

AGGREGATE HAUL ROAD IMPROVEMENT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 20_____.

BETWEEN:

THE CORPORATION OF THE COUNTY OF GREY
("County")

- and -

**HAROLD SUTHERLAND CONSTRUCTION LTD., BLUE WATER LOGGING LTD., AND
H.S.C. AGGREGATES LTD.**
("Operator")

WHEREAS the Operator is the future operator of the quarry located on the lands described as Lot 26, 27 and Part of Lot 28, Concession 10, in the geographic Township of Keppel, now part of the Township of Georgian Bluffs in the County of Grey ("Keppel Quarry" – see Schedule "D" – Map of Subject Lands). The Operator warrants that it is the owner of the Keppel Quarry, or will be the owner thereof prior to receipt of the license referred to in recitals below;

AND WHEREAS the Operator has made application to the Ministry of Natural Resources for a license to operate an aggregate quarry to be known as the Keppel Quarry (the "Application");

AND WHEREAS pursuant to the Official Plans of the County, the County has an interest in ensuring that the proponents of new developments provide appropriate infrastructure at the proponents' expense;

AND WHEREAS the County's Official Plans provide that the County may enter into agreements with the operators of mineral aggregate extractive developments to determine the appropriate use and maintenance of County roads as haul routes;

AND WHEREAS the haul route for quarry truck traffic leaving and entering the Keppel Quarry is Grey Road 17 (the "Haul Route");

AND WHEREAS although it is recognized that material will be hauled on Grey Road 17 south and north of the Keppel Quarry, the County has identified that the section of Grey Road 17 between the Keppel Quarry and Grey Road 17B has the potential to be impacted the most as a result of its use as part of the Haul Route, and shall be referred to as the "Haul Road" for the purposes of this agreement;

AND WHEREAS the Haul Road may require work to be undertaken to provide additional structural support to accommodate the additional truck traffic as a result of the new Keppel Quarry which shall be determined through a road assessment study;

NOW THEREFORE in consideration of the premises and the covenants and agreements contained herein, including but not limited to the County supporting the Application and the Operator's commitment to perform the road Operator's Work set out herein, the parties covenant and agrees as follows:

Section 1 – Interpretation

1.1 Definitions

In this agreement, unless there is something in the subject matter or context to the contrary, the following words have the meanings set out below:

"As Built" means final drawings or plans which are to be submitted by the Operator following the completion of the Operator's Work and which reflect the work actually completed;

"Board" means the Ontario Municipal Board;

"Construction Lien Act" means the *Construction Lien Act*, R.S.O. 1990, c.C.30, as amended or any successor legislation;

"County Work" means the work administered by the County and cost-shared with the Operator pursuant to the findings of the Road Assessment Study under this agreement;

“Drawings” includes the general conformance plan(s) set out on Schedule “A”;

“Encroachment Permit” means a permit that is approved by the County Transportation Services Department in accordance with Corporate Procedure Number MS-TS-001-004 that is required where there is an installation or stockpile of work upon, over, under or within the County right-of-way or roadway.

“Entrance Permit” means a permit that is approved by the County Transportation Services Department in accordance with Corporate Procedure MS-TS-001-001 where a new entrance or alteration to an entrance is proposed on to a County Road.

“Environmental Protection Act” means the *Environmental Protection Act*, R.S.O. 1990, c.E.19, as amended, or any successor legislation;

“Haul Road” means the specific Section of Grey Road 17 between the Keppel Quarry entrance and Grey Road 17B, a distance of 7.75 kilometres, which the County has identified as having the most potential to be vulnerable to the stress which will be placed on it due to the additional truck traffic as a result of the new Keppel Quarry, and which therefore may require work to be undertaken to provide additional structural support to accommodate that truck traffic. The Haul Road and its maintenance and improvement is the subject of this agreement between the parties.

“Haul Route” means the routes used by quarry truck traffic leaving and entering the Keppel Quarry.

“Keppel Quarry” means, for the purposes of this agreement, the quarry being applied for by the Operator located on lands described as Lot 26, 27 and Part Lot 28, Concession 10, in the geographic Township of Keppel, now part of the Township of Georgian Bluffs as shown on Schedule “D” – Map of Subject Lands.

