB (base course).	2	Each	675.00	1,350.00
3.4	adjusting CBMH (base course).	2	Each	475.00	950.00
3.5	adjusting MH (base course).	1	Each	475.00	475.00
3.6	350mm thick sub-base OPSS granular 'B'	3,600	m <sup>2</sup>	32.25	116,100.00
3.7	150mm thick base - OPSS Granular 'A'	3,600	m <sup>2</sup>	15.00	54,000.00
3.8	barrier concrete curbs - OPSD 600.110	310	L.m.	165.00	51,150.00

	Item	Qty	Unit	Unit Price (\$)	Total (\$)
3.9	relocate the bike trail's fencing, P-gate and signage	1	L.S.	7,500.00	7,500.00
3.10	1.2 wide surface raised island	54	L.m.	400.00	21,600.00
3.11	1.5 m wide sidewalk	135	L.m.	125.00	16,875.00
3.12	tactile plates (red, cast iron)	15	Each	450.00	6,750.00
3.13	50mm thick HL-8 asphalt	2,900	m <sup>2</sup>	23.50	68,150.00
3.14	50mm thick HL-3 asphalt	2,900	m <sup>2</sup>	24.00	69,600.00
3.15	street name signs	2	Each	375.00	750.00
3.16	stop signs	1	Each	475.00	475.00
3.17	traffic control signs	10	Each	425.00	4,250.00
3.18	100mm wide solid white line paintings	377	L.m.	3.00	1,132.80
3.19	100mm wide solid yellow line paintings	255	L.m.	3.00	765.00
3.20	100mm wide (3mline and 3m gap)	155	L.m.	2.50	387.50
3.21	island painting	200	m <sup>2</sup>	15.00	3,000.00
3.22	stop bars	3	Each	350.00	1,050.00
3.23	remove hatched pavement markings	1	L.S.	2,000.00	2,000.00
3.24	traffic arrows painting	9	Each	125.00	1,125.00
3.25	boulevard grading and sodding	1,300	m <sup>2</sup>	12.00	15,600.00
<b>Sub-Total</b>					<b>454,985.30</b>
<b>4.0 20<sup>th</sup> AVENUE EAST STREETLIGHTS</b>					
4.1	Install and connect 5 streetlights	1	L.S.	38,972.00	38,972.00
<b>Sub-Total</b>					<b>38,972.00</b>
<b>20<sup>th</sup> Avenue East Construction (Sections 1.0-4.0) Sub-total</b>					<b>727,284.80</b>
<b>5.0 INTERSECTION IMPROVEMENTS</b>					
5.1	Traffic detection upgrades	1	L.S.	10,000.00	10,000.00
5.2	Intersection signal upgrades	1	L.S.	298,000.00	298,000.00
<b>Sub-Total</b>					<b>308,000.00</b>
Sections 1.0 - 5.0 TOTAL:					1,035,284.80
12% ENGINEERING & CONTINGENCIES					124,234.18
13% HST					150,737.47
<b>TOTAL CONSTRUCTION COST ESTIMATE</b>					<b>1,310,256.45</b>

Reimbursement of capital expenses to Hwy 26 & 20<sup>th</sup> Commercial Inc. as per Clause 43 following the maintenance period and the issuance of a Certificate of Assumption of Works and Facilities:

1. For 20<sup>th</sup> Avenue East Construction (Schedule 'E', Sections 1.0-4.0)  
37.5% in Five (5) years:     \$ 305,459.62 (includes 12% Engineering & Contingencies) plus HST  
37.5% in Ten (10) years:    \$ 305,459.62 (includes 12% Engineering & Contingencies) plus HST
2. For 16<sup>th</sup> Street East & 20<sup>th</sup> Avenue Intersection Upgrades to Existing Intersection (Schedule 'E', Section 5.0)  
50% in Five (5) years:       \$ 172,480.00 (includes 12% Engineering & Contingencies) plus HST
3. For 16<sup>th</sup> Street East & 20<sup>th</sup> Avenue Intersection Existing Intersection  
50% in Ten (10) years:       \$ 69,730.00 plus HST

TOTAL RECOVERABLE CONTRIBUTION:                             \$853,129.24 plus HST

The Developer agrees that the maximum amount recoverable from future development abutting the road allowance described above shall be the total actual cost of designing and constructing the Services payable by the Developer and adjusted for inflation based on the Construction Price Index from the time of construction to the time the Services are used or accessed.

