

THIS AGREEMENT made this _____ day of _____, 2020.

B E T W E E N:

THE CORPORATION OF HALDIMAND COUNTY
(hereinafter called the "County")

OF THE FIRST PART

-and-

GATEWAY COMMERCIAL (CALEDONIA) Ltd
(hereinafter called the "Developer")

OF THE SECOND PART

and-

(hereinafter called the "Mortgagee")

OF THE THIRD PART

[NTD: There is currently no mortgage on the subject property but there likely will be by the time this is ready for execution.]

WHEREAS the County has had prepared a Development Charges Background Study as required by the *Development Charges Act* and pursuant thereto has approved a Development Charges By-Law (the "By-Law") which provides for the construction of certain capital projects to be constructed in the benefiting area as defined in this Agreement and to which capital works the within Agreement specifically addresses;

AND WHEREAS the Developer represents and warrants that that they are either the registered owner of the lands and premises located within the benefiting area, or have entered into an agreement to purchase the said lands and premises, which lands and premises are more particularly described in Schedule A hereto;

AND WHEREAS pursuant to the provisions of the *Development Charges Act*, 1997 S.O. as amended (the "Act") and the other authorizing provisions in the *Municipal Act*, 2001 S.O. 2001 and the *Planning Act*, R.S.O. 1990 all as amended, the Act specifically provides that a person can advance funds to a municipality for municipal infrastructure purposes and the municipality can enter into an agreement whereby the person may recover such advances by various means including but not limited

to receiving credits against and/or repayment from future development charges collectible by the municipality pursuant to its By-Law.

AND WHEREAS the Developer has agreed to fund the cost of the proposed capital project within the benefiting area and to recover such funding by repayment credits from future development charges collected by the County.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the terms and conditions and mutual covenants exchanged by the Parties pursuant to the terms and conditions of this Agreement, the sufficiency whereof the Parties hereby acknowledge, the Parties agree as follows:

1. The recitals herein before set forth are true in substance and in fact and form part of this Agreement.

2. **DEFINITIONS**

2.1 In this Agreement and in the recitals and schedules hereto, unless the subject matter or context of the inclusion of the word or term is inconsistent therewith, the following words, terms and expressions shall have the following meanings:

“**Act**” means the *Development Charges Act, 1997, S.O.* as amended;

“**Agreement**” means this Agreement;

“**Approved Plans**” means the complete engineering design plans and specifications of the Project as approved by the County and its consulting engineers;

“**BTE’s**” means the amount estimated, after the Approved Plans for the Project have been agreed upon and the Total Costs of Project estimated as being that portion of the Project which in accordance with the Study represent “benefits to existing users” and therefore capital costs not attributable to growth or in accordance with the Study are benefits accruing outside the benefiting area. BTE’s will be determined in accordance with the provisions of Paragraph 4.1 to arrive at the D.C. Eligible Costs

“**Benefiting Area**” has the same meaning as in the By-Law and the area benefiting under this Agreement is set out in Schedule “B” hereto.

“**By-Law**” means, collectively, the County’s development charges By-Law #2042/19, dated May 13th, 2019, as amended by By-Law #2155/20, dated April 21st, 2020 or the applicable County Development Charges or Community Benefit Charge By-law in effect at the time of the required payment;

“**Completion Certificate**” means the certification by the Consulting Engineer on the consultation and acceptance by the County’s Engineer that the Project is ready for turn-over and full time operation;

“Consulting Engineer” means the engineering firm retained by the Developer and approved by the County to prepare the Project design and finalize the Approved Plans whose fees shall be paid for by the Developer;

“Contract” means the contract to be entered into by the Developer with the successful contractor to build the Project in accordance with the Approved Plans;

“Contract Price” means the actual construction costs of the Project based on the tendered costs plus a 5% contingency provided by the Consulting Engineer and as approved by County as part of the approval of the Approved Plans. Administration charges incurred by the Developer or any management or external consulting fees (excluding the Consulting Engineers Fees) or, any third party claims, any costs incurred during the Warranty Period and any costs incurred as a result of any default by the Developer are expressly excluded;