“Municipal Act” means the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, or any successor legislation;

“Occupational Health and Safety Act” means the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1, as amended or any successor legislation;

“Ontario Provincial Standards General Conditions” means Ontario Provincial Standards - General Conditions of Contract (OPSS. Muni 100) dated November 2006, as amended, or any successor conditions of legislation;

“Ontario Water Resources Act” means the *Ontario Water Resources Act*, R.S.O. 1990, c.O.40, as amended, or any successor legislation;

“Operator” includes the successor, assigns, heirs, executors, administrators, or other legal representative of the Operator of whom the context may apply according to law and includes an individual, an association, a partnership and a corporation and includes at the time of the execution of this agreement Harold Sutherland Construction Ltd. as well as H.S.C Aggregates Ltd. and Blue Water Logging Ltd. as owners of the subject lands, jointly and severally.;

“Operator’s Work” includes the items set out under section 2.3 a., b., and c., all of which shall be completed by the Operator at the Operator’s sole expense.

“Party Status” means, for the purposes of this agreement, the current status of the County that the Board has approved with respect to the Board Hearing for the proposed Keppel Quarry.

“Planning Act” means the *Planning Act*, R.S.O. 1990, c. P.13, as amended or any successor legislation;

“Road Occupancy Agreement” means a legal agreement the County and a Developer established to identify the responsibilities of the Developer completing work within the County road right-of-way.

“Road Assessment Study” or “Study” means a study to be undertaken pursuant to this agreement. It will assess the structural condition of the Haul Road and determine, among other things, the structural components of the Haul Road that are required to accommodate its future traffic needs. The Road Assessment Study is further defined under section 2.3 e.

“Securities” includes Letters of Credit, cash, certified cheques and/or bonds provided by the Operator to the County for the Operator’s Work and/or the County Work under this Agreement, including but not limited to the Road Occupancy Agreement, the Entrance Permit, and/or the Encroachment Permit.

“Term” of this agreement means the period of time from when this agreement has been fully executed until such time as it is no longer in effect, which will be the later of either the lifespan of the Keppel Quarry or the completion of both the Operator’s Work and the County Work, and all related financial obligations being met by the Operator.

1.2 Headings

The headings inserted in this agreement are inserted for convenience only and not as a means of interpreting this agreement.

1.3 Lists

Whenever a statement or provision in this agreement is followed by words denoting inclusion of examples and then lists or references specific items such list or reference should not be read as to limit the generality of that statement or provision even if words such as “without limiting the generality of the foregoing” do not precede such list or reference.

1.4 Reference to Statutes

References herein to any statute or any provision thereof includes such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.

1.5 Operator’s Expense

Every provision of this agreement by which the Operator is obligated in any way is deemed to include the words “at the expense of the Operator” and “to the County’s satisfaction,” unless specifically stated otherwise.

1.6 Schedules

Schedules attached form part of this agreement and have the same force and effect as if the information contained on them was included in the body of this agreement.

Section 2 – Administration, County’s Work and Operator’s Work

2.1 Agreement Conditional upon Application Approval

Should the Operator’s Application, and/or its license to remove aggregate from the Keppel Quarry, not receive final and binding approval, the terms of this agreement shall be null and void.

2.2 Legal and Consulting Fees

- a. The Operator agrees that, prior to the execution of this agreement by the County, the Operator shall pay an initial deposit to the County in the sum of \$5,000 for legal fees incurred to date by the County, as well as anticipated legal fees to negotiate and draft this agreement. If the actual legal fees incurred are less than the initial deposit, the County shall return the remaining amount to the Operator. If the actual legal fees incurred are more than the initial deposit, the Operator shall pay the full outstanding amount to the County to cover the legal fees.
- b. This Agreement is necessary to satisfy a condition of the Niagara Escarpment Development Control Permit which requires the Operator to enter into a Haul Road Agreement with the County to the satisfaction of the County. Upon full execution of this agreement, the County shall notify the Board that the County’s outstanding matters have been resolved and the Party Status at the Board will be withdrawn.

