

CORPORATION OF THE MUNICIPALITY OF WEST GREY

BY-LAW NUMBER 47 - 2013

BEING a By-law to authorize the Mayor and CAO to enter into a Development Agreement between the Municipality of West Grey and Cedarwell Excavating Ltd.;

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 owner, being the owner of the property described as Part Lots 43, 44 and 45, Concession 1 SDR, Geographic Township of Glenelg, Municipality of West Grey, County of Grey;

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 Cedarwell Excavating Ltd., 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 3rd day of June, 2013.

Read a third time and finally passed this 3rd day of June, 2013.

(SIGNED)
Kevin Eccles, Mayor

(SIGNED)
Christine Robinson, CAO

SCHEDULE "A" TO BY-LAW NUMBER 47 - 2013

MUNICIPALITY OF



CEDARWELL EXCAVATING LTD.
GRAVEL PIT
DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT

BETWEEN

CEDARWELL EXCAVATING LTD.
(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")
Being the Party of the SECOND PART

THIS AGREEMENT made in quadruplicate this 3rd day of June, 2013.

WHEREAS the parcel affected by this Agreement is more particularly described as being Part Lots 43, 44 and 45, Concession 1 SDR, Geographic Township of Glenelg, Municipality of West Grey, in the County of Grey, PIN 37239-0121 (the "Subject Lands");

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 113, 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;

AND WHEREAS the Municipality of West Grey also deems it necessary for the Owner to enter into a Site Plan Agreement with the Municipality;

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) Upon application to the Municipality for the preparation of this Agreement, the Owner shall deposit 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 processing of the Development Agreement, for checking of Plans and specifications, and for supervision and inspection on behalf of the Municipality. As accounts are received from the Municipality's Planner, Lawyer and Engineer, they will be paid by the Municipality and then submitted to the Owner for reimbursement, so that the \$5,000.00 initial deposit will again be built up to enable the Municipality to pay the next accounts as they are received.
- 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, its successors and assigns, including, without limitation, any subsequent chargee/mortgagee;
- e) The Owner shall obtain all necessary approvals to carry on an aggregate extraction operation on the Subject Lands from the Municipality and from all Ministries and Agencies.
- f) That all operations on the Subject Lands will occur in accordance with the Class 'A' Aggregate License, and the following plans:

Existing Features (November 6, 2011)
Operational Plan (January 11, 2013)
Consultants Recommendations (November 6, 2011)
Progressive Rehabilitation and Final Rehabilitation Plans (November 6, 2011)

All as prepared by William Bradshaw, P. Eng., all as annexed hereto as Schedules “B”, “C”, “D” and “E”, respectively.

- g) That all manufacturing, crushing, shipping or any other activity shall occur only Monday to Friday, between the hours of 7:00 a.m. and 6:00 p.m., and on Saturdays between the hours of 7:00 a.m. and 12:00 p.m. No activity will occur on statutory holidays.
- h) That access to and from the licensed site shall be limited to County Road 4.
- i) 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 Subject 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.
- j) The Owner agrees that this Agreement shall become null and void if the Municipality fails to pass the zoning by-law amendment on the Subject Lands to allow the extraction of aggregate.

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. Provided, however, that this Agreement shall become null and 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 acknowledges Section 66(1), (2), (3) of the Aggregate Resources Act R.S.O. 1990 c. A8. The Municipality agrees that, in the event of a conflict between this Agreement and the Act, the Act will prevail and the Municipality will not take any punitive action against the Owner under such circumstances.
- c) That this Agreement shall be binding on the Municipality and its successors and assigns.

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 to the reasonable satisfaction of the Municipality. Failing this, the Municipality shall be entitled to otherwise address the issue or rectify the situation in such manner as the Municipality, in its sole discretion, deems appropriate, 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: Cedarwell Excavating Ltd..
Attn: Joerg Weller
302300 Concession 2 SDR
R.R. No. 1
Hanover, ONTARIO N4N 3B8

To Municipality: Municipality of West Grey
Attn: Christine Robinson, C.A.O.
402813 Grey Road No. 4
R.R. No 2
Durham ONTARIO 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”, “D” and “E” 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 3rd day of June, 2013.

IN WITNESS THEREOF the parties hereto have executed this Agreement.

SIGNED, SEALED AND DELIVERED

in the presence of

) **CEDARWELL EXCAVATION LTD.**

)

) **PER:** _____

) Joerg Weller, President

) I have authority to bind the Corporation.

) **MUNICIPALITY OF WEST GREY**

)

)Per: _____

) Kevin Eccles

) Mayor

)

) Per _____

) Christine Robinson

Chief Administration Officer

) I have authority to bind the Corporation

SCHEDULE "A" TO BY-LAW NUMBER 47 - 2013

DESCRIPTION OF LANDS

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

Part Lots 43, 44 and 45, Concession 1 SDR, Geographic Township of Glenelg, Municipality of West Grey, County of Grey, being PIN 37239-0121;

Also identified as 42-05-220-002-08200

SCHEDULE "B" TO BY-LAW NUMBER 47 - 2013

**EXISTING FEATURES PLAN
(NOVEMBER 6, 2011)**

SCHEDULE "C" TO BY-LAW NUMBER 47 - 2013

**OPERATIONAL PLAN
(JANUARY 11, 2013)**

SCHEDULE "D" TO BY-LAW NUMBER 47 - 2013

**CONSULTANT RECOMMENDATIONS
(NOVEMBER 6, 2011)**

SCHEDULE "E" TO BY-LAW NUMBER 47 - 2013

**PROGRESSIVE REHABILITATION AND FINAL REHABILITATION PLANS
(NOVEMBER 6, 2011)**