

Tri-County Aggregates Ltd., Proposed East Garafraxa Pit March 22, 2017

## **MEMORANDUM OF HAUL ROUTE AGREEMENT**

### **HAUL ROUTE**

1. All trucks, both loaded and empty shall travel along 17<sup>th</sup> Line and County Road 3 and shall not use any other highway under the jurisdiction of the Township except for the purpose of a Local Delivery.

### **ROAD WORKS**

2. The Owner agrees that, should the Pit be approved, it will, at its expense and prior to opening them, carry out the road works (the "Road Works") identified on Schedule "\_" as well as any other agreed-upon road works. The Road Works shall include the design, construction and installation of the road, all to the satisfaction of the Township and County acting reasonably.
3. The Road Works shall be designed, constructed and installed at the Owner's cost to the satisfaction of the Township in the case of 17<sup>th</sup> Line and to the satisfaction of the County in relation to County Road 3. They will commence no later than five (5) years following the date of the execution of this Agreement

### **COST SHARING OF ROAD WORKS**

4. The Parties acknowledge that Greenwood Construction Company Limited. ("Greenwood") is seeking approvals to expand its aggregate operations on lands legally described as Part of Lots 1 and 2, Concession 17 and 18. Should those approvals be granted, Greenwood will also be using 17<sup>th</sup> Line and County Road 3 for its trucking operations. The Parties agree that it is fair and equitable that Greenwood shares in the cost of the Road Works and the Maintenance Works (as below defined).
5. Through the approvals process related to the Greenwood Pit application, the Township and the County undertake to make their best efforts to have Greenwood enter into an agreement to provide an equitable contribution toward the Road and the Maintenance Works, including by requesting MNRF and/or the Ontario Municipal Board that this be a condition of any approvals. These best efforts will

include a requirement that Greenwood provide the Township with performance security to ensure the completion of the Road Works.

6. These best efforts do not require the Township and/or County to commence Court action unless either the Township and/or the County see fit to do so in their sole discretion acting reasonably, and if they see fit to do so, they may require the Owner to indemnify the Township and/or County for any Court action.
7. It is the anticipation of the Parties that the Owner and Greenwood shall enter into an agreement between them incorporating these cost sharing provisions to equitably apportion the costs of the Road and the Maintenance Works.
8. The agreements referenced in this section should specify that:
  - a. the first operator to commence its pit operations shall undertake or fund the cost of the Road Works and that the second operator shall thereafter contribute its 50% share of the Road Works to the first operator; or
  - b. if both operators proceed with their new operations at the same time they shall jointly and equally contribute to the cost of the Road Works.
9. The proportionate costs should include any costs paid to reimburse the Township and County for their legal and other costs incurred in negotiating and drafting the agreements.

### **ONGOING MAINTENANCE**

10. The Owner agrees and undertakes to meet annually with the Township and the County to discuss what maintenance works (the "Maintenance Works") are reasonably necessary to keep 17<sup>th</sup> Line and County Road 3 in a good state of repair suitable for its continued use as a haul route by the Owner. The cost of the Maintenance Works shall be shared equally between the Parties.

11. Should the Parties be unable to agree on the extent or proportion of the Maintenance Works they agree to retain an engineer satisfactory to all to make such a determination. That determination shall be final and binding upon the Parties.

12. It is the intention of the Parties that once Greenwood begins utilizing 17<sup>th</sup> Line and County Road 3 to haul its aggregate to market it shall be required, through the agreements referenced above in Cost Sharing of Road Work, to share equally in the funding of the Maintenance Works. Ongoing maintenance includes any clean out of culverts as may be required.

**PERFORMANCE SECURITY**

13. In order to secure completion of the Road Works as set out in this Agreement, the Owner shall, upon execution of this Agreement, provide the Township/County with a security deposit in the amount of Three Hundred Thousand Dollars (\$300,000.00) in the form of cash or an irrevocable renewable Letter of Credit, the terms of which shall be satisfactory to the Township/County acting reasonably (the "Performance Security"). The Performance Security shall be administered by the Township and reduced to \$25,000 once the Road Works have been completed. If the Performance Security is less than \$25,000 at any point in time, the Owner shall be required to replenish the Performance Security so that it is, at all times, no less than \$25,000. This \$25,000 remaining in Performance Security shall be released no later than two (2) years following the completion of the Road Works.
14. The Owner acknowledges and agrees that should it breach paragraph \_\_ of this Agreement, and fail to correct that breach within 30 days of receiving written notice of the breach, the Performance Security shall be forfeited to the Township as a consequence of the breach of this Agreement and shall be deemed to be fees and charges to which the Township is entitled to under the *Municipal Act, 2001*.
15. Should Greenwood obtain its approvals, the Township/County shall make best efforts to require that Greenwood provide one-half of the Performance Security, in which case the Performance Security requirement for the Owner shall be reduced by one-half.