2.3 Operator’s Work, County Work and Other Haul Road Improvements

- a. The Entrance (Operator’s Work):
The Operator shall complete construction of the entrance to, and improvements to the access of the Keppel Quarry (as per Schedule “A”) prior to the hauling of any aggregate therefrom, save and except for any materials used in the Operator’s Work under this agreement. Construction of the entrance and the access improvements must be designed by a Professional Engineer Ontario and completed to the County’s satisfaction as noted in the terms of both the Entrance Permit and Road Occupancy Agreement to be completed.

b. The Tunnel/Centreline Structure (Operator's Work):

The Operator shall complete the design and construction of the tunnel/centerline structure beneath Grey Road 17 to convey aggregate under Grey Road 17 if the Operator decides to proceed with a culvert under Grey Road 17. Construction of the culvert must be designed by a Professional Engineer Ontario and completed to the County's satisfaction as noted in the terms of the Encroachment Permit and Road Occupancy Agreement to be completed. During the installation of the culvert, traffic must be maintained on Grey Road 17 in accordance with Ontario Traffic Manuals.

In addition, the following maintenance and road reinstatement terms regarding the culvert shall apply:

- i. Every two (2) years, at the expense of the Operator, the structure must be inspected by a Professional Engineer Ontario in accordance with the Ontario Structure Inspection Manual (OSIM) and the Ontario Field Inspection Guide. A copy of each such inspection shall be provided to the County.
 - ii. All deficiencies noted in the inspections will be the Operator's responsibility to repair to the satisfaction of the County in a timely fashion.
 - iii. The Operator will be required to reinstate Grey Road 17 once the culvert is no longer required, functional and/or the quarry is depleted. The plans to reinstate Grey Road 17 and the work required to complete the reinstatement shall be completed to the satisfaction of the County and shall include the removal of the culvert. The traffic must be maintained on Grey Road 17 in accordance with Ontario Traffic Manuals during such reinstatement.
- c. Utility Relocation (Operator's Work):
The Operator is responsible for all costs associated with the relocation of any utilities that must be moved in order to complete the work described in clauses (a) and (b) above. The County shall be notified in writing of any such relocates.
- d. The Operator warrants the workmanship and materials comprising the Operator's Work for a period of one year from the date of substantial completion of the Operator's Work. The date of substantial completion shall be declared in writing by the Operator and the County shall either confirm the declared date within 10 business days or advise the Operator of any work required in order to satisfy substantial completion.
- e. The Operator shall provide a report within 60 days of the issuing of a quarry pit license that specifies the annual tonnage removed from the existing quarry from 2001 to 2011.
- f. On a go forward basis, until the Keppel Quarry is depleted, the Operator shall annually, in January, provide a report to the County which specifies the amount of aggregate material removed from the Keppel Quarry in the prior 12 months.
- g. Road Assessment Study:
The County will complete a Road Assessment Study (the "Study") between the months of April and October in a calendar year following the issuance of a quarry licence for the Keppel Quarry. The County will contract with a qualified third party consulting engineer to carry out the Study in accordance with the County's Purchasing Policies, and the County will administer the Study. The County will notify the Operator prior to the commencement of the Study. The cost of the Study will be cost-shared at 50% by the Operator and 50% by the County. The County shall invoice the Operator for such cost upon completion of the Study.

The Study shall include the following for the Haul Road:

- i. The current pavement condition, established with a visual pavement condition survey, carried out to MTO protocols (SP021, SP022, and SP024, SP025);
- ii. The current pavement strength, established using pavement deflection equipment such as the falling weight deflectometer (FWD) and possibly the drilling of boreholes;
- iii. An estimate of the remaining life in the pavement based on future non-quarry related traffic plus 85 percent of the average annual quarry traffic flow based on the historical traffic flow from the operator's existing quarry operation between 2001 and 2011;
- iv. An estimate of the remaining life in the pavement if the Keppel Quarry truck traffic on the Haul Road exceeds the future non-quarry related traffic plus 85 percent of the average annual quarry traffic flow based on the historical traffic flow from the Operator's existing operation between 2001 and 2011;
- v. A determination of the costs to be paid by the Operator to the County for the

following:

- a. a valuation for the reduced life span of the Haul Road due to the Keppel Quarry truck traffic in excess of 85 percent of the historical flow of traffic for the Operator's existing quarry operation between 2001 and 2011; and
- b. a valuation of the future work which may be required (at the eventual reconstruction/rehabilitation date) to account for any Keppel Quarry truck traffic in excess of 85 percent of the historical flow of traffic for the Operator's existing quarry operation between 2001 and 2011.