The City's financial commitment to these works shall not exceed \$855,000.00 plus HST adjusted for inflation based on the Construction Price Index.

**SCHEDULE 'F' TO THE SERVICING AGREEMENT**

**Taxes in Arrears, Local Improvement Charges,  
And Other Charges**

The following monies are to be deposited with the City prior to or at the time of execution of this Agreement.

- a) Taxes in Arrears: There are no taxes in arrears for the Lands currently.
- b) Local Improvement Charges: There are no Local Improvement charges assessed or outstanding for the Lands.
- c) Relocation of Utility Plants:  
The Owner shall pay the full costs of the relocation of any public or private utility plants necessitated by the development of the Lands.
- d) Other Charges: As noted below.

Pursuant to Clause 3 of this Agreement, the City of Owen Sound Engineering Services Fee consists of an Administration Fee (to cover the initial legal and administrative expenses) of \$500.00 plus an additional fee based on 4% of the first \$100,000 of the estimated TCC of the works to be assumed by the City plus 2% of the balance of the TCC.

*Total Construction Cost (TCC) comprises the construction value of the works plus 12% for engineering (design, admin & inspection) and contingency allowances plus HST.*

CALCULATED REVIEW FEE = \$4,000.00 + ((TCC - \$100,000.00) X 2%)

<b>Estimated Total Construction Cost:</b>	<b>\$ 1,310,256.45</b>
Administration Fee:	\$ 500.00
Calculated Review Fee:	<u>\$ 28,205.00</u>
<b>Total City of Owen Sound Engineering Services Fee</b>	<b>\$ 28,705.00</b>

SUMMARY OF CASH CHARGES

1. Taxes in Arrears	\$ N/A
2. Local Improvement Charges	\$ N/A
3. Street Lighting (see Schedule 'C', Item 12)	\$ N/A
4. Engineering Services Fee	\$ 28,705.00
5. Water Connection Fee/Deposit (to be adjusted to actual cost)	\$ 2,000.00
7. Frontage fees	\$ N/A
8. Proportionate Contribution (existing traffic signals at 16 <sup>th</sup> St. E.)	\$ 139,460.00

**Total Charges:** cash or certified cheque  
(due at time of Agreement Execution) **\$ 170,165.00**

**Security Deposit** (due at time of Agreement Execution) **\$1,310,256.00**

100% of the estimated cost of off-site services required by the development to be assumed by the City under this Agreement (Letter of Credit per Sample in Schedule 'K', certified cheque or cash)

**Securities Retained by the City**

The two-year Maintenance Period as described in Clause 18 of this Agreement shall commence following the issuance of a Certificate of Substantial Completion by the City in accordance with Clauses 16 and 17 of this Agreement.

When the Certificate of Substantial Completion is issued the City shall reduce the amount of security held to **\$131,026.00**

At the conclusion of the two-year maintenance period. The City shall issue a Certificate of Assumption of Works and Facilities and return the remaining security to the Developer in accordance with Clause 18 of this Agreement.

## **SCHEDULE 'G' TO THE SERVICING AGREEMENT**

### **Easements to be Granted to the City**

The Developer, at his/her sole cost and expense including all registration costs and applicable taxes if any, shall grant and convey to the City free and clear of all encumbrances, easements as may be required for the installation of the Services.

