

CORPORATION OF THE MUNICIPALITY OF WEST GREY

BY-LAW NUMBER 26 - 2011

BEING a By-law to authorize the Mayor and CAO to enter into a Development Agreement between the Municipality of West Grey and 1535331 Ontario Inc.;

WHEREAS the Council of the Municipality of West Grey deems it necessary and in the public interest to enter into a Development Agreement with the aforementioned property owners, being the owner of lands described as Part Lot 19, Concession 5 NDR, in the Municipality of West Grey (formerly the Township of Bentinck);

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF WEST GREY ENACTS AS FOLLOWS:

1. **THAT** the Mayor and CAO are hereby authorized to sign a Development Agreement with 1535331 Ontario Inc., a copy of which is attached hereto as Schedule "A", and is hereby declared to form part of this by-law.
2. **THAT** this by-law shall come into force and take effect on the date of its final passing.

Read a first and second time this 18th day of April, 2011.

Read a third time and finally passed this 18th day of April, 2011.

Kevin Eccles, Mayor

Christine Robinson, CAO

SCHEDULE "A" TO BY-LAW NUMBER 26 - 2011

MUNICIPALITY OF

***West
Grey***

1535331 ONTARIO INC.
DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT

BETWEEN

1535331 ONTARIO INC.
(Hereinafter referred to as the "Owner")
Being the Party of the FIRST PART

-And-

THE CORPORATION OF THE MUNICIPALITY OF WEST GREY
(Hereinafter referred to as the "Municipality" and/or "West Grey")
Being the Party of the SECOND PART

THIS AGREEMENT made in quadruplicate this 18th day of April, 2011.

WHEREAS the parcel affected by this Agreement is more particularly described as being Lot 19, Concession 5 NDR, former Township of Bentinck, in the Municipality of West Grey, in the County of Grey;

AND WHEREAS the County of Grey has amended the Official Plan for the County of Grey as it affects the subject lands, by Amendment Number 75, to permit the proposed extractive industrial use;

AND WHEREAS the Planning Act under Section 41(7)(c) enables a local municipality to require the owner to enter into one or more agreements;

NOW THEREFORE this Agreement Witnesseth that in consideration of the mutual covenants hereinafter contained, the parties hereto hereby covenant and agree as follows:

1. COVENANTS BY THE OWNER

The Owner covenants and agrees as follows:

- a) The Owner is the registered owner of the subject lands described herein.
- b) The Owner has deposited with the Municipality the sum of Five Thousand Dollars (\$5,000.00). The Owner agrees to pay the Municipality the cost of the Municipality's planner, lawyer, and engineer for all costs involved in the review, completion and registering of the Development Agreement on behalf of the Municipality. As accounts relating to the costs involved in the review and completion, as applicable, of the proposed Development Agreement, are received from West Grey's solicitor, engineer or planner, they will be paid by West Grey, and then submitted to the Developer for reimbursement, so that the \$5,000.00 initial deposit will again be built up to enable West Grey to pay the next accounts as they are received. Deposit will be returned to Developer upon completion of planning requirements relating to the Development Agreement.
- c) This Agreement shall be registered against title to these subject lands, at the expense of the Owner, and shall take priority over any subsequent registrations against the title to the subject lands.
- d) That this Agreement shall be binding on the Owner and from time to time, their heirs, executors, administrators, successors and assigns.
- e) The Owner shall obtain all necessary approvals from the Municipality and from all Ministries and Agencies.
- f) That all operations on the subject property will occur in accordance with the Class 'A' Aggregate License, and the following plans:

Operational Plan prepared by Don Stewart & Associates, April 21, 2010, attached as Schedule "B".