The qualified third party consulting engineer will submit the results of the Study in the form of a final report to the County, and a copy to the Operator; and will also provide technical support to discussions between the County and the Operator regarding the findings of the Study, upon request.

- h. Haul Road Repairs/Rehabilitation/Reconstruction/Preventative Maintenance/Upgrades (County Work):
The County shall complete the work to the Haul Road as identified in the Road Assessment Study, and this work shall be referred to as the "County Work" under this agreement.
- i. 30 days prior to the commencement of the County Work by the County, the Operator shall provide Securities to the County for its financial obligation with regard to the County Work.
- j. The County will administer all County Work and will invoice the Operator for the costs of the County Work as determined by the Road Assessment Study for the County Work as the work is completed.
- k. In the event that the Operator fails to pay the invoice for the costs of the County work completed, the County shall be entitled to:
 - i. Draw upon any Securities filed by the Operator under this agreement including but not limited to the Entrance Permit, the Encroachment Permit, and/or the Road Occupancy Permit; and/or
 - ii. Revoke the permit to the entrance to the Keppel Quarry on Grey Road 17 until the situation has been resolved to the satisfaction of the County.
- l. The County may carry out periodic inspections of the Operator's Work identified in Section 2.3 a., b., and c as it deems fit, and including at milestone intervals. All costs incurred by the County for such inspections under Section 2.3 a., b., and c. shall be invoiced by the County and paid by the Operator.
- m. The Operator shall have a Professional Engineer Ontario verify in writing to the County that the Operator's Work, or warranty claims relating to the Operator's Work, has been completed as per the standards set out in Section 2.4 of this agreement.
- n. Defects and deficiencies in the Operator's Work shall be handled pursuant to Section 3.2 of this agreement.
- o. If an isolated premature road condition develops that is a direct result of Keppel Quarry activities on the Haul Road as mutually agreed upon by the Operator and County, the Operator and the County hereby agree to resolve any such isolated minor issues and/or repairs for a mutually agreed upon cost which shall be shared between the two parties, and that is practical and cost efficient to both parties.

2.4 Construction Standards

- a. All construction work under this agreement shall be performed in accordance with:
 - i. The Ontario Provincial Standards General Conditions; and
 - ii. The most recent version of the Geometric Design Standards for Ontario Highways, created by the Ministry of Transportation for Ontario; or
 - iii. The satisfaction of the County, acting reasonably.
- b. All traffic control shall conform to Ontario Traffic Manuals. Traffic must be maintained on Grey Road 17 at all times.

2.5 Operator's Consulting Engineer

The following applies to the Operator's Work identified in Section 2.3 a., b., and c.:

- a. The Operator shall retain the services of a professional civil engineer or firm of professional civil engineers (referred to hereinafter as the "Operator's Consulting Engineers") who shall be subject to the written approval of the County. The Operator's

Consulting Engineers and the Operator shall be solely responsible for ensuring the final design, the reviewed engineering drawings, the materials used in the Operator's Work, and that the Operator's Work meet all applicable codes and drawing standards in the Province of Ontario. Review by the County does not release the Operator's Consulting Engineers and the Operator from this responsibility.

- b. Subject to the foregoing, the parties agree that all of the Operator's Work under this agreement shall be in accordance with the Drawings reviewed by the County as detailed in Schedule "A". The County review is for general conformity to the design concept only. The County's review shall not relieve the Operator and the Operator's Consulting Engineers of responsibility for errors or omissions in the Drawings or for meeting all requirements of all applicable building codes and drawing standards in the Province of Ontario.
- c. The Operator's Consulting Engineers shall be responsible for reviewing all Drawings relating to the Operator's Work, preparing detailed As Built drawings, and for ensuring consistency among the Drawings. The Operator's Consulting Engineer shall provide the County with three full size copies of the As Built drawings, sealed and signed by the Operator's Consulting Engineers as well as digital versions of the Drawings in AutoCAD and PDF formats. As Built drawings must be provided to the County prior to the final inspection (of what and by whom) and/or the release of any Securities.
- d. In the event that there are inconsistencies among the Drawings, and the Operator's Work is constructed such that the Operator's Work does not meet the requirements of Schedule "A", the Operator shall rectify the Operator's Work at its own cost.
- e. The Operator shall be responsible for obtaining all approvals pertaining to the Operator's Work and all work undertaken as a result of this agreement as may be required from all of the appropriate stakeholder agencies.

