

**AGREEMENT FOR ELECTRIC POWER TRANSMITTER OR DISTRIBUTOR
TO LOCATE STRUCTURES**

THIS AGREEMENT made in duplicate this 8th day of May 2014.

BETWEEN:

THE CORPORATION OF THE COUNTY OF GREY

Hereinafter called the "County"

- and -

EAST DURHAM WIND, INC.

Hereinafter called the "Company"

WHEREAS the County is the owner of or otherwise exercises jurisdiction over certain public rights of way, highways, streets, sidewalks, walkways, driveways, ditches and boulevards, and the allowances therefor within the County of Grey as identified in Schedule "A" (hereinafter, the "Road Allowance" or "Road Allowances");

AND WHEREAS the Company is the owner and operator of the Wind Project and, pursuant to section 41 of the *Electricity Act, 1998* (Ontario) as amended (the "*Electricity Act*"), may install certain structures, equipment and other facilities over, under or on any Road Allowances;

AND WHEREAS pursuant to section 41 of the *Electricity Act*, the location of the structures, equipment and facilities installed over, under or on the Road Allowances shall be agreed upon between the County and the Company;

NOW THEREFORE in consideration of the mutual promises and commitments described below, the receipt and sufficiency of which, is hereby acknowledged and agreed, the Parties hereto agree as follows:

1. Definitions

The words or expressions in quotations below shall have the meaning set forth below when used elsewhere in this Agreement:

"Agreement" means this Agreement, including all Schedules, as it may be confirmed, amended, modified, supplemented or restated by written agreement between the Parties.

"Anti-Bribery Laws" mean any anti-bribery law or international convention, as may apply now or in the future, including the Canadian Corruption of Foreign Public Officials Act, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and the OECD Convention on Combating Bribery of Foreign Public Officials.

"Applicable Law" means all present or future applicable laws, statutes, regulations, treaties, judgments and decrees and all present or future applicable published directives, rules, policy statements and orders of any governmental authority and all applicable orders and decrees of courts and arbitrators of like application to the extent, in each case, that the same are legally binding on the Parties in the context of this Agreement.

"Basic Maintenance" means test measurements and field inspections to validate the operational characteristics of the Plant as well as such activities as repair or replacement of faulty or obsolete equipment.

"Bridge Condition Index Inspection" means an inspection of a bridge or a culvert with a span of three metres or greater in accordance with the Municipal Bridge Appraisal Manual, Municipal Culvert Appraisal Manual and the Ontario Structural Inspection Manual.

"Collection Plans" shall be plans showing the location of the Plants in the Road Allowances and containing such other information as set out in section 4.1 of this Agreement, which plans shall be attached at Schedule "E" hereto.

"Director" means the most senior County official employed as staff to manage its Transportation Services Department.

"*Electricity Act*" has the meaning ascribed thereto in the Recitals.

"Emergency Repairs" means such work and assistance as may be necessary to repair any Plant which causes a service outage or presents a danger to the public or the Company's Plant.

"Parties" means the County and the Company, collectively, and "Party" means any one of them.

"Pavement Condition Index Survey" means an assessment of a section of road in accordance with the Manual for Condition Rating of Flexible Pavement- SP-204.

"Plant" means any structure, equipment or other facilities of the Company required to be installed over, under or on a Road Allowance for the purpose of the Company's distribution system within the meaning of the *Electricity Act*.

"Plant Rights" means the non-exclusive right, privilege, interest, benefit, to use, place, install, construct, re-construct, inspect, maintain, operate, alter, enlarge, repair, replace, relocate and remove the Plant over, under or on any Road Allowances as provided for in this Agreement.

"Plant Work" means the installing, constructing, transporting, operating, inspecting, maintaining, altering, enlarging, repairing, replacing, relocating and removing of the Plants over, under or on Road Allowances in connection with the Wind Project.

"Repair Work" means work involving the maintenance, repair and replacement of the Plants.

"Road Allowance(s)" has the meaning ascribed thereto in the Recitals.

"Road Occupancy Agreement" means the detailed formal road occupancy agreement between the County and the Company dated May 8, 2014.

"Wind Project" means up to 23 megawatt renewable energy generating facility known as East Durham Wind Energy Centre and its appurtenant wind turbines, substation, access roads, equipment, construction laydown yard, buildings and related infrastructure, for the purpose of supplying electricity.

"Work" means all work required to be performed by the Company pursuant to the terms of this Agreement, including, but not limited to, all Plant Work and Repair Work.

2. Term

This Agreement shall be in effect for twenty (20) years from the Effective Date of this Agreement together with such additional time, not to exceed 12 months, as may be reasonably required to complete the decommissioning of the Wind Project (hereinafter, the "Term"). In the event that the Company wishes to renew the Term, the Company shall give the County notice to that effect and the Term may be extended by a further term of up to twenty years by mutual agreement between the Parties reached prior to the end of the initial Term. In the event that the Company shall cease to be a "Distributor" within the meaning of the *Electricity Act* or otherwise cease to be entitled under the *Electricity Act* to install Plant on the Road Allowances, the term shall expire on the date that is specified by either party to the other in a notice delivered not less than 90 days prior to the specified termination date.

3. Permission To Use Grey County Road Allowances

- 3.1 In accordance with the provisions of the *Electricity Act*, the Company may inspect, maintain, repair, alter, remove and replace any Plant constructed or installed on the Road Allowances.
- 3.2 The Parties acknowledge and agree that, prior to the date hereof, the Director and the Company have agreed to the Collection Plans and the Director has received complete encroachment permit applications and application fees regarding the Plant Work set out in the Collection Plans. As such, the County agrees that it shall process, review and issue the encroachment permits relating to the Plant Work set out in the Collection Plans within ten (10) days of the date hereof.
- 3.3 Subject to the terms of this Agreement, the County hereby grants and transfers to the Company, for the duration of the Term, Plant Rights in respect of the Road Allowances identified in the Collection Plans, as may be necessary for the purpose of the undertaking the Plant Work and locating the Plants within the Road Allowances.