“Creditable Portion” means that portion of the Development Charges which pursuant to the Act, the By-Law and the Background Study are attributable to the recoverable capital costs of the Project as reflected in the Contract Price;

“D. C. Eligible Costs” means the Total Costs of the Project plus legal and administrative costs attributable to this Project, less the BTE’s, if any, and any other costs or benefits, which pursuant to the Act, Study and the By-Law are not eligible for inclusion as recoverable by Development Charges;

“Development Charges” means the charges levied and collected by the County pursuant to its By-Law;

“Gross Approved Credit” means the creditable portion of the D. C. Eligible Costs which will be aggregated to arrive at the credit which the Developer will receive in accordance with the provision of Paragraph 6.1.1 hereof;

“HST” means taxes payable and/or collected pursuant to the provisions of the Harmonized Sales Tax regime under the Excise Tax Act (Canada) and/or any similar or replacement tax which may be imposed on goods and services;

“Land” means the lands of the Developer or described in Schedule “A” hereto;

“Parties” means all the Parties to this Agreement and “Party” means any of them;

“Project” means the North Caledonia Wastewater Pumping Station, which includes the construction of a new pumping station, force main, and collector gravity sewer and all appurtenances thereto together with the decommissioning of the Domtar Pumping Station.

“Project Lands” means that portion of the Lands of the Developer on which the Project is to be constructed and which will be conveyed to the County and more particularly described in Schedule “B” hereto;

“Study” means the Development Charges Background Study dated the 5th day of March, 2019, together with Addendum #1 dated April 8th, 2019, and Addendum #2 dated May 2nd, 2019 as prepared by Watson & Associates Economists Ltd. for the County and approved by it in accordance with the provisions of the Act and which Study is generally implemented in the By-Law;

“Total Costs of Project” means the Contract Price and Consulting Engineer Fees incurred by the Developer to complete the Project in accordance with the work identified in the Approved Plan;

“Warranty Period” means the period of two (2) years following the issuance and acceptance by the County of the Project;

“Wastewater Services Component” means that portion of the development changes imposed by the By-Law which are attributed as being collected for wastewater services throughout the County for both Residential and Non-Residential development in the amount shown from time to time in the Schedules to the By-Law;

2.2 Schedules

- Schedule “A” – Lands of the Developer
- Schedule “B” – Map of Benefiting Area
- Schedule “C” – Copy of draft Reference Plan of Lands subject to Conveyance pursuant to Article 5.1
- Schedule “D”- Matrix of Capital Cost Estimate

3. PROJECT APPROVAL

3.1 The Parties hereto agree that the design specifications and implementation of the design for working plans is yet to be determined and will be subject to the prior written approval of the County. The Developer shall submit to the County’s Engineer draft engineering drawings and specifications, including an estimate of Total Costs of the Project for the County’s review and approval. Once approved by the County’s Engineer the drawings in final form and in the form to be constructed shall be subject to the final approval of the County and shall become the Approved Plans.

3.2 The Developer shall enter into a construction contract or contracts (the “Contract”) with the proposed qualified contractor to build the Project in accordance with the Approved Plans. The Developer shall be responsible for all required permits and necessary approvals required for the Contract. The Developer shall be responsible for all contract administration, inspection, testing and reporting. In conjunction with the entering into the Contract to build the Project the Developer shall obtain and provide, for the benefit of the County a performance bond supplied by the Contractor, to the final completion of the Project from a bonding agent or company to be approved by the County.

3.3 The Developer shall assure that the Consulting Engineer shall monitor all work under the Contract and in so doing shall report progress weekly under the Contract to the County’s Engineer. Nothing herein shall limit the right of the County or the County’s engineering staff from carrying

out independent and separate monitoring of both the progress and the efficacy of the implementation of the Contract and consistency with the Approved Plans during construction of the Project.

