

The Corporation of the Township of Southgate

By-law Number 2022-149

**being a by-law to authorize an agreement between 2570970 Ontario Inc.
and The Corporation of the Township of Southgate**

Whereas the Municipal Act, 2001, Chapter 25, as amended, Section 5 (3), states that municipal power, including a municipality's capacity, rights, powers and privileges, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise; and

Whereas Section 8 of the Municipal Act, 2001, Chapter 25, as amended, provides that a municipality has the authority to govern its affairs as it considers appropriate and enables the municipality to respond to municipal issues; and

Whereas Section 9 of the Municipal Act, 2001, Chapter 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and

Whereas it is deemed necessary and desirable that the Council of the Corporation of the Township of Southgate enact a by-law authorizing the Corporation to enter into an agreement with 2570970 Ontario Inc.,

Now therefore be it resolved that the Council of the Corporation of the Township of Southgate enacts as follows:

1. **That** the agreement between 2570970 Ontario Inc. and The Corporation of the Township of Southgate, attached hereto at Schedule A is hereby ratified and confirmed; and
2. **That** the Mayor and Clerk are hereby authorized and directed to sign the Agreement, in substantially the same form as the agreement attached hereto as Schedule "A", on behalf of the Corporation of the Township of Southgate and all other documents as may be necessary to give effect thereto; and
3. **That** where the provisions of any other by-law, resolution or action of Council are inconsistent with the provisions of this by-law, the provisions of this by-law shall prevail.

**Read a first, second and third time and finally passed this 5th day of
October, 2022.**

John Woodbury – Mayor

Lindsey Green – Clerk



SERVICE FINANCING AGREEMENT

THIS AGREEMENT made the 5th day of October, 2022.

BETWEEN:

2570970 ONTARIO INC.
(White Rose Estates Park)
(hereinafter called the "Developer")

PARTY OF THE FIRST PART

-and-

**THE CORPORATION OF THE TOWNSHIP
OF SOUTHGATE**
(hereinafter called the "Township")

PARTY OF THE SECOND PART

WHEREAS:

- A. The Developer is the owner of certain lands described in Schedule "A" hereto for which a draft plan of subdivision has been approved;
- B. The development of the Developer's subdivision requires, *inter alia*, (i) the construction, installation and provision of certain Required External Services, identified in Schedule "B" attached hereto, and (ii) the payment of development charges in accordance with applicable law.
- C. The conditions of draft approval, File No. 42T-2018-08, require that *inter alia* the Developer and Township enter into this Service Financing Agreement to provide for all of the financing required for the construction of the works, facilities and services described on Schedule "B".

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

1. Definitions

In this Agreement:

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

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

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

"Development Charge By-law" or "DC By-law" means the Township's Development Charge By-law 36-2015 passed under the authority of the *Development Charges Act, 1997*, as amended.

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

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

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

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

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

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

2. Application of Agreement

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

3. Required External Services

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

4. Developer’s Obligation for Required External Services

4.1 Costs of Services

The Developer agrees to:

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

4.2 Design and Approvals

The Developer agrees:

- a) to be responsible for the design of all the Required External Services as approved by the Township’s Engineers, with the Township’s Engineers to act reasonably in all instances;
- b) to obtain the approval of all other necessary authorities to the design of the Required External Services;
- c) that the Required External Services shall be installed and constructed strictly in accordance with the designs as approved by the Township’s Engineer and all other necessary authorities in accordance with the terms of this Agreement;
- d) that all of the Required External Services shall be designed and their installation supervised by consulting engineers satisfactory to the Township’s Engineers, acting reasonably;

- e) that the Developer's agreements or contracts with their consulting engineers shall include design, general supervision and resident supervision and shall provide that the Township's Engineers or their representative may personally review the installation of the Required External Services and shall have the power to stop the work in the event that in his or her reasonable opinion the work is being performed in a manner that may result in a completed installation that would not be satisfactory to the Township.
- f) that all design drawings shall be approved by the Township, acting reasonably, before the construction of the Required External Services; and
- g) that all design drawings shall carry the seal of the professional engineer who is responsible for the designs and shall be signed by him or her.

