

**The Corporation of the Municipality of West Grey**  
**By-law Number 61 - 2015**

**Being,** A by-law to approve and authorize the execution of an Agreement between the Municipality of West Grey and Markdale Aggregates Inc.;

**Whereas,** the Council of the Municipality of West Grey deems it expedient and in the public interest to enter into an Agreement between the Municipality of West Grey and Markdale Aggregates Inc.;

**Now therefore the Council of the Municipality of West Grey hereby enacts as follows:**

1. That the Agreement between the Municipality of West Grey and Markdale Aggregates Inc., attached hereto as Schedule "A", and forming part of this by-law, is hereby approved.
2. That the Mayor and CAO/Deputy Clerk are hereby authorized to sign and seal the said Agreement.
3. That this by-law shall come into full force and effect on the date of passing.

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**Read a first and second time, this 9<sup>th</sup> day of September, 2015.**

**Read a third time and finally passed, this 9<sup>th</sup> day of September, 2015.**

\_\_\_\_\_  
**Kevin Eccles, Mayor**

\_\_\_\_\_  
**Larry Adams, CAO/Deputy Clerk**

**Schedule "A" to By-law Number 61 – 2015**

**Municipality of**



**Markdale Aggregates Inc., Agreement**

This Agreement made the            day of            , 2015

Between:

Markdale Aggregates Inc.  
(Hereinafter referred to as "MAI")

-and-

The Corporation of the Municipality of West Grey  
(Hereinafter referred to as "West Grey")

Whereas MAI is the licensed operator of an aggregate pit located on lands owned by Francis Joseph Frederick Handy and described as Part Lot 16, Concession 10 NDR as in R413422 (formerly Township of Glenelg); West Grey (PIN # 37237-0059), Municipality of West Grey (the "Handy Pit");

And whereas West Grey is the licensed operator of an aggregate pit located on lands owned by Mary Anna McKay (MAM) and described as Part Lot 15, Concession 10 NDR as in R401334 except Part 1 on Reference Plan 17R-1905 and Part 1 on Reference Plan 17R-2002 & GS53522 (formerly Township of Glenelg); West Grey (PIN #37327-0058) (the "Glenelg Pit");

And whereas the Handy Pit and the Glenelg Pit are separated by a municipal road allowance being Glenelg Road 23 (the "Road Allowance") which Road Allowance currently has a significant elevation in the area bordered by the Handy Pit and the Glenelg Pit;

Now therefore in consideration of these presents and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties. MAI and West Grey agree as follows:

1. MAI at its sole expense, agrees to construct a temporary detour road (the "Detour Road") on the MAM lands in accordance with the engineering specifications, drawings and road design prepared by Long Environmental Engineering, to be reviewed by West Grey's engineer at the sole cost of MAI, and in connection therewith to also temporarily re-locate all utilities, if necessary, situated within the Road Allowance including moving the hydro poles to the new elevation over the west side of the new road prior to completion.

2. West Grey agrees that MAI shall be entitled to remove and sell all aggregates from the Road Allowance and the area within 30 meter setback (the "Setback") from the Road Allowance fronting the Glenelg Pit provided that MAI shall be responsible, at its sole expense, as follows:
  - a. To complete construction of the Detour Road referred to in Section 1;
  - b. To obtain such approvals as may be required from the Ministry of Natural Resources and Forestry to permit the removal of aggregate from the Road Allowance;
  - c. To remove sufficient material from the Road Allowance to achieve the final grades established by West Grey for the Road Allowance;
3. This Agreement shall be conditional on the following:
  - a. MAI shall have obtained the written approval of the owner of the MAM lands to permit the location of the Detour Road on Mary Anna McKay's property, the extension of the licensed area to include the set back of the Handy Pit lands from the Road Allowance and the processing of aggregate from the Glenelg Pit on the Handy Pit lands; and
  - b. MAI shall have obtained the written approval of the Ministry of Natural Resources and Forestry to permit the extraction of aggregate from the Road Allowance; and

In the event that these conditions have not been satisfied within ninety (90) days from the date of this Agreement unless extended by mutual agreement of the parties hereto, this Agreement shall be at an end and each of the parties shall be released from all further obligations hereunder.

4. When all the above-noted conditions have been met, prior to the Detour Road being constructed, the utilities have been re-located to the satisfaction of West Grey, and the letter of credit or cash has been provided pursuant to paragraph 5 below, West Grey shall provide MAI with its authorization to begin removing material from the Road Allowance. All signage, tar and chip and necessary fencing will be completed.
5. MAI shall provide a letter of credit or cash in favor of West Grey for 110% of the estimated value for reconstructing the road prior to removing any aggregate from the Road Allowance. Each year on the anniversary of the date of execution of this Agreement, MAI agrees to adjust the amount of the letter of credit or cash to represent 110% of the then-current cost for

reconstructing the road, and shall provide West Grey with evidence of same.