3.4 In order to allow the County to inspect the Project, the Developer, or their agent, will provide the County with three (3) business days' notice of major construction activities to be undertaken by the Developer's contractor. These activities will include, but are not limited to: pumping station installation, trench backfill, compaction testing, force main installation, force main connections, trunk gravity sewer installation, testing and commissioning of all systems and similar works.

3.5 The Developer shall obtain prepare and submit to the County for approval a Reference Plan in registrable form for the Project Lands including without limitation, any easements or rights of way necessary to the Project. The Developer shall arrange for registered transfers to the County of all easements on private property required for completion of the Project to the satisfaction of the County prior to the County's assumption of the Project and at Developer's cost.

3.6 The Developer shall pay the contractor for the Contract work pursuant to the provisions of the Contract in accordance with the approved draws prepared by the Consulting Engineer. The Developer shall assure that payments are made in a timely fashion all in accordance with the provisions of the Contract. The Developer hereby warrants and guarantees to the County, and shall hold the County harmless as hereinafter provided, that the work under the Contract remains free and clear of any liens or claims for liens and to the extent that any liens or claims for liens are registered and/or otherwise advanced the Developer shall immediately make application pursuant to the *Construction Lien Act* to vacate the lien or claim on title and obtain the necessary order to remove it. All such costs shall be for the sole responsibility of the Developer.

3.7 The Developer shall warrant the Project for the Warranty Period such that the Developer shall be responsible for remedying and repairing any deficiencies that may arise during the Warranty Period in relation to the Project or any component thereof.

3.8 The Project shall be completed in accordance with the time Schedule agreed upon by the parties and as shown in the Contract.

4. ESTIMATED COST OF PROJECT

4.1 The Parties hereto agree that in accordance with the estimates in the Study the Parties estimate that the gross capital cost of completion of the Project is the amount \$9,946,300.00 excluding HST of which after making the required statutory or any other deductions the D. C. Eligible Cost is in the amount of \$9,040,316.00 plus HST and the Creditable Portion is in the amount of \$ _____. **[NTD: The issue of how HST will be dealt with is still under investigation]**

4.2 In accordance with this Agreement, the Parties hereto agree that the Gross Approved Credit which will accrue to the Developer for funding the recoverable and eligible capital costs is in the amount of \$_____.00.

4.3 (See notes above)

5. CONVEYANCE

5.1 On the 46th day next immediately following the delivery by the Developer to the County of the Completion Certificate the Developer shall convey to the County the Project Lands and the Project in full working order and functioning in accordance with the design parameters of the Approved Plans.

5.2 The conveyance to the County, in addition to the Project Lands, shall include any easements, rights of way, access agreements over which the Project and its constituent parts are located;

5.3 The conveyances described in 5.1 and 5.2 shall be free and clear of any and all encumbrances whatsoever including, but without limitation, any restrictive covenants or other limitations to the County's title, unless agreed to by the County. Nothing in the conveyances will require the County to obtain the consent of any party to exercise its rights under the conveyances.

6. CREDITS

6.1 The Parties hereto agree that in consideration for the Developer front ending the costs of the Contract and paying for the completion of the Project in accordance with the provisions of that Contract that the Developer shall receive credits (the "Gross Approved Credit") as against the Development Charges it will otherwise pay pursuant to the provisions of the By-Law. Said credit shall be calculated and administered as follows:

6.1.1 The County shall establish and keep current a running account, in favour of the Developer, of the Gross Approved Credit as determined in accordance with this Agreement. The account shall represent the credit available from time to time, to the Developer for any Wastewater Services Component which the Developer would otherwise be responsible to pay pursuant to the By-Law;

6.1.2 The Developer will pay, in accordance with the provisions of the By-Law, Development Charges eligible on any development application which it may make on any of its lands with the County;

6.1.3 The County shall maintain a record of the aggregate amount paid by the Developer which is attributed to the Wastewater Services Agreement of the Development Charge, herein the "Refundable Component".