2.6 Schedule of Operator's Work

- a. The Operator must complete the entrance modifications before any material is removed from the Keppel Quarry.
- b. Once established, the Operator's Consulting Engineers shall file with the County a written schedule of the Operator's Work and a timetable for the construction of the Operator's Work described in Section 2.3 a., b., and c. The schedule of the Operator's Work shall include design and construction supervision of the construction of the Operator's Work and will be attached to this agreement as Schedule "B".
- c. The Operator shall retain the services of the Operator's Consulting Engineers until the construction of the Operator's Work described in Section 2.3 a., b., and c. is complete. The Operator's Consulting Engineers shall certify completion of the Operator's Work to the County in accordance with the requirements set out in this agreement. Without limiting the generality of the foregoing, the Operator's Consulting Engineers shall design, inspect and certify the completion of the Operator's Work.
- d. The Operator's Consulting Engineers shall provide full time monitoring and inspection of the Operator's Work identified in Section 2.3 a., b., and c during construction, and shall immediately notify the County of any deficiencies in the Operator's Work.

2.7 Road Occupancy Agreement

Prior to the commencement of the Operator's Work identified in Section 2.3 a., b., and c, the Operator shall enter into a Road Occupancy Agreement with the County and must comply with the terms contained therein. The Operator shall commence the Operator's Work within 90 days of the posting of Securities as required under the Road Occupancy Agreement, and shall proceed with due diligence to complete the Operator's Work at its own expense.

2.8 County Health and Safety Requirements

- a. The Operator's Consulting Engineers shall ensure that all workers conform to the County's health and safety requirements for the Operator's Work identified in Section 2.3 a., b., and c. Without limiting the generality of the following, all workers on County property shall be required to wear hard hats, safety boots and reflective clothing at all times. The Operator shall review and sign the County's Contractor Health and Safety Agreement attached as Schedule 'C' at the time of its execution of this Agreement.
- b. Failure to comply with the County's health and safety requirements may result in the issuance of a stop work order by the County. In the event that the County issues a stop work order, the Operator shall comply forthwith.
- c. The Operator is responsible for all costs associated with the workplace accidents and all premiums or assessments owing to the Workplace Safety Insurance Board (WSIB), or

insurance company, associated with the Operator's Work. The Operator shall, throughout the Term of the Agreement, provide the County with evidence of coverage for itself, its employees, subcontractors and subcontractor's employees under the Workplace Safety and Insurance Act or insurance policy.

2.9 Applicable Laws

- a. In constructing, installing or providing the Operator's Work identified in Section 2.3 a., b., and c., and/or in carrying out any activities arising as a result of this agreement, the Operator shall comply with all statutes, laws, by-laws, regulations, ordinances, orders and requirements of governmental or other public authorities having jurisdiction at any time, applicable and in force. Without limiting the generality of the foregoing, the Operator shall comply with, and cause to be complied with, the provisions of the *Occupational Health and Safety Act*, the *Environmental Protection Act* and the *Ontario Water Resources Act* and any regulations, policies and guidelines relating thereto, including all obligations of the constructor and employer under the *Occupational Health and Safety Act* and regulations as applicable, and any obligation to obtain any approval or permit required under the *Environmental Protection Act* or the *Ontario Water Resources Act* or any regulations, policies or guidelines thereto. The Operator further shall handle and dispose of all materials in accordance with the foregoing legislation.
- b. The Operator shall do, cause to be done, or refrain from doing, any act or thing, as directed by the County, if at any time the County considers that any situation or condition is unsafe, damaging to the environment, or contrary to the provisions of any applicable law. The County will provide written notice to the Operator setting out the act or thing which is required to be done or refrained from being done and setting out a time frame in which to comply which will be dependent on the specific circumstances.
- c. If the Operator fails to comply with such direction, the County may take action to remedy the situation and if action is taken, the County is entitled to draw upon any Securities filed by the Operator under this agreement, including but not limited to the Entrance Permit, the Encroachment Permit, and/or the Road Occupancy Permit.

2.10 Registration of Agreement

The Operator consents to the County registering a Notice of this agreement on title to the aggregate properties which will utilize the Haul Road.