4. Responsibilities Of The Company In Obtaining Project-Specific Approval

- 4.1 The Collection Plans shall show the proposed location of the Plants within the Road Allowances and any relevant specifications. All work completed within the Road Allowance shall be designed and stamped by a Professional Engineer of Ontario. The Collection Plans shall include the following:

- i. An electronic file reflecting the proposed configuration of the Plants (complete with proper coordinates). This file will either be a shape file (.shp extension) or an AutoCAD File (.dwg or .dxf extension). The required version of the files will be identified by the County at the time of submission, and the Parties acknowledge that the version required each time may evolve throughout the Term of the Agreement, based on changes in technology.
 - ii. A minimum depth of the collection lines of 1.2m below the existing grade of the proposed location. Where the depth of the collection lines is less than 1.2 m below the existing grad, the collection lines shall be concrete encased.
 - iii. Placement of markers directly above the collection lines to identify the horizontal location.
 - iv. An outline of the recommended rehabilitation method and traffic control plan that will be used (as per Ontario Traffic Manual Book 7 and the *Occupational Health and Safety Act* (Ontario)).
- 4.2 Where extra space within the Road Allowance is required solely for the Company's purposes in terms of buffer space or for another reason, the Company shall include the additional space required within the Collection Plans.
- 4.3 The Company acknowledges that no installation or replacement project work shall commence without agreed upon Collection Plans and the associated encroachment permits.
- 4.4 At least ten (10) days prior to commencing any Plant Work, except for Emergency Repairs, the Company shall submit a Field Work Request Form to the Director in order to ensure that the intended work does not conflict with any other scheduled work on the Road Allowance. Such form is attached to this Agreement as Schedule "B". Provided there are no scheduling issues, the County shall not unnecessarily withhold, condition or delay permission. The format of the Schedule "B" form as required by the County may change from time to time throughout the Term of the Agreement.
- 4.5 In the event the Company needs to complete Emergency Repairs, the Company shall call the published 24/7 County Transportation Services phone number and request that the County provide immediate approval for the Company to complete the necessary and identified Emergency Repairs.
- 4.6 The Company shall be responsible for obtaining all other necessary approvals including but not limited to Federal, Provincial, Conservation Authority, or Municipal approvals required in order to carry out the Plant Work and shall notify all other utilities located on the Road Allowance that are registered with Ontario One-Call. The Company shall comply with all Applicable Laws in making use of the Road Allowance pursuant to this Agreement.
- 5. Responsibilities Of The Company When Performing Work On The Road Allowance**
- 5.1 The Company shall, wherever practicable, use those parts of the Road Allowance adjacent to the fence lines, gravel, grass, or outer boundaries of the Road Allowance and not the travelled part of the public highway.
- 5.2 Whenever the Company carries out work on the Road Allowance under this Agreement, it will be at its own expense and it shall restore the Road Allowance to a condition as good as it was in before the work was carried out or better, including fencing, trees, and vegetation, as deemed satisfactory by the County, acting reasonably, in writing within 30 days of completion of such work.
- 5.3 If, while carrying out work on the Road Allowance, the Company encounters or is approached by a third party also wishing to perform work on or use the Road Allowance, the Company shall not permit any third party to use any Road Allowance occupied or used by the Company under this Agreement, unless the County authorizes the third party to do so in writing and the County provides the Company with such written authorization.
- 5.4 In undertaking any Plant Work, the Company shall use care and diligence to ensure that there will be no unnecessary interference with the travelled portion of the highway or the ditches or drains adjoining it. If additional drains or ditches are made necessary by reason of any Plant Work done or omitted to be done by the Company, the County will, at the Company's expense, construct them during the Term.

- 5.5 Where the Plant Work done under this Agreement may affect a municipal drain, the Company shall also file a copy of the Collection Plans with the Clerk's office of the Municipality of West Grey for purposes of the Drainage Act (Ontario) or such other person designated by the Municipality of West Grey as being responsible for the drain.
- 5.6 The Company shall not cut, trim, or interfere with any trees on the highway without the approval in writing of the Director, or other person appointed by the County, acting reasonably. If the Director or other responsible County representative does not respond to such request within ten (10) business days, Company may proceed with such work.
- 5.7 Where written permission has been granted to cut, trim or remove any trees or brush on the Road Allowance, all materials and brush are to be removed from the site and disposed of appropriately, and as per the County's corporate policy and procedure, attached as Schedule "C".
- 5.8 The Director or his delegate may complete an inspection for the purpose of ensuring all Plant Work is performed by the Company in accordance with the Collection Plans approved by the County pursuant to the terms of this Agreement.

6. Responsibilities Of The Company To Provide Documents

- 6.1 Within 180 days after the installation of the Plants, the Company shall deposit with the County an as-constructed plan of the Plants and the date of completion, stamped by a licensed Ontario Professional Engineer or surveyor. The as-constructed plan shall include the location of all Plants. A record and copies of all approvals, plans, and other documentation made pursuant to the terms of this Agreement shall be maintained by the County.
- 6.2 The Company shall register all Plants installed on the Road Allowance with as-constructed plans and the date of completion with Ontario One Call.

7. Notification By County Of Work To Be Performed

If for any reason the County requires work to be completed within, or in close proximity to, any of the Company's Plant, the County shall contact the Company and inform the Company of the timing of the proposed work and the County employee to contact about it. The Company may send a representative to observe the work undertaken by the County in proximity to the Company's Plant and to request any reasonable precautions for such work in proximity to the Company's Plant. Only the Company's personnel or contractors approved by the Company shall be permitted to work within any of the Company's Plant.

8. Limitations Of Permission

- 8.1 The permission granted in this Agreement to use the Road Allowance is subject to the following:
 - a. The right of free use of the Road Allowance by all other persons entitled to it;
 - b. The rights of the owners of the property adjoining the Road Allowance to have full access to and from the Road Allowance and to construct crossings and approaches from their property over the Road Allowance;
 - c. The rights and privileges that the County may have previously granted to any utilities or other persons for use or occupation of the Road Allowance;
 - d. The rights and privileges that the County may grant to any utilities or other persons for use or occupation of the Road Allowance in the future provided such future rights and privileges shall recognize the Company's permission herein; and
 - e. The restriction that the Company shall not permit any lien to be filed or registered against any Road Allowance.
- 8.2 The Company acknowledges that this Agreement does not create an interest in any land, other than as provided by Applicable Laws; and in consideration of the rights and privileges granted herein, the Company does hereby release and revoke any claim to the land, other than as provided by Applicable Laws, against the County, its successors and assigns.

9. Relocation Of Plants

- 9.1 In the event that the County, acting reasonably and with diligence, deems it necessary for the County or the County's agents or contractors to modify or change the location of any part of any installed Plant (the "Relocation"), the required Plant Work shall be conducted by the Company within a reasonable period of time in accordance with the terms of this Agreement respecting Plant Work, and the County shall reimburse the Company 50% of its costs involved for such modifications or relocations during the initial five years from the Effective Date of this Agreement and 50% of its costs involved in such modifications or relocations for the remainder of the Agreement.