- 6.1.4 Quarterly, the County shall pay to the Developer the aggregate amount of the Refundable Component which the County has collected from the Developer over the proceeding three (3) month period and an amount equal to the payment shall be deducted to reduce the Gross Approved Credit account maintained by the County;
- 6.1.5 The Developer shall have the right to receive a copy of the account as maintained by the County but except for manifest error in the calculations, the account as maintained by the County shall be final and binding on the Developer;
- 6.1.6 The application of the Gross Approved Credit may be useable by the Developer not only for development on it's Lands as described in Schedule "A", but on any lands within the County either currently owned by the Developer or hereafter acquired by it;
- 6.1.7 Any payments made by the County on account of the Gross Approved Credit of the Creditable Portion shall be aggregated from time to time until such time as the Gross Approved Credit have been paid in full or the period which is 20 years from the date of the conveyance made to the County pursuant to Article 5.1 of this Agreement has passed whichever event should first occur when the Gross Approved Credit shall be deemed to have been fully exhausted.
- 6.1.8 Payments made by County in accordance with the provisions of this Article 6 and or the effluxion of time so provided are final and binding and the County shall have no further financial or other responsibility to the Developer hereunder in any manner or form.

7. ACKNOWLEDGEMENT OF AUTHORITY

7.1 The Parties hereto acknowledge that the legal authority for the Parties to contract in accordance with the terms of this Agreement are found under the provisions of the Act, the *Municipal Act* and the *Planning Act* and that the repayment to be made by the County through the use of credits is specifically authorized under the provisions of the Act. In acknowledgement of this authority to contract, the Parties agree that they will not, at any time or in any court of competent jurisdiction challenge the authority of either Party who have entered into this Agreement.

8. DEVELOPERS RIGHT TO TRANSFER CREDIT

8.1 The Parties hereto agree that the Developer shall have the right to transfer the benefit of this Agreement and the balance of any credits (or any portion thereof) to be derived thereunder if, in accordance with the provisions of Section 40 of the Act, the following conditions are met:

- (a) The Developer and the person to whom the credit or any part thereof is to be transferred (the "Transferee") have agreed to do so in writing (the "Transfer Agreement");

- (b) A copy of the Transfer Agreement between the Developer and Transferee is submitted to the County;
- (c) The Transferee has also become the owner of the lands within the County to which this Agreement may apply and the Transferee pursuant to the Transfer Agreement has agreed to assume any and all of the Developer's obligations pursuant to this Agreement and/or under the Contract;
- (d) That the transfer of the credit shall not be effective until the municipality has completed the transfer; and
- (e) The Developer pursuant to the Transfer Agreement and notwithstanding the County's consent, agrees to remain bound by the obligations under this Agreement until they have been fully performed.

9. INDEMNITY

9.1 The Developer agrees to indemnify the County, its employees, elected officials and agents against all actions, causes of actions, suits, claims and demands whatsoever, which may arise directly or indirectly by reason of the County entering into this Agreement or by reason of any breach by the Developer of any of its obligations hereunder.

10. INSURANCE

10.1 The Developer shall purchase and maintain and in addition cause any contractor retained by it pursuant to the Contract to purchase and maintain at all times during the term of this Agreement the insurance coverage listed below which coverage shall list the County as an additional insured with waiver of subrogation as it relates to the County.

10.2. The insurance coverage shall be obtained by the Developer to be written by an insurer licensed to do business in the Province of Ontario in accordance with the provision of this Agreement as follows:

- (a) Commercial General Liability Insurance insuring the Developer and/or the Contractor under the Contract covering all work related to the Project on an all risk basis to a limit of not less than \$5,000,000.00 per occurrence;
- (b) Extended Coverage to include, bodily injury, death and property damage, with cross-liability and severability of interest;
- (c) Blanket Contractual Liability for the Project and operations;

- (d) Broad Form Property Damage for Products and Completed Operations including owners and contractors protective coverage;
- (e) Owned and Non-Owned Automobile coverage to a limit not less than \$2,000,000.00;
- (f) The insurance policies to contain a covenant by the insurer to give not less than 30 days notice to all insured hereunder in the event of any material change in coverage and/or risk of cancellation.