2.11 Best Efforts

Throughout the term of this agreement, if any developer proposes a development that has the potential to generate significant truck traffic for which the Haul Road is intended to be utilized, the County will use its best efforts to require that such developer pay its equitable share of the costs required to properly maintain the Haul Road. In such case, the condition of the Haul Road will be assessed at that time to determine such equitable share.

2.12 Confidentiality

The County acknowledges that the Operator considers its aggregate prices, costs and quantities confidential. The County will do all that is in its authority to protect this information from disclosure to third parties. The Operator acknowledges that the County is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1190, C.M. 56 and the requirements of that legislation will be paramount in any event.

2.13 Releases Upon Assignment / Disposition of Property

In order to be released from its obligations hereunder, the Operator must:

- a. Be in compliance with all of the provisions of this agreement: and
- b. Require any potential assignee or purchaser of the Keppel Quarry to assume all such obligations and to become a party to this agreement in the Operator's place and stead, prior to entering into any agreement that purports to transfer to any third party all or any portion of the Keppel Quarry. Provided that the Operator is in compliance with this agreement and the assignee/transferee has entered into an assignment of this agreement as provided in this Section 2.13, the County will provide a release to the Operator.

2.14 Insurance

The Operator shall, at its expense, obtain and keep in force during the Term of this agreement:

- a. Commercial General Liability Insurance. Such insurance policy shall be satisfactory to the County, include the following and be underwritten by an insurer licensed to conduct business in the Province of Ontario:
 - i. A limit of liability of not less than \$5,000,000/occurrence;

- ii. The County of Grey shall be named as an additional insured;
 - iii. The policy shall contain a provision for cross liability in respect of the named insured;
 - iv. Non-owned automobile coverage with a limit of at least \$5,000,000, including contractual non-owned coverage;
 - v. Products and completed operation coverage (Broad Form) with an aggregate limit not less than \$10,000,000;
 - vi. A provision that requires 30 days prior notice of any cancellation of policy shall be given in writing to the County.
- b. The Operator shall also obtain and keep in force, during the Term of this agreement, automobile liability insurance under a standard Automobile policy with limits of not less than \$5,000,000 in respect of each owned or leased vehicle.
 - c. As evidence of the required policies being in effect, the Operator shall provide the County with a Certificate(s) of Insurance prior to the execution of this agreement, and upon each subsequent policy renewal period throughout the Term of this agreement
 - d. Any other form or limits of insurance as the County, acting reasonably, may require from time to time throughout the Term of this agreement in form, in amounts and for insurance risks against which a prudent person would insure.

Section 3 – Remedies

3.1 Breach

- a. In the event that the Operator substantially breaches any of the terms of this Agreement, the County shall provide the Operator with written notice of such breach and a request for rectification within seven (7) days. Should the Operator fail to rectify the breach, the County at its option may terminate this agreement or may use its own employees or subcontractor to complete the Operator's Work.
- b. Should the County use its own employees or subcontractor to complete the Operator's Work, and without limiting the generality of the following, the County shall have the right to purchase materials, tools and machinery immediately, and to employ workers as in its absolute discretion are required for the completion of the Operator's Work, all at the expense of the Operator. The cost of such completion work shall be calculated by the County, and such decision shall be final. The cost of the Operator's Work shall include a management fee not exceeding twenty percent (20%) of all labour, material and machine time charges incurred to complete the Operator's Work.
- c. The Operator shall be liable for all completion costs incurred by the County and shall make payment of these costs to the County within 30 days of demand. In the event that the Operator fails to make payment within such time, the County shall have the right in its sole discretion to draw upon the Securities in order to cover the completion costs incurred in addition, and without prejudice, to any other remedies available to the County at law.

3.2 Defects and Deficiencies

- a. In the event that any defects or deficiencies are observed in the Operator's Work, or warranty claims to the Operator's Work, prior to final release of the Securities, the County shall give the Operator written notice of such defects or deficiencies.
- b. The Operator shall promptly correct such defects or deficiencies. Failure to do so shall be deemed a substantial breach of this agreement.
- c. The County is authorized to withhold and/or apply the Securities against the cost of any actions that are taken to rectify any deficiencies in the Operator's Work, or warranty claims to the Operator's Work, or to complete any work not satisfactorily completed by the Operator.