6. In respect of all salvageable aggregate material removed from the Road Allowance or the Setback by MAI, MAI agrees to pay to West Grey forty cents (\$0.40) per tonne (the "Royalty") plus the applicable TOARC Fee at the time of removal of the salvageable aggregate material from the licensed pit of the MAM lands. MAI shall pay West Grey the Royalty payment within forty-five (45) days of each month end for aggregate material removed and scaled by MAI from the Road Allowance and Setback during the preceding month.
7. Due to the fact that under the Glenelg Pit license, West Grey is not permitted to have wash ponds to clean processed stone, MAI agrees to transport all aggregate from the Glenelg Pit to the Handy Pit for further processing. MAI agrees to indemnify and save harmless West Grey from any and all claims, demands, actions, suits, losses, costs, charges, expenses, damages and liabilities whatsoever MAI or its agents or employees may pay, sustain, suffer or incur by reason of or in connection with the transporting of material to and from, and the storing of material on, the Glenelg Pit.
8. MAI agrees to diligently and continuously undertake to complete its obligations under Section 2 above in order to complete construction of the Detour Road and the removal of salvageable aggregate from the Setback within three (3) months from West Grey Council approval. MAI further agrees to diligently and continuously undertake to remove all material in the Road Allowance by January 1, 2022. Should the final grade for the Road Allowance not be achieved by the third anniversary from when MAI begins removing the salvageable aggregate from the Road Allowance MAI agrees that the price per tonne of all salvageable aggregate material removed from the Road Allowance and paid to West Grey will double in price every six months. Therefore, on the third anniversary of the aforementioned date, the price will increase to eighty cents (\$0.80) per tonne; after three years and six months, the price will increase to one dollar and sixty cents (\$1.60) per tonne; and so on.
9. MAI shall be responsible at its expense to reconstruct in accordance with the engineering specifications, drawings and road design of the Municipality the road within the Road Allowance and to relocate the temporary utilities within the Road Allowance. Until such time as the Road

Allowance is reconstructed MAI shall continue to maintain the Detour Road and shall be entitled to store material removed from the Road Allowance or the setback on the Glenelg Pit.

10. MAI shall make available to West Grey on a monthly basis all relevant documentation related to the removal from the Setback or the Road Allowance in order to permit West Grey to verify the quantities so removed and sold.
11. MAI agrees with West Grey that MAI shall be responsible to carry out the excavation and removal of aggregate within the Road Allowance or the Setback in a diligent, careful and workmanlike manner and in compliance with all applicable laws, regulations and directions of the Ministry of Natural Resources and Forestry.
12. MAI shall take out and keep in force until the Road Allowance has been reconstructed to the final grades a comprehensive Insurance policy of public liability and property damages Insurance acceptable to West Grey, which policy shall provide insurance coverage in respect of any one accident to the limit of at least \$10,000,000.00 exclusive of Interest and cost, against loss or damage resulting from bodily Injury to, or death of, one or more persons and loss of or damage to property and such policy shall name West Grey as an additional insured thereunder and shall protect West Grey against all claims for all damage or injury, including death to any person or persons and for damage to any property of West Grey or any other public or private property resulting from or arising out of any act or omission on the part of MAI or any of its employees or agents during the execution of the Agreement, and MAI shall forward evidence of same to West Grey before the work is started and every year thereafter.
13. MAI shall pay all reasonable engineering and legal costs and expenses in connection with the negotiation, preparation, execution and delivery of this Agreement, and amendments or modifications of this Agreement and any and all other documents furnished pursuant hereto or in connection herewith, which shall be limited to \$5,000.00 together with any reasonable fees and out-of-pocket expenses incurred in connection with the enforcement of this Agreement in the event of a default thereunder by MAI.

14. This Agreement shall commence on the date hereof and shall continue until such time as the new road in the Road Allowance has been completed, which shall be no later than by January 1, 2022.
15. This Agreement shall endure to the benefit of the parties hereto and their respective successors and assigns. In the event that MAI transfers or assigns its license to operate the Handy Pit, MAI may assign its rights and obligations under this Agreement to the assignee of the license for the Handy Pit provided that the assignee enters into an agreement with West Grey agreeing to undertake and discharge the obligations of MAI under this Agreement. The Agreement can only be assigned if West Grey approves of the assignment and the proposed assignee, which consent shall not be unreasonably withheld.
16. All notices and other communications are to be given to the parties hereto at the following addresses:

If to West Grey:

402813 Grey Road 4  
RR #2  
Durham, Ontario NOG 1R0

If to MAI:

111 Creditstone Road  
Concord, ON L4K 1N3

Or at such other address and/or to such other person as the parties may hereafter specify. Such notices are effective only if and when given in writing, signed by an authorized officer and delivered either personally, by registered mail or by fax to the address specified above.

17. This Agreement constitutes the entire agreement between the parties and may not be amended except by a written agreement between the parties.
18. This Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

In witness whereof MAI and West Grey have executed this Agreement with effect on the date first above written.

Markdale Aggregates Inc.

Per: \_\_\_\_\_

Name: Larry Pevato

Title: Director

Per: \_\_\_\_\_

Name: Dave Lain

Title: Director

*We have authority to bind this corporation.*

The Corporation of the Municipality of West Grey

Per: \_\_\_\_\_

Name: Kevin Eccles

Title: Mayor

Per: \_\_\_\_\_

Name: Larry C. Adams

Title: CAO/Deputy Clerk

*We have authority to bind this corporation.*