4.3 Construction of Required External Services

The Developer agrees:

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

4.4 Indemnity

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

4.5 Failure to Comply

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

labour disturbance, Act of God or similar occurrence, the Developer shall be deemed not to be in default under this Section until a reasonable time after such occurrence. In the event that a claim is made against the Township under the Construction Lien Act in respect of work that is done or to be done by the Developer pursuant to this Agreement, in addition to any other remedy the Township may have, upon the Township's Engineers giving 48 hours written notice by prepaid registered mail to the Developer, the Township may, without further notice, draw upon the Letter of Credit referred to in Section 6.2 for the amount of the claim plus security for costs as provided for in s.44 of the Construction Lien Act, as may be amended.

4.6 Emergency Repairs

At any time prior to the assumption of the Required External Services by the Township, if any of the Required External Services provided by the Developer do not function properly and, in the reasonable opinion of the Township's Engineers, repairs are necessary immediately to prevent damage or hardship to any persons or any property, the Township may, but is not obligated to, make whatever repairs may be deemed necessary and the Developer shall pay to the Township, immediately upon receipt of a written demand, all expenses including engineering fees, based upon the cost of the work, incurred in making the said repairs. Such repairs shall not be deemed an acceptance of the Required External Services by the Township or an assumption by the Township of any liability in connection therewith and shall not release the Developer from any of its obligations under this Agreement.

4.7 Applicable Laws

The Developer agrees:

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

4.8 General Liability Insurance Policy

The Developer agrees:

- a) to take out and keep in force comprehensive general liability insurance against claims for personal injury, death or property damage resulting from any accident or occurrence relating to the Required External Services;

- b) to deliver with this Agreement (if not previously delivered) a certified copy of the policy of liability insurance or a certificate of insurance setting out the essential terms and conditions of insurance, the form and content of which shall be satisfactory to the Township's Engineers or his or her designate, all acting reasonably, naming the Township and its agents as an additional insured; and
- c) that such policy shall be kept in full force and effect until all of the Required External Services have been assumed by the Township and shall comply with the following provisions:
 - i. the minimum limit shall be \$5,000,000, all inclusive, for property damage and personal liability;
 - ii. it shall not contain a clause for exclusion for blasting;
 - iii. the premium must be paid initially for a period of one year and the policy shall be renewed for further one-year periods until all Required External Services are installed and assumed by the Township;
 - iv. if the policy contains a deductible clause, the Developer agrees to deposit a certified cheque or a Letter of Credit with the Township in the deductible amount, as a deposit, together with a letter from the Developer authorizing the Township to appoint an independent adjuster and to investigate claims less than the deductible amount and authorizing the Township to pay such claims determined to be valid by the adjuster out of the said deposit. The Developer is responsible for all adjustment service costs and shall maintain the deposits in the amount of the deductible;
 - v. the policy shall provide for cross-liability and severability of interest *protecting the Township against claims by the Developer as if they were separately insured and providing that the Township shall be insured notwithstanding any breach of any condition in the policy by any other insured; and*
 - vi. *the policy shall provide that the insurer shall not cancel or refuse to renew it without first giving the Township at least sixty (60) days prior written notice.*

4.9 No Relief

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

4.10 Notice of Cancellation

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

5. Agreement to Reimburse Developer for Services

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

The Developer agrees to provide the Township with proof of the actual cost of the Required External Services as soon as it is available. The Township will review the actual costs and if the Township is satisfied with the actual costs, the costs in the Required External Services and Cost Sharing will be adjusted accordingly.