10.3 The Developer shall ensure that certificates of insurance signed by the insurer shall be delivered to the County prior to the commencement of any work pursuant to the Contract and not less than 30 days after the execution of this Agreement whichever shall first occur.

11. CONTINUING MUNICIPAL COUNCIL DISCRETION

11.1 The Developer acknowledges that the execution of this Agreement by the County shall not in any way or manner fetter or be deemed to fetter the discretion and authority of the County's Council as an approval authority under any applicable statute, including, without limitation, the *Planning Act* or the *Development Charges Act* with respect to any matter where the discretion of Council as an approval authority may be exercised in relation to any application made to it by the Developer with respect to the Lands and/or any other application within Council's jurisdiction.

12. MORTGAGEE'S CONSENT

[NTD: Until we get a copy of the legal description of the Lands of the Developer we cannot conduct a search of title to determine if there are any encumbrances. If there are we will want postponement to our Agreement.]

12.1 The Mortgagee is the holder of a mortgage on the Lands in current first priority. The Mortgagee agrees to consent to register on the title to the Lands a postponement (the "Postponement") of its mortgage and this Agreement and any other security held by it and attached to the Lands), collectively the "Charges", to the rights if the County hereunder, the Postponement shall be in the form as approved by counsel to the County and shall be delivered to the County for registration on the execution of the Agreement.

12.2 On delivery of the conveyances to be made by Developer in accordance with the provision of Paragraph 5.1, 5.2 and 5.3 the Mortgagee shall and the Developer shall ensure, the delivery of a discharge of all Charges in registrable form for all of the Project Lands.

13. GENERAL

13.1 The Developer, notwithstanding the provisions of Paragraph 8 shall not assign or transfer this Agreement without first obtaining the written consent of the County which consent may be withheld by the County in its sole and absolute discretion.

13.2 This Agreement is governed by and shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. The Parties hereby irrevocably agree to attorn to the jurisdiction of the Courts of the Province of Ontario.

13.3 This Agreement including Schedules A to D inclusive constitute the entire agreement between the Parties to with respect to the subject matter hereof and supersedes and cancels any prior understanding or agreement between the Parties as to this matter. No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by all Parties thereto.

13.4 No waiver or breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same unless otherwise provided in the written waiver and shall be limited to the specified breach waived.

13.5 In the event that any portion or term of this Agreement is deemed invalid or void, in whole or in part by any Court of competent jurisdiction, the remaining terms and provisions of this Agreement shall remain in full force and effect.

13.6 The Developer agrees that the County in its sole and unfettered discretion has the right to register or deposit the Agreement on title to the Developer's Lands and that said registration shall provide the County a clear and first priority charge upon the title of the Lands.

13.7 This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts shall be construed together and shall constitute one and the same Agreement.

13.8 The Developer represents and warrants to the County that it has the capacity to enter into this Agreement and to be executed and bound by any document arising from this Agreement.

13.9 Notwithstanding any other provision of this Agreement, in the event that either the County or the Developer is delayed, hindered, or prevented from the performance of any act required hereunder, by reason of any unavoidable delay, including epidemics, pandemics, strikes, lockouts, unavailability of materials, inclement weather, acts of God, acts of war or terrorism or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds, then performance of such act is postponed for a period of time equivalent to the time lost by reason of such delay

14. NOTICES

14.1 Any notice required or permitted to be given under the terms of this Agreement or any tender or delivery of documents may be sufficiently given by personal delivery or, if other than delivery by facsimile transmission to the Parties at the following address:

in the case of the County:

The Corporation of Haldimand County
53 Thorburn Street South
Cayuga, Ontario
Canada, N0A 1E0
ATTN: Clerk
Phone: (905) 318-5932
Facsimile: (905) 772-3542

in the case of the Developer:

GATEWAY COMMERCIAL (CALEDONIA) Ltd. c/o
Empire Communities
125 Villarboit Crescent
Vaughn, Ontario
L4K 4K2
ATTN: Daniel Guizzetti
Phone: 1 (905) 307-8102
Facsimile: 1 (905) 307-8103

14.2 Any notice may also be given by prepaid registered mail within the Province of Ontario and such notice shall be deemed to be effectively delivered five (5) days following the date of mailing except in the event that there shall be a disruption in postal service at the time of mailing in which case notice shall be effective by personal delivery, e-mail or facsimile transmission as stated above.

14.3 This Agreement shall inure to the benefit and be binding upon the Parties hereto and their respective successors and permitted assigns.

THE CORPORATION OF HALDIMAND COUNTY

Per: _____

Name:

Office: Mayor

Per: _____

Name:

Office: Clerk

**GATEWAY COMMERCIAL (CALEDONIA) Ltd. c/o
EMPIRE COMMUNITIES**

Per: _____

Name: Daniel Guizzetti

Office: President

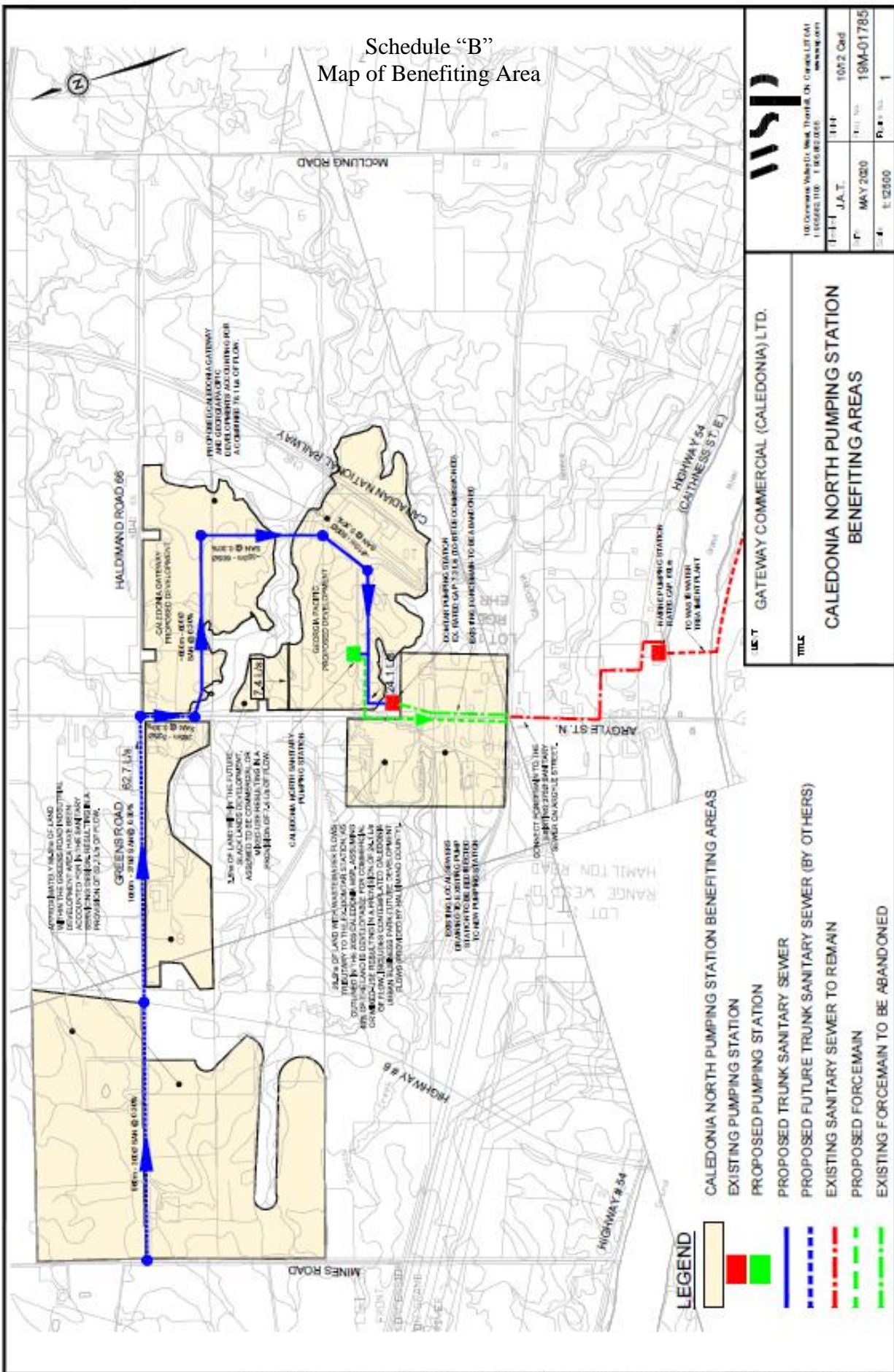
Schedule "A"
Lands of the Developer

Gateway - PART OF THE WEST HALF OF LOTS 8 AND 9 RANGE 1, EAST OF PLANK ROAD, SENECA, AS PART 1 ON 18R7623, TOWNSHIP OF SENECA; HALDIMAND COUNTY

GP - PT W1/2 LT 9 RANGE 1 EAST OF PLANK RD SENECA; PT LT 10-11 RANGE 1 EAST OF PLANK RD SENECA; PT A BLK OF LAND S OF LT 9 E OF HAMILTON PLANK RD GRANTED TO JACOB TURNER SENECA PT 1 18R4574 S/T HC128570, HC128571; S/T S10142; HALDIMAND COUNTY