3.3 Indemnity

- a. The Operator shall indemnify the County, its officers, members of Council, agents, servants, employees, invitees or licensees from and against all liabilities, suits, claims, expenses, demands, losses, costs, damages, actions, suits or other proceedings by whomsoever made, directly or indirectly arising out of or connected with the carrying out of the Operator's obligations in this agreement, attributable to bodily injury, sickness, disease or death or to damage to or destructions of tangible property including loss of revenue or expense incurred resulting from disruption of service; and/or caused by any acts or omissions of the Operator, its officers, agents, employees, with respect to activities undertaken or failing to be undertaken or arising out of this Agreement and/or by the

installation, construction, repair, and/or maintenance of the Operator's Work and/or by the existence of the completed Operator's Work within the County road right of way.

- b. The indemnification of the County by the Operator under Section 3.3, part 'a' shall also extend to include any claims made pursuant to the Construction Lien Act.
- c. The County shall have the right to withhold and/or use any portion of the Securities to indemnify the County for any costs, fees or expenses that the County may incur to defend their interests against any suit or claim of any nature arising out of or connected with the carrying out of the Operator's obligations, or the entering into of this agreement.
- d. In the event that any fines or remediation orders are levied against the Operator and/or the County by either the Provincial or Federal government, or any of their agencies, as a consequence of its construction of the Operator's Work, the Operator shall be solely responsible for the payment of such fines and there shall be no obligation whatsoever upon the County in such event. In the event that such fines or remediation orders are levied against the County, the Operator shall indemnify and save harmless the County for any payments made or corrective work undertaken by the County, and the County shall have the right to withhold and/or use any portion of the Securities in connection therewith.
- e. This section shall survive the termination of this agreement provided that the Securities (or remainder thereof) shall be returned/released by the County not later than 1 year following the termination of this agreement unless the County has notice of a claim pursuant to this section.

3.4 Waiver of Provisions or Breach

- a. The County is at liberty to waive any or all of the provisions of this agreement whether or not the Operator is in breach thereof, and such waiver shall not affect in any way the enforceability of this agreement, or any other provision herein. In particular, and without limiting the generality of the foregoing, it is agreed that the County may at any time:
 - i. Release or reduce Securities which they hold;
 - ii. Provide comfort letters to prospective purchasers of some or all of the Keppel Quarry; and
 - iii. Issue any necessary permits.
- b. The above-noted actions will not affect the obligations of the parties to this agreement or in any way prejudice the ability of the County to enforce the terms of this agreement.

3.5 Municipal Act

In addition to all other remedies set out under this section, sections 349, 442 and 446 of the *Municipal Act*, (and any County by-law passed pursuant to the *Municipal Act* or the *Planning Act*), will apply should the Operator fail to provide and/or properly maintain, to the satisfaction of the County, the Operator's Work and other matters referred to in this agreement.

3.6 Mediation/Arbitration

- a. In the event that any disputes, difference or questions ("Issues") should arise out of this agreement, the parties shall submit such Issues to mediation. The parties shall jointly agree on a mediator. In the event that such mediation fails, or there is a failure to agree on a mediator, the parties shall submit the Issues to arbitration, by one party giving notice to the other party. The parties shall jointly appoint one arbitrator. If the parties fail to agree on an arbitrator within thirty (30), then the arbitrator shall be appointed pursuant to Section 10 of the *Arbitrations Act, 1991*, S.O. 1991, c. 17 (in this Section 3.6, the "Act"). The arbitration shall be conducted in accordance with the provisions of the Act and shall be held as promptly as possible in the County of Grey. The decision of the arbitrator shall be final and binding on the parties hereto and not subject to appeal. The costs of the arbitration shall be paid as the arbitrator should so determine.
- b. It is a condition precedent to any action being instituted by any party, for any liability arising out of or pertaining to this Agreement, that the matter must be first referred to mediation/arbitration as herein provided for the disposition.

Section 4 – General

4.1 Enforceability

The invalidity or unenforceability of any provision of this agreement shall not affect the validity or enforceability of any other provision hereof and any such invalid or unenforceable provision shall be deemed to be severable herein.