10. Notice Of Proposed Sales And Closings / Alternative Easement

The County agrees, in the event of the proposed sale or closing of any Road Allowance or any part of a Road Allowance where there is an existing, active Plant, to give the Company a minimum of 180 days' written notice of such proposed sale or closing. In the event of a closing of any Road Allowance, the Company may, in its sole discretion, be allowed to maintain its Plant within the Road Allowance. In the event of a sale of any Road Allowance, the County agrees to take reasonable efforts to execute formal documents with the purchaser for the purchaser to assume the obligations of the County under this agreement. If the County and purchaser cannot execute such formal documents, despite the County's reasonable efforts, the County shall provide the Company with the option of relocating the affected Plant within the Road Allowance in accordance with Section 9.1 hereof. In no event will the Company be obligated to cease to operate its Plant should the County sell or close its Road Allowance.

11. Replacement During Term Of Agreement

Where, in the opinion of the Company, replacement of the Plant is required during the Term of this Agreement, the Company may enter on the Road Allowance in order to replace the Plant and it is agreed that all provisions of this Agreement shall remain in force and the Company shall comply with the requirements of this Agreement that applied to the original Plant.

12. Repairs

- 12.1 The Company may require access to the Road Allowance for the purpose of repairing any portion of the Plant which has been installed.
- 12.2 The Company may access the Plant at any time for Basic Maintenance and prior approval of the County will not be required provided that all repair work will be carried out by the Company in accordance with any other reasonable procedures prescribed in writing by the Director from time to time. However, except in cases where Emergency Repairs are necessary, a Field Work Request Form must be submitted to the Director a minimum of 2 full working days prior to the intended start date for the scheduled work, and such written approval must be received back from the County prior to the work commencing.
- 12.3 Should any repair carried out by the Company materially affect any plan or other documentation required to be maintained pursuant to this Agreement, the Company shall file amendments to such plans or documentation with the County.

13. Additional Requirements

- 13.1 Where an entrance is being constructed, the Company shall be required to obtain and comply with all requirements of the Entrance Permit.
- 13.2 The Company shall be required to obtain and comply with any other permits as may be required by the County throughout the Term of this Agreement.
- 13.3 At the request of the Director, acting reasonably, the Company may be required to complete and pay for a Road Impact Study to the extent such Study has not already been completed by or on behalf of the Company pursuant to any other agreement between the Parties. The Road Impact Study shall:
- a. Assess the structural integrity of the Road Allowances considering the anticipated Plant Work;
 - b. Assess the impacts of any drainage changes attributed to the anticipated Plant Work;
 - c. Assess the alignment and intersections considering the anticipated Plant Work;
 - d. Recommend any road improvements or other measures that are reasonably necessary to mitigate any impacts of the Plant Work by the Company or its contractors identified in the forgoing assessments.

The Company shall be responsible for implementing all recommendations in such Road Impact Study.

- 13.4 At the request of the Director, acting reasonably, the Company shall complete and pay for a Structural Assessment Study of any bridges or culverts to the extent such Study has not already been completed by or on behalf of the Company pursuant to any other agreement between the parties. The Company shall be responsible for all bridge and culvert improvements identified as reasonably necessary to mitigate any impacts of the Plant Work by the Company or its contractors, as identified in the Structural Assessment Study.
- 13.5 Prior to the commencement of any Plant Work, the Director, at his sole discretion, may require the Company to document the then-existing condition of all County roads, including bridges, that the Company expects will or may be used for, or be subject to, such work, as set out in the Collection Plans. Such documentation, if required, shall be achieved by means of a Pavement Condition Index Survey and/or a Bridge Condition Index Inspection completed by a Professional Engineer of Ontario, or another means satisfactory to the County acting reasonably. The Company shall provide the County with all copies of such documentation. All costs for such surveys and inspections shall be the responsibility of the Company.
- 13.6 At the sole discretion of the Director, the Company may be required to enter into a Road Occupancy Agreement, based on the extent of the Company's project.

14. Health And Safety And WSIB

- 14.1 The Company shall provide the County, prior to the commencement of any work on the Road Allowance under this Agreement, with a copy of its current Health and Safety Policy with respect to the operation of the various equipment being used, along with any and all current Health and Safety procedures relevant to the specific works to be performed.
- 14.2 The Company shall use commercially reasonable efforts to ensure any of its contractors performing the Plant Work shall review and sign the County's Contractor Health and Safety Agreement, attached as Schedule "D" prior to performing any work on the Road Allowance under this Agreement. This shall be done once a year or once per project, whichever is less. The Parties acknowledge that the County may make changes to the document attached as Schedule "D" throughout the Term of the Agreement, in which case the County shall provide the Company with the revised version.
- 14.3 The Company and its contractors, as applicable, are responsible for all costs associated with any workplace accidents and all premiums or assessments owing to the Workplace Safety and Insurance Board (WSIB), or its insurance company. The Company and its contractors, as applicable, shall provide the County with evidence of coverage for itself, its employees, subcontractors and subcontractors' employees under the Workplace Safety and Insurance Act or its insurance policy prior to the commencement of the Plant Work and within 30 days of any change in policy throughout the Term.

15. Insurance

- 15.1 The Company shall during the entire term of this Agreement and any renewals thereof, at its own cost and expense, take out and keep in full force the following insurance coverage with respect to all activities arising from this Agreement. This insurance shall be primary, non-contributing with and not in excess of any other insurance available to the County. The policies shall be underwritten by an insurer licensed to do business in the Province of Ontario. Such policies shall include but not be limited to:
 - a. Commercial General liability insurance on a per occurrence basis for an amount of not less than Ten Million Dollars (\$10,000,000); such policy to include, but not be limited to, non-owned automobile liability; personal injury; broad form property damage; blanket contractual liability; owners and contractors protective liability; products and completed operations liability; contingent employers' liability; and, shall include cross liability and severability of interest clauses. The Corporation of the County of Grey shall be included as an Additional Insured thereunder, with respect to the Company's operations, acts and omissions relating to its obligations under this Agreement.

