

Report TR-TAPS-36-16

To: Chair Bell and Members of the Transportation and Public Safety Committee

From: Kim Wingrove, Chief Administrative Officer / Acting Director of Transportation Services

Meeting Date: May 19, 2016

Subject: Completion of East Durham Wind Oversized-Overweight Road Use Agreement

Status: Recommendation adopted by Committee as presented per Resolution TAPS68-16; Endorsed by County Council June 7, 2016 per Resolution CC73-16;

Recommendation(s)

WHEREAS the East Durham Wind Oversized-Overweight Road Use Agreement was enacted by By-Law 4584-14;

AND WHEREAS the wind turbine installation project is complete and a final inspection of the County roads and structures has taken place and found no evidence of damage to these assets;

AND WHEREAS East Durham Wind LP wishes to provide, and the County of Grey wishes to accept a payment of \$100,000 in recognition of the possibility of the roads and structures having a shortened lifespan as a result of the transport of overweight cargo;

NOW THEREFORE BE IT RESOLVED THAT Report TR-TAPS-36-16 be received;

AND THAT Council directs the Warden and the Clerk to enter into the Letter Agreement in full satisfaction of East Durham Wind LP's obligations under the Road Use Agreement to Permit Transport of Oversized Cargo.

Background

In October, 2013, Council approved the creation of a unified set of policies with regards to road use agreements for wind turbine developments to ensure that the County's best interests are considered during the development and operation of these projects.

In May, 2014, Grey County entered into three agreements with East Durham Wind LP, which were developed under the following unified agreements:

- Electric Power Transmitter or Distributor to Locate Structures
- Road Occupancy
- Road Use Agreement To Permit Transport of Oversized Cargo (“Road Use Agreement”)

The Road Use Agreement required East Durham Wind LP to provide a pre-transportation highway condition report, including a Bridge Condition Index Inspection Report and Pavement Condition Index Survey. These were completed by IBI Group and accepted by Grey County in May, 2015.

The Road Use Agreement makes East Durham Wind LP responsible for returning the Grey roads and bridges that were used for transportation during the turbine project, to a condition as good as or better than what was observed in the pre-transportation report. At the time the agreement was executed, East Durham Wind LP provided a \$200,000 performance bond to be held as security for the company’s completion of its obligations. The bond is to be released when all obligations under the Road Use Agreement have been satisfied.

At this time, the wind turbine construction project is complete. County Staff conducted a visual examination of the Grey Roads used during the construction of the project and determined that there is no evidence of physical damage. The County received a third party post haulage structure assessment report completed by IBI Group. There does not appear to be any physical damage to the structures (bridges and culverts) at this time, but they will need to be monitored over the next two years to ensure that damage did not result from this project.

Financial/Staffing/Legal/Information Technology Considerations

Now that the project is complete, it is in the interests of the County of Grey and East Durham Wind LP to satisfy their contractual and financial obligations to one another. This would require the release of the proponent’s \$200,000 performance bond and the execution of the Letter Agreement and acceptance of the \$100,000, as compensation to Grey County for the reduced life of the Grey Roads, as a result of the haulage of overweight/oversized vehicles in 2015, to deliver components to the wind farm.

Attachments

[By-law 4854-14 Schedule A East Durham Wind Oversized-Overweight Agreement 2](#)

East Durham Wind, LP Letter Agreement re Restoration Obligations of Road Use Agreement for Oversized Cargo of May 8 2014

Respectfully submitted by,

Kimberly Wingrove

Chief Administrative Officer / Acting Director of Transportation Services

LETTER AGREEMENT

This Letter Agreement (this "Letter Agreement"), dated as of May __, 2016 ("Effective Date"), is made by and between The Corporation of the County of Grey ("County") and East Durham Wind, LP ("EDLP") and, collectively with the County, the "Parties"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed to such terms in (i) the Road Use Agreement to Permit Transport of Oversized Cargo dated as of May 8, 2014 (the "RUA") by and between East Durham Wind, Inc. ("EDWI") and the County or (ii) the Road Occupancy Agreement dated as of May 8, 2014 (the "ROA") by and between EDWI and the County, as applicable.

WHEREAS, EDLP is the successor in interest to EDWI;

WHEREAS, the RUA and the Transportation Plan require that (i) EDLP must return any County Highways or bridges on which transportation has occurred to a condition as good or better than the condition set out in the Bridge Condition Index Inspection Report and Pavement Condition Index Survey and (ii) the Director may reasonably request a Road Impact Study and/or Structural Assessment Study and further that EDLP is responsible for implementing all recommendations and/or improvements/impacts identified in such studies (collectively the "EDLP Restoration Obligations");

WHEREAS, reference is made to those certain Technical Memorandums dated May 21, 2015 by Golder Associates (collectively, the "Third Party Impact Assessments") which assessments have been reviewed and approved by each Party prior to the Effective Date;

WHEREAS, EDLP desires to make to the County and the County desires to accept from EDLP a payment of one-hundred thousand dollars (\$100,000) in full satisfaction of all EDLP Restoration Obligations that have accrued up to the Effective Date (the "Restoration Payment"); and

WHEREAS, the County desires to return to EDLP and EDLP desires to receive from the County the security contemplated by Section 5.3 of the RUA and Section 16.1 of the ROA.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereby covenant and agree as follows:

1. In full satisfaction of all EDLP Restoration Obligations EDLP shall pay the Restoration Payment to the County by bank draft, certified cheque or wire transfer, within forty-five (45) days of the Effective Date. The Parties acknowledge and agree that the Restoration Payment represents a reasonable estimate of the present value of the Restoration Obligations based, in part, on the Third Party Impact Assessments. In addition:
 - a. the County shall utilize the Restoration Payment for any lawful purpose and in compliance with its obligations under Section 24 of the RUA; and
 - b. if payment is effected by wire transfer EDLP shall wire immediately available funds to an official County account designated in writing by the Director of Finance for the County.
2. Simultaneously upon its receipt of the Restoration Payment the County shall:

- (a) release to EDLP the full amount of the security provided by EDLP in accordance with Section 5.3 of the RUA;
 - (b) release to EDLP the full amount of the Security provided by EDLP in accordance with Section 16.1 of the ROA;
 - (c) waive any right to payment in connection with EDLP Restoration Obligations that have accrued up to the Effective Date including, without limitation, the obligations contained in Section 4.4, 4.5, 8.2 and 8.3 of the RUA; and
 - (d) release and forever discharge EDLP and its successors and assigns from any and all liability, claims, and demands of whatever kind or nature, either in law or in equity, which arise or may hereafter arise in connection with the physical impact of the transportation of Cargo prior to the Effective Date, including Oversized and Overweight Cargo, upon the County Highways.
3. Other than as expressly completed by this Letter Agreement, the RUA shall remain in full force and effect in accordance with its terms.
 4. The provisions of Sections 12, 16, 17, 21, 23, 24, 25 and 26 of the RUA shall apply *mutatis mutandis* to this Letter Agreement as though set out in full herein.
 5. This Letter Agreement may be executed in counterparts, all of which together shall constitute one and the same instrument and counterparts may be exchanged by telecopy, PDF or other facsimile signature (which shall be deemed an original for all purposes).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each of the undersigned has duly executed and delivered this Amendment on the date first above written.

THE CORPORATION OF THE COUNTY OF GREY

Name: Alan Barfoot
Title: Warden

Name: Sharon Vokes
Title: Clerk

We have the authority to bind the Corporation

EAST DURHAM WIND, LP
by East Durham Wind GP, Inc., its General Partner

Name:
Title:

I have authority to bind the company.