Progressive & Final Rehabilitation Plan prepared by Don Stewart & Associates, January 15, 2010, attached as Schedule "C"

- g) That all manufacturing and crushing operations shall occur Monday to Friday between the hours of 7:00 a.m. and 7:00 p.m.. Extraction, loading and shipping will be limited to the hours of 6:00 a.m. to 7:00 p.m. Monday to Friday and from 7:00 a.m. to 12:00 p.m. on Saturdays.
- h) The Owner agrees to limit the haulage route such that trucks carrying aggregate from the site only travel westerly along the abutting Concession Road 4 NDR, excepting however that trucks may travel easterly along Concession Road 4 NDR in instances where the Owner is supplying aggregate to sites located within the immediate vicinity of the pit, with written permission from the West Grey Director of Infrastructure and Public Works.
- i) The Owner agrees to construct an entrance in accordance with the Operational Plan prepared by Don Stewart & Associates, April 21, 2010, and in accordance with the standards of the Municipality.
- j) The Owner agrees to construct berms on the subject property in accordance with the Operational Plan prepared by Don Stewart & Associates, April 21, 2010.
- k) The Owner agrees to hard surface the road (Concession 4 NDR), from 40 m west of the pit entrance westward to Grey Road #3 and the Owner agrees to pave the road from the pit entrance 40 m west all at the Owner's expense. Notwithstanding the foregoing, the removal of the aggregate from the pit site for use on the Concession 4 NDR road allowance shall be permitted. The hard surface and the paved surface, with the lengths as set out above, shall be 6.7 metres wide (22 feet) and consist of double high float surface treatment or HL2 Modified Hot Mix Asphalt for the hard surface area with the paved surface area consisting of one lift of HL4 of 50 mm. Double high float surface treatment will be the same as that called in the West Grey 2010 tender. HL2 Modified mix design will be as attached as Schedule "D". The Owner shall also apply a "fog seal" sealing treatment on the part of the road being hard surfaced immediately after completing the surfacing. Prior to issuance by West Grey to the Owner of the entrance permit onto Concession 4 NDR, the Owner agrees to provide security equal to 110% of the estimated cost of the aforementioned WORKS, being security of \$63,030.00, and said security shall be in the form of a Performance Bond from a duly qualified servicing contractor, cash, certified cheque, or an irrevocable letter of credit from a Chartered Bank. West Grey agrees to include the WORKS as an optional item in its annual tender, with the Owner having the option of accepting that price or contracting independently for the WORKS. Upon completion of the WORKS, the Municipality shall refund any security not used for the WORKS to the Owner.
- l) The Owner covenants and agrees with the Municipality on behalf of itself, its successors and assignees, to indemnify and save harmless the Municipality, its servants and agents from and against any and all actions, suits, claims and demands whatsoever, which may arise either directly or indirectly by reason of any work performed. The Owner further covenants and agrees to release and forever discharge the Municipality from and against all claims, demands, causes of actions, of every nature and type whatsoever that may arise either as a result of the failure of the Municipality to carry out any of its obligations under this Agreement, or as a result of the Municipality performing any municipal work on the said lands or the adjacent properties which may damage or interfere with the works of the Owner, provided that such default, failure or neglect was not caused as a result of negligence on the Part of the Municipality, its servants or agents.
- m) The Owner agrees that it shall be responsible for any repairs necessary to the hard surface on that part of Concession 4 NDR so hard surfaced after being notified by the Municipality's Director of Infrastructure and Public Works, acting reasonably, that such repairs are required. In order to ensure that this clause fairly apportions the repair costs between general traffic and the Owner's traffic, the Municipality shall carry out an inspection of the hard surface on that part of Concession 4 NDR so hard surfaced immediately prior to and immediately after

half load season. The Owner shall not be responsible for the repair of any damage occurred during half load season, as the Owner is not shipping during this time period. The Owner shall carry out such repairs on a timely basis. If the Owner fails to carry out such repairs on a timely basis after being provided with sufficient notice, then it is agreed that the Municipality may cause such repairs to be carried out, and the Municipality can add the cost of such repairs to the tax roll if the Owner does not reimburse the Municipality for the cost of repairs within a month of receiving such a demand for reimbursement. For these purposes, it is agreed that the hard surfacing road repairs so carried out by the Municipality represent the improvement and maintenance of land of the municipality, being Concession 4 NDR from 40 m west of the pit to Grey Road #3, and the cost of such repairs are a fee and charge imposed on the Owner of the pit, being classed as industrial land, and as such the repairs have priority lien status and are appropriately added to the tax roll, in accordance with Section 361(13) of the Municipal Act, 2001, c. 25, as amended. It is agreed that this paragraph shall be at an end six months after the site ceases to operate as a gravel pit.