- b. Automobile Liability insurance for an amount not less than Five Million Dollars (\$5,000,000) on forms meeting statutory requirements covering third party property damage and bodily injury liability (including accident benefits) covering all licensed vehicles used in any manner in connection with the performance of the terms of this Agreement, and/or as may be required by Applicable Laws;
 - c. The limits for Sections 15.1 (a) and (b) above may be satisfied with a combination of primary and excess/umbrella coverage.
 - d. Insurance upon property of every description owned by the Company, or for which the Company is legally liable or installed by or on behalf of the Company and which is located within the Road Allowance, on an All Risk basis for the full replacement cost thereof, as well as business interruption insurance in such amount as will reimburse the Company for direct or indirect loss of earnings attributable to an insured peril;
 - e. Any other form or limits of insurance as the County, acting reasonably, may require from time to time throughout the Term of the Agreement in form, in amounts and for insurance risks against which a prudent person would insure.
- 15.2 As evidence of the required policies being in effect, the Company shall provide the County with Certificates of Insurance prior to the execution of this agreement, and upon each subsequent renewal period throughout the Term of this Agreement.
- 15.3 The Company shall provide 30 days' prior written notice to the County in the event of any cancellation which reduces or restricts the insurance provided.
- 15.4 The Company agrees that if it fails to take out or keep in force any such insurance referred to in this section, or should any such insurance not be approved by the County, and should the Company not commence and proceed to diligently rectify the situation within forty eight (48) hours after written notice by the County, the County has the right without assuming any obligation in connection therewith, to effect such insurance at the sole cost of the Company. The County shall be reimbursed as set out under the terms of this Agreement.

16. Designated Contact

The Company shall have a representative on the construction and/or maintenance site or provide the Director with the name of an official of the Company or contractor who may be contacted with respect to any construction or maintenance activities being carried out by the Company.

17. Utility Coordination

The Company further agrees to participate in any utility coordinating committees or forums as may be established by the County, and to pay its proportionate share of the costs of the administration of such forums.

18. Notices

Any notice required or permitted to be given under this Agreement shall be in writing and may be personally delivered or sent by prepaid registered mail, email or fax to the party to whom it is directed at the address for service of that party set out below, or at such other address as either of the Parties may by notice to the other specify.

In the case of the Notice to the County:

Attention: County Clerk
Corporation of the County of Grey
595 9th Avenue East
Owen Sound, ON N4K 3E3
Email: countyclerk@grey.ca

And in the case of the Notice to the Company:

Attention: Business Management
East Durham Wind, Inc.
390 Bay Street, Suite 1720
Toronto, ON M5H 2Y2
Tel: 416-364-9714

With a copy to:

Attention: General Counsel
East Durham Wind, Inc.
700 Universe Blvd. LAW/JB
Juno Beach, Florida 33408
Tel: 561-304-5213

Every such notice shall be deemed to have been received if personally delivered, at the time of such delivery; if e-mailed or sent by fax, on the next business day; and if sent by prepaid registered mail, at the end of three (3) business days after the mailing thereof.

19. Remedy Of Violations

If the Company violates any of the conditions of this Agreement, the Company shall commence to remedy the violation as soon as possible but in any event no later than sixty (60) days after receiving notice in writing as prescribed in Section 22 specifying the violation, in accordance with any reasonable direction which the County may give.

20. Termination

20.1 This Agreement may be terminated:

- a. By the County, if at any time an order is made or an effective resolution passed for the winding-up, liquidation or dissolution of the Company which is not immediately stayed by appeal;
- b. By the County, if at any time the Company makes a proposal under, or takes advantage of, any insolvency, restructuring or reorganization legislation, or is declared bankrupt, or if a liquidator, trustee in bankruptcy, custodian or receiver and manager or other officer with similar powers is appointed of the Company or of all or substantially all of the Company's property which is not immediately stayed by appeal;
- c. By either the Company or the County, if the other party defaults in making a payment when due or in the performance or observance of any of the material terms, covenants or agreements on its part contained in this Agreement and such default continues or the defaulting party has not commenced to cure the breach for a period of ninety (90) days after notice thereof from the other party;
- d. By the Company by providing the County with ninety (90) days written notice thereof.

20.2 In the event of termination of this Agreement, the Company will, at its own expense, de-energize the Plant within sixty (60) days, or failing such removal, the Plant will either become the property of the County or will be removed by the County at the expense of the Company, at the discretion of the County.

21. Representations And Warranties

The County has made no representations or warranties as to the state of repair of the Road Allowances or the suitability of same for any business, activity or purpose whatsoever, and the Company hereby agrees to accept the Road Allowances on an "as is" basis and that the County is not responsible, either directly or indirectly, for any damage to property or injury to a person, including death, arising from the Company's use of the Road Allowances, unless due to the negligent or intentional acts of the County, its elected officials, employees or authorized agents.

22. Payment Terms

All charges by the County that are payable by the Company under the terms of this Agreement and the Schedule(s) annexed hereto shall be payable 30 days from the date of the invoice. All invoices that are outstanding for longer than 30 days shall be subject to interest charged at 1.25% per month (equivalent to 16.075% per annum) and shall run from the due date of the invoice until the date payment is received.

23. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising under or related to this Agreement.

24. Relationship Of The Parties

Nothing herein contained shall be deemed to create and the Parties do not intend to create any relationship of partner, agent or joint venture as between the County and the Company.

25. Schedules

The Schedule(s) annexed to this Agreement are integral to, and form part of, this Agreement.

26. Indemnity

The Company shall indemnify the County, its elected officials, employees and agents from and against any and all liabilities, claims, demands, loss, cost, damages, expenses, causes of action, suits, judgments (including legal fees on a solicitor/client basis and all other costs of defence thereof) or other proceedings made by any person arising out of activities arising under this Agreement or in connection with the use of the Road Allowances, the location of Plant or the installation thereof by the Company, its agents, servants, employees, or invitees, except to the extent they are caused by the negligent or intentional acts of the County, its elected officials, employees or authorized agents. This indemnity shall extend to protect the County from construction liens by contractors, mechanics, material men, and suppliers (which are expressly prohibited), which shall be deemed to include all purchases of expendables, consumables, and other merchandise.

In the event of any claims made or suits filed, the County shall give the Company timely written notice thereof, and the Company shall have the right to defend or settle the same to the extent of its interest hereunder.

The Company agrees to assume all environmental liability relating to its use of the Road Allowances (including but not limited to any liability for clean-up of any hazardous substance in, on, under, along, across and around the Road Allowance) caused by:

- a. The Plant Work of the Company in, on, under, along or across the Road Allowances; or
- b. Any products or goods brought in, on, under, along or across the Road Allowances by the Company or any other person with the express consent of the Company.

For the purpose of this section, "hazardous substance" means any hazardous substance and includes, but is not limited to, radiation, petroleum products and by-products, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any statute, regulation, by-law or code, whether federal, provincial or municipal.

EXCEPT AS SET FORTH IN THE PROVISIO HERETO, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO PARTY TO THIS AGREEMENT SHALL BE LIABLE TO OR OTHERWISE RESPONSIBLE TO THE OTHER PARTY OR ANY AFFILIATE OF THE OTHER PARTY OR ANY OTHER INDEMNIFIED PARTY FOR LOST REVENUES OR PROFITS (OR MULTIPLES OF SUCH ITEMS) OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR PUNITIVE, EXEMPLARY, TREBLE OR OTHER DAMAGES BASED ON STATUTORY MULTIPLIERS THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF OR ANY LIABILITY RETAINED OR ASSUMED HEREUNDER.

