

THE CORPORATION OF THE MUNICIPALITY OF WEST GREY

BY-LAW NUMBER 75 - 2011

BEING a By-law to authorize the Mayor and CAO to enter into an Easement Agreement with 2268319 Ontario Inc., operating as Markdale Quality Aggregates;

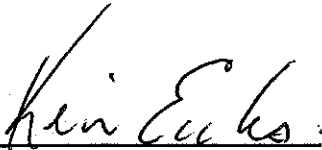
NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF WEST GREY ENACTS AS FOLLOWS:

1. **THAT** the Mayor and CAO are hereby authorized to sign an Agreement with 2268319 Ontario Inc., operating as Markdale Quality Aggregates, a copy of which is attached hereto as Schedule "A", and is hereby declared to form part of this by-law.

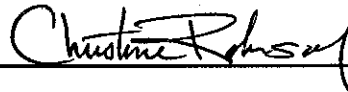
2. **THAT** this by-law shall come into force and take effect on the date of its final passing.

Read a first and second time this 21st day of November, 2011.

Read a third time and finally passed this 21st day of November, 2011.



Kevin Eccles, Mayor



Christine Robinson, CAO



SCHEDULE "A" TO BY-LAW NUMBER 75 - 2011

MUNICIPALITY OF



AGREEMENT – 2268319 Ontario Inc.,

Operating as Markale Quality Aggregates

THIS AGREEMENT MADE THE 7th DAY OF November, 2011.

BETWEEN:

**2268319 Ontario Inc. operating as Markdale Quality
Aggregates**
(hereinafter referred to as "MQA")

-and-

THE CORPORATION OF THE MUNICIPALITY OF WEST GREY
(hereinafter referred to as "West Grey")

WHEREAS MQA is the licensed operator of an aggregate pit located on lands owned by Francis 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 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, MQA and West Grey agree as follows:

1. MQA, at its sole expense, agrees to construct a temporary detour road (the "**Detour Road**") on the Handy Pit in accordance with the engineering specifications, drawings and road design prepared by Harrington McAvan including tar and chip surface and in connection therewith to also temporarily re-locate all utilities situate within the Road Allowance including moving the hydro poles to the new elevation over on the west side of the new road.
2. West Grey agrees that MQA shall be entitled to remove and sell all aggregate from the Road Allowance and the area within the 30 meter setback (the "**Setback**") from the Road Allowance fronting the Glenelg Pit provided that MQA 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 to permit the removal of aggregate from the Road Allowance;

- (c) To remove from the Road Allowance all material;
 - (d) 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) MQA shall have obtained the written approval of the owner of the Handy Pit lands to permit the location of the Detour Road on the Handy Pit lands, the extension of the licenced 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) MQA shall have obtained the written approval of the Ministry of Natural Resources to permit the extraction of aggregate from the Road Allowance; and
 - (c) West Grey shall have obtained the written approval of the owner of the Glenelg Pit to permit the extension of the licenced area to include the Setback, as hereafter defined.

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, the Detour Road has been constructed, the utilities have been re-located to the satisfaction of West Grey, and the letter of credit, performance bond, or cash has been provided pursuant to paragraph 5 below, West Grey shall provide MQA with its authorization to begin removing material from the Road Allowance.
5. MQA shall provide a letter of credit, performance bond or cash in favour 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, MQA agrees to adjust the amount of the letter of credit, performance bond 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 MQA, MQA agrees to pay to West Grey thirty cents (\$0.30) per tonne (the "**Royalty**"). MQA shall pay West Grey the Royalty payment within forty-five (45) days of each month end for aggregate material removed and scaled by MQA from the Road Allowance and Setback during the preceding month.

7. Due to the fact that under the Glenelg Pit licence, West Grey is not permitted to have wash ponds to clean processed stone, MQA agrees to transport all aggregate from the Glenelg Pit to the Handy Pit for further processing. MQA agrees to indemnify and save harmless West Grey from any and all claims, demands, actions, suits, losses, costs, charges, expenses, damages and liabilities whatsoever which MQA 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. MQA agrees to diligently and continuously undertake to complete its obligations under Section 2 above in order to complete construction of the Detour Road within thirty-six (36) months from removal of salvageable aggregate from the Setback. MQA further agrees to diligently and continuously undertake to remove all material in the Road Allowance in order to achieve the final grade for the Road Allowance within three (3) years from completion of removal of salvageable aggregate from the Setback as contemplated by this paragraph. Should the final grade for the Road Allowance not be achieved by the third anniversary from when MQA begins removing the salvageable aggregate from the Road Allowance MQA 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 sixty cents (\$0.60) per tonne; after three years and six months, the price will increase to one dollar and twenty cents (\$1.20) per tonne; and so on.
9. MQA 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 MQA 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. MQA shall make available to West Grey on a monthly basis all relevant documentation related to the removal and sale of aggregate from the Setback or the Road Allowance in order to permit West Grey to verify the quantities so removed and sold.
11. MQA agrees with West Grey that MQA 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.
12. MQA 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 damage insurance acceptable to West Grey, which policy shall provide insurance coverage in respect of any one accident to the limit of at least \$5,000,000.00 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 MQA or any of its employees or agents during the execution of the Agreement, and MQA shall forward evidence of same to West Grey before the work is started and every year thereafter.

13. MQA shall pay all reasonable 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 \$2,500.00 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 MQA.
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 or such other date as the parties may agree.
15. This Agreement shall enure to the benefit of the parties hereto and their respective successors and assigns. In the event that MQA transfers or assigns its licence to operate the Handy Pit, MQA 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 MQA 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
Durham, Ontario N0G 1R0

If to MQA:

1526 Stoneybrook Crescent
London, Ontario N5X 1C5


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

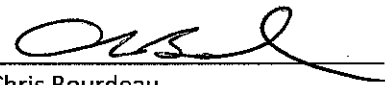
authorized officer and delivered either personally, by registered mail, or by fax to the address specified above.

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 may be executed in counterparts and each counterpart together shall constitute one Agreement.
19. This Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

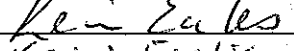
IN WITNESS WHEREOF MQA and West Grey have executed this Agreement with effect on the date first above written.

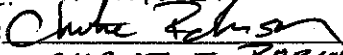
**2268319 ONTARIO INC. operating as
MARKDALE QUALITY AGGREGATES**

Per: 
Name: Steve Mader
Title: General Manager

Per: 
Name: Chris Bourdeau
Title: Vice-President
We have authority to bind the corporation.

**THE CORPORATION OF THE MUNICIPALITY OF
WEST GREY**

Per: 
Name: KEVIN ECCLES
Title: MAYOR

Per: 
Name: CHRISTINE ROBINSON
Title: CHIEF ADMINISTRATIVE OFFICER
We have authority to bind the corporation.