2. COVENANTS BY THE MUNICIPALITY

The Municipality covenants and agrees as follows:

- a) That the Municipality agrees that subject to compliance by the Owner with all relevant Municipal By-laws, Provincial Statutes and Regulations, Agency requirements, and the provisions of this Agreement, the Owner may proceed to extract aggregate on the subject lands. The Municipality agrees that this Agreement is void if the Municipality fails to pass the zoning by-law amendment on the subject property to allow the extraction of aggregate.
- b) That the Municipality agrees to reimburse the Owner with any of the unused \$5,000 retainer for Planner, Lawyer and Engineer services described in Section 1 b) to this Agreement within 60 days of the Municipality receiving the final invoice from the Municipality's Planner, Lawyer, and Engineer.
- c) From the date that this Agreement is executed by the Municipality and for a period of 15 years thereafter, if any future aggregate operators starts using, or if such future aggregate operators are required by the terms of a license to use all or a portion of the road (Concession 4 NDR), from the Owner's pit entrance westward to Grey Road #3, to transport aggregate, the Municipality will use its best efforts to require that such future aggregate operators pay an equitable share towards the cost of the road work completed by the Owner, and any such payments received from the future aggregate operators using the aforementioned road, will be reimbursed by the Municipality to the Owner.

3. ACCURACY OF PLANS AND OTHER MATTERS

The Owner warrants that all plans and diagrams attached to this Agreement as Schedules or otherwise referred to in this Agreement are accurate as to all dimensions and other matters shown thereon. In the event that any material misrepresentation, whether accidental or otherwise is found to exist and which on reasonable grounds has prejudiced or compromised the Municipality's position, then the Owner shall be required, at its expense, to resolve all matters. Failing this, the Municipality may rectify the situation at the Owner's expense. For the above reasons, the Owner acknowledges the importance of having reliable and accurate plans and that the Municipality is relying upon them and is entering into this Agreement on that basis.

4. NOTICE

Any notice required or permitted to be given pursuant to the provisions of this Agreement may be given personally or shall be mailed to each party at the address hereinafter set out. If mailed by ordinary, prepaid first class post, it shall be deemed to have been received on the fourth day after it is postmarked.

To the Owner at: 1535331 Ontario Inc.
c/o Ken Stadnyk
RR 4, Mount Forest ON N0G 2L0

To Municipality: Municipality of West Grey
Attn: Mark Turner, Clerk
402813 Grey Road #4
R.R. #2, Durham ON N0G 1R0

5. ENFORCEABILITY OF AGREEMENT

It is understood and agreed that the Owner shall not call into question, directly or indirectly, in any proceeding whatsoever, in law or in equity, or before any administrative tribunal, the right of the Municipality to enter into this Agreement and to enforce each and every term, covenant and condition herein contained, and this Agreement may be pleaded as an estoppel against the Owner by the Municipality in any such proceeding.

6. REGISTRATION

The Owner hereby agrees that this Agreement shall be registered on the title of the lands described in this Agreement at the expense of the Owner and shall be binding on the successors and assigns of the Owner. As provided in Section 1(b), the Owner agrees to pay the Municipality's reasonable legal costs incurred by it in connection with the preparation and registration of this Agreement. Schedules "A", "B", "C" and "D" are attached hereto and form part of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement and have hereunto caused to be affixed the corporate seals, duly attested to by the proper signing officers.

SIGNED, SEALED AND DELIVERED this 18th day of April, 2011.