27. Waiver Of Claims By Company

The Company places its Plant on the Road Allowance entirely at its own risk. The County, its elected officials, employees and agents shall not be responsible or liable in any way to the Company, its contractors, agents, or its customers for any damage or loss howsoever caused unless such damage or loss is caused by the negligence or intentional acts of the County, its elected officials, employees or authorized agents. This includes loss of service or loss of use by any customers and the Company shall indemnify and hold the County and others harmless therefrom in accordance with Section 27.

28. Waiver Of Compliance With This Agreement

No amendment, waiver or modification of any provision of this Agreement shall be binding on a party unless both Parties consent to same in writing. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver, unless otherwise expressly provided in writing.

29. Force Majeure

Any delay or failure of either party to perform its obligations under this Agreement or under any Schedule annexed hereto, except for the obligation to make any payments, shall be excused if, and to the extent, that the delay or failure is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, action by any governmental authority (whether valid or invalid), fires, flood, wind storms, explosions, riots, natural disasters, human health emergencies, wars, sabotage, labour problems (including lock-outs, strikes and slowdowns), material failures, delays, shortages or unavailability, or court ordered injunction or order; provided that written notice of delay (including anticipated duration of the delay) shall be given by the affected party to the other party within five (5) business days of the affected party first becoming aware of such event. In the event that force majeure continues for a period of one hundred and eighty (180) days or more, the Parties may terminate this Agreement without liability to the other upon mutual agreement. In the event that force majeure discontinues and the Parties continue work pursuant to this Agreement, then all time-frames by which work is to be completed shall be extended by the length of the delay.

30. Assignment

This Agreement may not be assigned, sold or transferred without the prior written consent of the other party, such consent not to be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, the Company may, without the consent of the County, assign its rights and obligations under this Agreement in whole or in part to a person that directly or indirectly controls, is controlled by or is under common control with the Company or to a purchaser of all or a material portion of the Company's assets. A change of control of the Company shall not be considered an assignment of this Agreement.

For greater certainty and notwithstanding the foregoing, the Company shall also be entitled to assign this Agreement and all of its rights thereunder without the consent of the County to the Secured Parties as security for the Company's obligations to such Secured Parties which shall be further entitled to assign this Agreement and the Company's rights thereunder in connection with an enforcement of their security. The County hereby grants to any Secured Party the rights and remedies set forth in Schedule "F" hereto. In addition, the County will, from time to time, at the request of the Secured Party, promptly execute and deliver in favour of any Secured Party such consents and acknowledgements granting and confirming the rights and remedies hereunder and in Schedule "F" hereto. The County shall enter into any other reasonable agreements with the Secured Party, as may reasonably be required by the Company in order to obtain financing from the Secured Party.

31. Foreign Corrupt Practices Act

Notwithstanding anything to the contrary herein, the Parties, in relation to this Agreement, shall refrain from offering, giving or promising, directly or indirectly, money or anything of value to a Canadian (including, without limitation, municipal, provincial or federal), tribal or foreign governmental official to influence the official in his or her official capacity, induce the official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person. For the purposes of this Section, "anything of value" shall include, but is not be limited to, cash or a cash equivalent (including a "grease", "expediting" or facilitation payment), discounts, gifts, use of materials, facilities or equipment, entertainment, drinks, meals, transportation, lodging, insurance benefits, or promise of future employment. "Governmental Official" shall mean any person holding any level of legislative, administrative, or judicial office of the Canadian, tribal or a foreign government or any of its departments or agencies or divisions; any person acting on behalf of the Canadian, tribal or a foreign government, including a local, provincial or federal agency, enterprise, or organization; any official or agent of a Canadian, tribal or a foreign public administration or publicly funded organization; any political party or official of a Canadian, tribal or a foreign political party; any officer or agent of a public international organization (e.g., World Bank, International Monetary Fund, World Health Organization, United Nations, World Trade Organization); or any relatives or close family/household members of any of those listed above. Each Party shall indemnify and hold harmless the other Party from all claims brought against such Party as a result of the first Party's or its representatives' failure to comply with Anti-Bribery Law. Each Party shall immediately report any breach of Anti-Bribery Law by such Party or its representatives. The Company shall have the right to audit the County's books and records solely with respect to any payments made by the Company to the County pursuant to this Agreement in the event that the Company, acting reasonably, believes that the County has violated this Section 31, and the Company shall have the right to immediately terminate all such payments if the County fails to comply with this Section 31.

32. Entire Agreement

This Agreement and Schedules attached hereto contain the entire agreement between the Parties with respect to the matters set out herein and supersede all prior agreements, negotiations, representations and proposals, whether written or oral, dealing with the subject matter of this Agreement. There are no conditions, covenants, representations or warranties, express or implied, statutory or otherwise relating to the subject matter hereof, except as herein expressly provided.

33. Miscellaneous

- 33.1 The Parties agree that nothing contained in this Agreement shall abrogate or prejudice any statutory rights held by any Party under section 41 of the Electricity Act.
- 33.2 Every provision of this Agreement which requires any party to use its efforts shall be deemed to include the words "reasonable commercial efforts" unless specifically stated otherwise. Every provision of this Agreement which requires any party to make a payment of any costs or expenses, such costs and expenses shall be deemed not to exceed an amount which is reasonable in the circumstances, unless specifically stated otherwise. Whenever the provisions of this Agreement require an approval or consent to be given, unless this Agreement expressly states to the contrary, the following rules shall apply:
- a. Such approval or consent shall be in writing;
 - b. Such approval or consent shall not be unreasonably withheld, delayed or conditioned;
 - c. The party whose approval or consent is required shall, within thirty (30) days after the request for approval or consent is received, advise the party requesting such approval or consent in writing that it consents or approves, or that it wishes to withhold its consent or approval, in which case such party shall set forth, in reasonable detail, its reasons for withholding such consent or approval; and
 - d. Any dispute as to whether or not such consent or approval has been unreasonably withheld shall be resolved by arbitration.
- 33.3 This Agreement may be executed by facsimile or pdf transmission and in one or more counterparts, all of which shall be considered one and the same Agreement.
- 33.4 The invalidity or unenforceability of any provision or covenant contained in this Agreement shall affect the validity or enforceability of such provision or covenant only and any such invalid provision or covenant shall be deemed to be severable from the balance of this Agreement, which shall be enforced to the greatest extent permitted by law.
- 33.5 Each covenant in this Agreement is a separate and independent covenant and a breach of covenant by either party will not relieve the other party from its obligation to perform each of its covenants, except as otherwise provided herein.