Easements required by the City shall be provided to the City Clerk within sixty (60) days of execution of this Agreement. The City shall not issue any release as provided for in Clause 38 hereof nor release any securities deposited hereunder until such easements have been conveyed to the City. Required easements shall be shown on reference plans registered in the County Registry Office, and documentation shall be in a form acceptable to the City Solicitor.

The following easements are to be defined on reference plans registered in the Grey County registry office and conveyed to the City in accordance with the requirements of the City Solicitor:

**- None Required -**

If at any time the City is of the opinion that additional easements are necessary to provide any of the required Services, the Developer shall provide such additional easements at the request of the City to the approval of the City Engineer.



## **SCHEDULE 'H' TO THE SERVICING AGREEMENT**

### **Lands to be Deeded to the City**

Deeds and discharges of any encumbrances for lands to be conveyed to the City pursuant to this Agreement shall be delivered to the City Clerk at the time of execution of this Agreement and are subject to approval of the City Solicitor, and will be registered in the County Registry Office, the costs of which shall be paid by the Developer.

The following lands are to be conveyed to the City in accordance with the requirements of the City Solicitor:

**- None Required -**

## **SCHEDULE 'I' TO THE SERVICING AGREEMENT**

### **Release of Lands Drainage Requirements for the Lands**

#### **Release of Lands**

The Owner shall be entitled to an effective release in a form for registration in the County Registry Office for the whole or any part of the Lands designated by The Owner when:

- i) The Owner is not in default of this Agreement;
- ii) All easements, discharge of encumbrances, and any other conveyances required by this agreement have been provided to the satisfaction of the City Clerk;
- iii) The City has issued a Certificate of Substantial Completion and a Certificate of Assumption of Works and Facilities for the Works required by this Agreement.

#### **Drainage Requirements for the Lands**

**- None Required -**

## SCHEDULE 'J' TO THE SERVICING AGREEMENT

### Sample Letter of Credit

Clerk of the Corporation of the City of Owen Sound  
808 2nd Avenue East  
Owen Sound, Ontario

In consideration of the agreement between The Corporation of the City of Owen Sound and *(Name of Owner)* which is dated the \_\_\_\_ day of \_\_\_\_\_, 2016, we hereby authorize you to draw on the *(Name and Address of Bank)* up to an aggregate amount of \$\_\_\_\_\_ available by draft at sight for 100% of invoice value of credit, with guarantee as follows:

As requested by our customer *(Name of Owner)*, we the *(Name of Bank)* hereby establish and give an Irrevocable Letter of Credit in your favour in the total amount of \$\_\_\_\_\_, which 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 question as to rights between you and our said customer, provided however, that you are to deliver to the *(Name of Bank)* at such time as a written demand for payment is made by you upon us, a statement signed by you confirming that the monies drawn by you are pursuant to our customer's agreement with The Corporation of the City of Owen Sound.

The amount of this Letter of Credit may be reduced from time to time as advised in writing from time to time by you to us.

This Letter of Credit shall remain in full force and effect for a period of \_\_\_\_\_ months and will expire on \_\_\_\_\_, 20\_\_, provided however, that unless notice of expiry is given by registered mail to the Clerk of The Corporation of the City of Owen Sound by us no later than 30 days prior to the expiry date, the Letter of Credit shall be deemed to be renewed from year to year on the same terms and conditions.

In the event that we refuse to renew the Letter of Credit at the aforementioned date of expiry, prior to such date the City shall have the right to draw such amount of money as it shall in its absolute discretion deem necessary.

Letter to be Dated, Signed and Sealed

***Note: THE CITY WILL ACCEPT LETTERS OF CREDIT ONLY FROM CHARTERED BANKS AND CREDIT UNIONS.***

*The Letter of Credit must be irrevocable.*

*The Letter of Credit must be written so as to be honoured by the Surety without question or without just cause having to be proven by the City to the Bank.*

*Automatic renewal provisions with 30 day notice of expiry must be included in the Letter of Credit.*