4.2 Notice

Where this agreement requires notice to be delivered by one party to another, such notice must be in writing and delivered by facsimile transmission or by courier from one party to another at their addresses noted below. Such notice will be deemed to have been given, in the absence of proof to the contrary, if:

- i. By facsimile or email transmission, then on the date of delivery with electronic confirmation of receipt obtained if received before 5:00 p.m. on a business day and if thereafter, then delivery is deemed to be on the next business day; or
- ii. By courier or prepaid registered post, then on the 2nd business day following the sending thereof which for the purposes of this agreement will be deemed to exclude Saturdays, Sundays and statutory holidays; or
- iii. By ordinary mail then on the 5th business day following the date on which it was mailed.

For the County:

The Corporation of the County of Grey
Attention: County Clerk
595 9th Avenue East
Owen Sound, ON N4K 3E3
Tel: 519-376-7337
Fax: 519-376-0967
Email: countyclerk@grey.ca

For the Operator:

Harold Sutherland Construction Ltd.
Attention: Jennifer Prentice nee Sutherland, Harold Sutherland and/or Mike Sutherland
323545 East Linton Road
RR 2
Kemble, ON N0H 1S0
Tel: 519-376-5698
Fax: 519-371-6121
Email: jennifer@hsc-ltd.com; mike@hsc-ltd.com; and sudsy@hsc-ltd.com

Addresses and contact numbers may be changed by written notice to the parties.

4.3 Governing Law

This agreement shall be interpreted in accordance with and governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

4.4 Entire Agreement

This agreement and the appending schedules as attached hereto shall constitute the entire agreement between the parties and the parties further acknowledge that there is no representation, warranty, collateral agreement or adverse condition affecting this agreement other than as expressed herein in writing.

4.5 No Fettering of Discretion

Notwithstanding any other provisions of this agreement, none of the provisions of this agreement, including a provision stating the parties' intention, is intended to operate, nor will have the effect of operating, in any way to fetter either the County Council which authorized the execution of this agreement or any of its successor councils in the exercise of any of such Councils' discretionary powers, duties or authorities. The Operator will not obtain any advantageous planning or other consideration or treatment by virtue of it having entered into this agreement or by virtue of the existence of this agreement.

4.6 Other Applicable Laws

Nothing in this agreement will relieve the Operator from compliance with all applicable municipal by-laws, laws and/or regulations or laws and/or regulations established by any other governmental body which has jurisdiction over the Keppel Quarry.

4.7 Further Assurances

The parties agree to execute such further documents and consents as required for the purposes that may affect the carrying out of this agreement.

4.8 Counterparts and Facsimile

This agreement may be executed and delivered in any number of counterparts each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument. The delivery of an executed counterpart copy of this agreement by facsimile will be deemed to be the equivalent to delivery of an original executed copy.

4.9 Effective Date

This agreement shall be effective from the date that it is signed by the final signatory hereto.

4.10 Extension of Time

Time is of the essence in this agreement. Any time limits specified in this agreement may be extended with the consent in writing of all parties, but no such extension of time will operate or be deemed to operate as an extension of any other time limit. Time will remain of the essence in this agreement notwithstanding any extension of any time limit.

4.11 Binding

This agreement shall enure to the benefit of and be binding upon the parties and their respective administrators, successors and assigns.

Any of the parties hereto may register this agreement on title to the Keppel Quarry, at the expense of the Operator.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year set out above:

THE CORPORATION OF THE COUNTY OF GREY:

Brian Milne, Warden

Sharon Vokes, County Clerk

We, together, have the authority to bind the County.

HAROLD SUTHERLAND CONSTRUCTION LTD., H.S.C AGGREGATES LTD. and BLUE WATER LOGGING LTD.:

Name and Title

Name and Title

I/We have the authority to bind the Operator.

Schedule "A"
Drawings Pursuant to Section 2.5 Under this Agreement

Drawings prepared by:

OPSS Contract available at the Grey County Administration Office.

Schedule “B”

Schedule of the Operator’s Work as Per Sections 2.3 a., b., and c. of this Agreement

Attached separately.

**Schedule “C”
Contractor Health & Safety Agreement**

Company Name: Harold Sutherland Construction Ltd. (the “Contractor”)

Project: All activities undertaken as a result of the Aggregate Haul Road Improvement Agreement relating to the Keppel Quarry.

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 Harold Sutherland Construction Ltd. 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 Authorized Signature: _____

Date: _____

Schedule "D" Map of Subject Lands