IN WITNESS WHEREOF the Parties have executed this Agreement by the signatures of their respective duly authorized officers.

THE CORPORATION OF THE COUNTY OF GREY

Per: 

Warden, Brian Milne

Per: 

Clerk, Sharon Vokes

We have the authority to bind the Corporation.

EAST DURHAM WIND, INC.

Per: 

John DiDonato, Vice President

I have authority to bind the Company.

Schedule "A"
Road Allowances

County Road 4 (Grey Road 4)

Schedule "B"
Notification of Field Work Form



Notification of Field Work

Transportation Services
595 9th Avenue East Owen Sound Ontario N4K 3E3
Tel: 519-376-7337 / Fax: 519-376-0967

This completed notification must be submitted at least 12 hours to commencing work on Grey County right-of-ways by either Fax: 519-376-0967 or email to roads@grey.ca

Company Name: _____

Contractor Performing Work: _____

Location of Work: Grey County Road Number: _____

Closest Civic Address (if available): _____

Township/Municipality: _____

Date of Work: _____

Description of Work: _____

Duration of Work: _____

Type of Operation

Road Cut ☐

Off Road Cut ☐

Lane Closure ☐

Trenching ☐

Boring ☐

Type of Approval

MC ☐

Verbal ☐

Other ☐

Company Authority _____

(Signature)

(Name Printed)

Contact No. _____

Date _____

Schedule "C"
Tree Removal Policy and Procedure



Corporate Policy

Tree Removal Policy

Approved by: County Council
Last Revision Date: June 4, 2013
Scheduled for Review by: 2018

Date Approved: June 4, 2013
Replaces: N/A

Policy Number: MS-TS-006
Sub Section: Roads

Section: Municipal Services

References and Related Documents

[Municipal Act 2001](#)

[Tree Removal Procedure](#)

Policy Statement

This policy provides for the removal of trees and branches on Grey County Roads, road right-of-ways and private property adjacent to Grey County Roads that may pose a safety hazard for the travelling public.

Purpose

The purpose of this policy is to outline the criteria for the removal of trees and branches on Grey County owned road right-of-ways, as well as on private property adjacent to Grey County Roads.

Scope

This policy will encompass all Grey County Roads as determined by the Director of Transportation Services.

Tree Removal

Approved by: County Council **Last Modified Date:** June 4, 2013
Date Approved: June 4, 2013 **Scheduled for Review by:** 2018
Replaces: Tree and Brush Maintenance Policy

Procedure Number: MS-TS-006-001 **Parent Policy:** MS-TS-006
Author: MJ Kelly, Director of Transportation Services

References and Related Documents

Section 6.2 of the Municipal Act
[Municipal Act 2001](#)
[Tree Removal Policy](#)

Policy Statement

The County of Grey has the responsibility to remove trees and tree branches that pose a safety hazard to the users of County Roads.

In accordance to Section 62 in the Municipal Act, the County has the right to remove decayed, damaged or dangerous trees or branches of trees on or adjoining County Roads if, in the opinion of the County, the trees or branches pose a danger to the health or safety of any person using the road.

Purpose

The purpose of this procedure is to provide the Transportation Services Department with direction for removing trees and parts of trees on County owned road right-of-ways, as well as, on private property adjacent to County Roads. In addition, it identifies a protocol for informing adjacent property owners of the removal of trees and potential compensation for trees removed.

Scope

Trees within and adjacent to County road right-of-ways can create a hazard to motorists and other road users or hamper road components such as drainage. To enhance the safety of the road users and longevity of the road facility this policy addresses the following:

- Determination of Work;
- The hierarchy of tree removal;
- Communications;
- Compensation.

Determining Work

While patrolling Grey County Roads, the Area Foremen will inventory trees and parts of trees that have potential to fall onto road surfaces, reduce site visibility at intersections, impede winter maintenance activities, have a negative effect on the infrastructure, such as ditches or structures, or are within the Clear Zone, as identified in the Roadside Safety Manual. These locations and identified problems will be summarized and submitted to the Manager of Maintenance.

In addition, the Manager of Engineering will inventory the locations of the trees that are recommended to be removed to accommodate ditching and construction work. The Manager of Engineering will also identify trees that are within the Clear Zone, as identified in the Roadside Safety Manual within projects on the County's five (5) year work program.

Hierarchy of Tree Removal

It is recognized that the amount of trees to be removed annually may exceed the capacity of available resources. The Maintenance Manager will prioritize the trees that have been identified for removal or trimming, based on the following hierarchy:

- Dead trees or parts of trees that have potential for falling on Grey Roads driving lanes;
- Healthy trees that canopy Grey Roads and are causing a potential hazard;
- Trees that are compromising the integrity of infrastructure, such as ditches or bridges;
- Trees within the Clear Zone of planned construction projects;
- Trees that are negatively affecting winter maintenance operations;
- Trees that are within the Clear Zone of non-construction projects.

The Maintenance Manager may use the services of the Tree Cutting Lead Hand or a third party expert to assess the health of a tree.

There will be occasions when trees that require removal are identified through the year from various sources that will be included in the annual plan.

Communications

The County shall identify the areas where tree cutting will occur on its internet site at least two (2) weeks before trees are removed. However, in emergency situations the tree cutting locations may not be identified on the internet site.

A) Trees on Private Property Adjacent to a Grey County Road

When a tree or portion of a tree that is located on private property adjoining a Grey County Road right-of-way requires removal or trimming, Grey County staff will attempt to contact the property owner to advise them of the County's intentions and rationale. A letter will be forwarded to the property owner and a letter will be left at the residence identifying the County's intent at least four (4) weeks prior to the work being undertaken. The letter will provide a contact name, telephone number, email address and an approximate date when the work will be completed.

B) Trees within County Road Allowance

When a tree located on a County Road right-of-way, having a caliper of 0.3 m or larger, is identified for cutting and a property owner is maintaining the property (cutting the grass) to the tree. A letter will be left at the residence identifying the County's intent to cut all or a portion of a tree, at least four (4) weeks prior to the work being undertaken. The letter will provide a contact name, telephone number, email address and an approximate date when the work will be completed.

An orange X will be marked on each tree to be removed at least two (2) weeks prior to the removal of a tree as identified in A and B.

Compensation

No compensation will be provided to property owners adjoining a County Road for trees removed from the County-owned road right-of-way.

The Director of Transportation Services has the authority to authorize the planting of a new tree to replace a tree removed from private property adjoining a County Road, if the tree to be removed has a trunk caliper of at least 0.3 m at the stump and the principle residence is within 50 m of the tree that has been cut.