6. Securities

6.1 Type and amount of security

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

- One hundred (100%) of the cost of Required External Services based on the Total Estimated Cost of such services as outlined in Column 1 on Schedule “B” including all applicable taxes, engineering fees, Township costs and contingency allowances. This amount is applicable if none of the Required External Services have been constructed and accepted/approved by the Township.; or
- If a portion of the Required External Services have been constructed and accepted/approved by the Township, the security amount will be equal to one hundred and fifteen (115%) percent of the cost of work remaining to be completed plus ten (10%) percent of the completed work costs, as estimated by the Developer’s Engineers and verified by the Township Engineer, for all of the Required External Services based on the Total Estimated Cost of such services as outlined in Column 1 on Schedule “B” including all applicable taxes, engineering fees, Township costs and contingency allowances;

as the case may be.

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

6.2 Reduction of security

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

6.3 Authority to draw upon security

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

6.5 Stop Work Order

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

7. Amendments to DC By-law and Adjustments to Repayments or Credits

Not Applicable.

8. Recovery of Costs

Not Applicable.

9. Registration on Title

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

10. Effective Date of this Agreement

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

11. Estoppel

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

12. Time of Essence

Time shall be of the essence in this Agreement.

13. Amendments Only in Writing

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

14. Notices

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

Developer: White Rose Park
2570970 ONTARIO INC.
7941 Jane Street
Concord, Ontario
L4K 2M7

Attn: Vittorio De Palma, Director

Township: 185667 Grey Road 9
R.R. #1
Dundalk, Ontario N0C 1B0
Attention: Dave Milliner, Chief Administrative Officer

15. Schedules

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

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

16. Successors and Assigns

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

17. Developer's Acceptance of Agreement

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

18. Further Assurances

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

REMAINDER OF PAGE INTENTIONALLY LEFT IN BLANK

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

2570970 ONTARIO INC.

Per: _____ Date: _____
Vittorio De Palma Director

I have authority to bind the Corporation

THE CORPORATION OF THE TOWNSHIP OF SOUTHGATE

Per: _____ Date: _____
Mayor John Woodbury

Per: _____ Date: _____
Clerk Lindsey Green

We have authority to bind the Corporation

SCHEDULE “A”

LEGAL DESCRIPTION

***PART OF LOT 227, CONCESSION 2 SWTSR
PART 1 17R2183 AND AS IN R480846
(VILLAGE OF DUNDALK)
NOW IN THE TOWNSHIP OF SOUTHGATE
(GEOGRAPHIC TOWNSHIP OF PROTON)
COUNTY OF GREY***

SCHEDULE “B”
REQUIRED EXTERNAL SERVICES AND COST SHARING TABLE
COST BREAKDOWN BELOW

WHITE ROAD PARK SUBDIVISION ; PHASE 3
EXTERNAL WORKS COST SHARING

No. of Units
86

Project Description	Estimated Cost	% Developer Cost	% Township Cost	Developer Cost	Township Cost
Road & Drainage: Bradley - WR3 to Grey	\$447,978	100%	0%	\$447,978	\$0
½ Road Recon c/w Curb & Sidewalk: Bradley- Grey to Highpoint	\$212,614	100%	0%	\$212,614	\$0
½ Road Asphalt Replacement: Bradley- Grey to Highpoint	\$58,830	0%	100%	\$0	\$58,830
½ Road Recon: Highpoint; Bradley– Ext Sidewalk	\$194,277	100%	0%	\$194,277	\$0
Sanitary Service Repair: Bradley	\$7,500	0%	100%	\$0	\$7,500
TOTAL	\$921,199			\$854,869	\$66,330

Note:

SCHEDULE “C”

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

APPROVED FORM FOR LETTER OF CREDIT

Your Name & Address	Date of Issue: Irrevocable Standby Letter of Credit
	Reference No:
APPLICANT BENEFICIARY:	THE CORPORATION OF THE TOWNSHIP OF SOUTHGATE
	c/o 185667 Grey Road 9 R.R. #1 DUNDALK, Ontario N0C 1B0
	AMOUNT: MAXIMUM in Canadian Dollars:

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

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

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

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

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

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

Partial Drawings are permitted.

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