SIGNED, SEALED AND DELIVERED
in the presence of

)
)
) 1531531 ONTARIO INC.
) Per:
)
) Ken Stadnyk
) Ken Stadnyk, President
) I have authority to bind the Corporation
)
)
) MUNICIPALITY OF WEST GREY
) Per:
)
) Kevin Eccles
) Kevin Eccles - Mayor
)
) Christine Robinson
) Christine Robinson - CAO

SCHEDULE "A"

DESCRIPTION OF LANDS

In the Municipality of West Grey (formerly in the Township of Bentinck) being composed of:

Lot 19, Concession 5, Municipality of West Grey, in the former Township of Bentinck, County of Grey

Also identified as 42-05-280-006 03800 0000

SCHEDULE "B"

**OPERATIONAL PLAN PREPARED BY DON STEWART
& ASSOCIATES, DATED APRIL 21, 2010**

SCHEDULE "C"

**PROGRESSIVE & FINAL REHABILITATION PLAN PREPARED BY
DON STEWART & ASSOCIATES, DATED JANUARY 15, 2010**

SCHEDULE "D"

HL2 Modified Mix Design

CONTRACT No:	LOCATION:	HOT MIX TYPE:	HL2 Modified	ITEM No:
HWY:	DATE SAMPLES RECEIVED: Aug 17, 2002	DATE MIX COMPLETED: Sept 5, 2002		
TEST RESULTS SUPPLIED BY:	McASPHALT ENGINEERING SERVICES			

JOB MIX FORMULA - GRADATION PERCENT PASSING *

% AC *	26.5	19.0	16.0	13.2	9.5	4.75	2.36	1.18	600 μ m	300 μ m	150 μ m	75 μ m
5.4				100.0	99.9	79.7	54.3	41.9	31.0	16.2	7.5	5.9

MARSHALL DATA	REQUIRED	SELECTED	% CA#1	45.00	% RAP
% VOIDS SSD (min)	3.0	4.04	% FA#1	30.00	% AC RAP
(max)	5.0		% FA#2	25.00	RAP PEN
FLOW (min)	8.0	10.0	Gb	2.680	BRQ BRD
STABILITY (N) (min)	8900	9800			MRD
% VMA (min)	15.0	15.0			MRD (SSD)
					2.420
					2.522

ASPHALT CEMENT ***	
SUPPLIER	PG GRADE
McASPHALT	PG 58-28

ADDITIVE		
SUPPLIER	TYPE	% of AC

AGG. TYPE	DESCRIPTION - SOURCE	INVENTORY No.	BRD	% ABS
CA #1	1/4" Chip - Murray Group		2.963	1.765
FA #1	Sand - Murray Group		2.700	0.995
FA #2	Screenings - Murray Group		2.702	1.134

AGG. TYPE	AGGREGATE GRADATION - PERCENT PASSING											
	26.5	19.0	16.0	13.2	9.5	4.75	2.36	1.18	600 μ m	300 μ m	150 μ m	75 μ m
CA #1					100.0	61.5	18.1	4.9	1.9	1.4	1.2	1.0
FA #1					100.0	99.9	92.9	80.1	61.2	25.0	3.5	1.0
FA #2				100.0	99.4	86.9	72.3	59.3	43.1	27.2	13.6	14.9

- * FINES RETURNED TO THE MIX (1.5%) PLANT TYPE: DRY COLLECTOR
- ** AGGREGATE COMPONENT OF JMF ADJUSTED.
- *** RECOMMENDED MIXING (152 C) AND COMPACTION (140 C) TEMPERATURES.
- 55 MECHANICAL BLOWS USED (=75 BLOWS MANUAL)
- **** NO AIR VOIDS "CORRECTION" REQUIRED. NO VISIBLE AGGREGATE ABSORPTION FOR MRD MIX AT 5.0-7.0% AC.

REMARKS
 GRADATIONS FROM SAMPLES (CHECKED AGAINST PROCESS CONTROL).
 AIMS-2 PROCEDURES FOLLOWED. THIS MIX DESIGN IS SUBJECT TO MARSHALL COMPLIANCE CHECKS AND POSSIBLE JOB MIX ADJUSTMENT.