The species of the newly planted tree mutually agreed upon by the property owner and the County of Grey with a maximum value of \$200. All trees will be planted on private property within 5 m of where the cut tree was located. The property owner shall be responsible for the maintenance of the trees and the County will not warranty the replacement trees.

The County will cut the wood into lengths of approximately 1.5 m and leave the wood within the county road allowance for the home owner's use (for trees cut on both private property and Grey County owned road right-of-ways). If the wood is not removed within seven (7) days of the cutting, the County will make arrangements to have the wood removed.

Schedule "D"
Health and Safety Contractor Agreement



Contractor
Health & Safety Agreement

Company Name Bosea Construction (the "Contractor")
Project: East Durham Wind Project

It is our policy objective at the Corporation of the County of Grey (the "County"), to provide all persons within our workplace with a safe environment to work in. It is the County's objective to totally eliminate all accidents through thorough Health and Safety standards. All employees, contractors, sub-contractors, suppliers and any other service providers to our projects must cooperate and make all reasonable efforts to ensure the maximum protection and minimum inconvenience to the general public, occupants, and the environment.

In consideration of being contracted to do work for the County, the Contractor shall follow the following requirements on County projects:

- The Contractor must ensure that all of their employees and sub-contractors have safety training and certifications equal to, or exceeding, the requirements set forth in the current Occupational Health and Safety Act and current regulations.
- The Contractor and all of its employees and sub-contractors on the project must work in conjunction with the County's appointed Health and Safety Representatives. The Contractor and all its employees and sub-contractors must follow Health and Safety policies set forth by the County.
- The Contractor will investigate all accidents and near accidents, and report to the Site Representative and the Health and Safety Representative immediately.
- Health and Safety policies will be reviewed by the Contractor and the County, and be part of all pre-site and site meeting agendas.
- Health and Safety issues will always be given immediate attention by the County and its representatives, and the Contractors and its sub-contractors.
- All applicable current health and safety issues and environmental legislation and regulations are considered the minimum requirements that the Contractor must meet.
- All employees, contractors/sub-contractors, suppliers and visitors/residents must immediately report unsafe conditions, incidents, and accidents to the Project/Site Supervisor or the County's Occupational Health & Safety Coordinator.

The Contractor shall provide and post, in a conspicuous location, a written copy of its Health and Safety Policy, as required under Sections 25 (2)(i) and (k) of the Occupational Health and Safety Act.

Failure to adhere to any of the above stated requirements would jeopardize the Health and Safety of all. Through a safety conscious workforce, the quality of work and production will ensure safe and timely project completion.

ALL accidents will be investigated to determine the causes and corrective actions to prevent recurrence. Any one of the following disciplinary actions will be used for disregard of the Occupational Health & Safety Legislation/Regulation(s) and unsafe work practices, depending on the severity of the occurrence.

Step 1 - Verbal Warning;
Step 2 - Written Warning;

Step 3 - Notification of the Minister of Labour re: Project
Violations/Termination of Project.

The County takes pride in the commitment of our employees and contractors, and will take the necessary steps to ensure Health & Safety on all projects.