DRAFT

Schedule "B"
Map of Benefiting Area



Schedule "C"

Copy of Draft Reference Plan of Lands Subject to Conveyance pursuant to Article 5.1

Schedule "D"

Matrix of Capital Cost Estimate

PROJECT: Caledonia North SPSPROJ. NO: 191-10460-00DATE: May 6, 2020**100% DETAIL DESIGN CAPITAL COST ESTIMATE**

	Item	Total	Empire Cost	DC Eligible Cost (County Cost)	Benefit to Existing
A	Caledonia SPS (inc. Demolition of the existing Domtar SPS)	\$5,060,000	\$ -	\$ 4,940,523	\$119,477
B	Site Preparation, Earthworks, and Siltation Control	\$410,500	\$ 410,500	\$ -	\$ -
C	Sanitary Sewers, Maintenance Holes and Appurtenances	\$1,717,802	\$ -	\$ 1,717,802	\$ -
D	Storm Sewers, Maintenance Holes and Appurtenances	\$119,485	\$ 119,485	\$ -	\$ -
E	Watermains and Appurtenances	\$85,098	\$ 85,098	\$ -	\$ -
F	Preparation of Road Base	\$57,088	\$ -	\$ 57,088	\$ -
G	300mm dia. Forcemain	\$838,590	\$ -	\$ 818,184	\$ 20,406
H	Sub-Total	\$8,288,561	\$ 615,082	\$ 7,533,597	\$ 139,882
I	Project Contingency (5%)	\$414,428	\$ 30,754	\$ 376,680	\$ 6,994
J	Approvals and Engineering Fees (15%)	\$1,243,284	\$ 92,262	\$ 1,130,040	\$ 20,982
K	Grand Total	\$9,946,274	\$ 738,098	\$ 9,040,316	\$ 167,859

Benefit to Existing Detail	
Caledonia North PS Capacity (L/s)	150
Domtar PS Capacity (L/s)	3.65
Domtar PS Percentage of Caledonia PS Capacity	2.4%
Proportional Cost (Includes Items A, G, I & J)	\$ 167,859