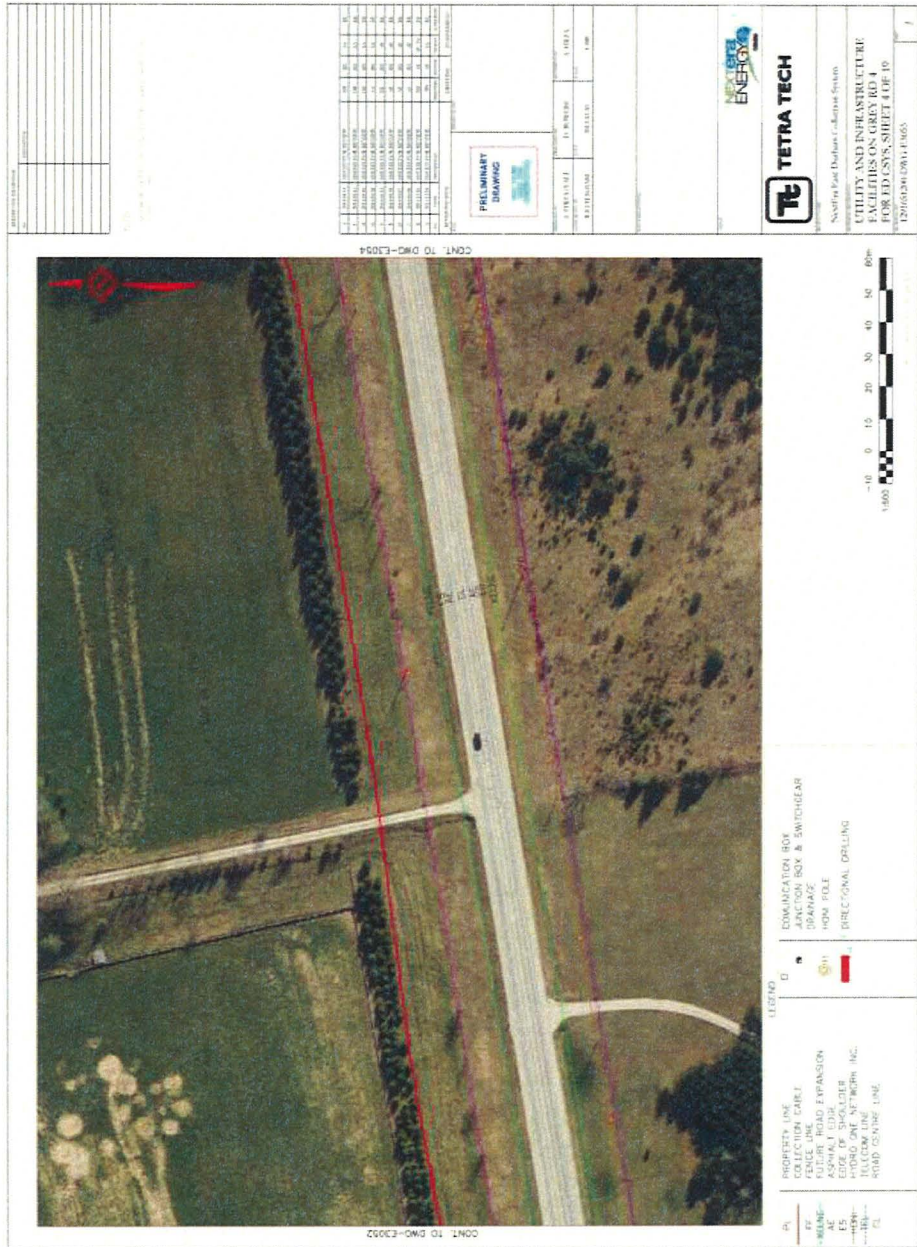
Acknowledgement

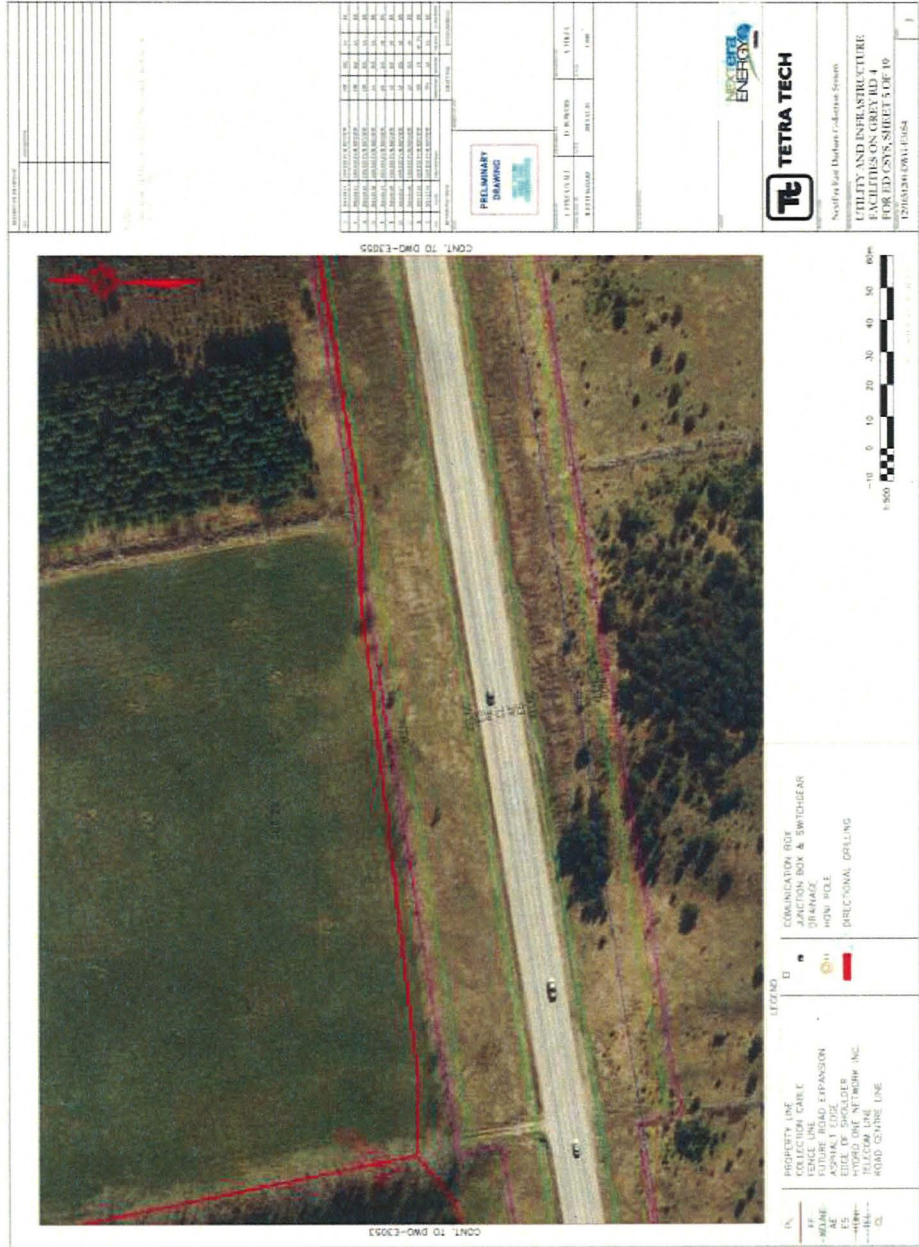
As an authorized representative of the Contractor, I have read and received a copy of the "Contractor Health and Safety Agreement", and agree on behalf of Bosea Construction to comply with its requirements, and the requirements of the Occupational Health & Safety Act and Regulations. I will also take all necessary precautions to ensure the health and safety for our employees, suppliers and sub-contractors while on the project, and ensure they are provided with, and are aware of, the preceding requirements.

Contractor Signature: [Signature] Date: April 15, 2014

Schedule "E" Collection Plans















Schedule "F"
Rights and Remedies of Secured Creditors

1. The County will from time to time execute and deliver such consents and acknowledgements reasonably requested by the secured party.
2. The County agrees that, upon the secured party giving the County written notice, the secured party will, without any further action being required, have the benefit of the following provisions until such time as the secured party advises the County in writing that its security is no longer in effect (and, if the secured party so requests, the County will (i) acknowledge in writing that the secured party so benefits from these provisions, or (ii) enter into a written agreement with the secured party substantially in accordance with these provisions):
 - a. the County will give prompt written notice to the secured party of any breach or default by the Developer of its obligations under the Agreement in respect of which the County proposes to exercise any of its remedies;
 - b. the County will give the secured party the right to cure any breach or default by Developer under the Agreement, within a period of 90 days commencing on the later of (i) the expiry of the cure period afforded Developer under the Agreement, and (ii) the date on which the County gives the secured party notice of such breach or default pursuant to Section 2(a), or such longer period of time as the secured party may reasonably require to cure such breach or default; and no exercise by the County of any of its rights or remedies against Developer will be effective against Developer or the secured party unless the County has the secured party such notice and opportunity to cure.
 - c. the County will, at any time and from time to time, upon not less than twenty (20) business days' prior request by Developer or the secured party or proposed the secured party, execute any agreements, certificates or acknowledgements that Developer or the secured party may reasonably request with respect to this Agreement; and
 - d. All notices to the secured party from the County will be in writing and will be sent by personal delivery, registered mail, email or by fax to the address, email address or facsimile number of the secured party set out in any notice that the secured party delivers to the County.

The provisions of this Section 2 will enure to the benefit of the secured party and its successors and assigns, and any rights conferred on the secured party by the terms of this Schedule "F" or limiting its liability under the Agreement will benefit each receiver or receiver-manager appointed by the secured party or by a court of competent jurisdiction.

3. The County hereby acknowledges that Developer may grant security to a trustee or collateral agent acting on behalf of one or more lenders (a "Collateral Agent"), and the County hereby acknowledges and agrees that upon its receipt of notice that such security was granted, the Collateral Agent will be entitled to all of the rights of the secured party set forth in this Schedule "F" and such notice will constitute notice of the existence of the Collateral Agent as the secured party.