

Report TR-TAPS-63-15

To: Chair Barfoot and Members of the Transportation and Public Safety Committee
From: M.J. Kelly
Meeting Date: August 20, 2015
Subject: Grey Highlands Nominee (No.1) Ltd. - Oversize/Overweight Cargo Agreement
Status: Recommendation adopted by Committee as amended per Resolution TAPS113-15; Endorsed by County Council September 1, 2015 per Resolution CC124-15;

Recommendation(s)

WHEREAS Grey Highlands Nominee (No.1) Ltd. wishes to utilize Grey Roads 2, 4, and 124 to transport oversized/overweight loads to accommodate the construction of a wind turbine development in the Municipality of Grey Highlands;

AND WHEREAS Grey County Council approved generic agreements (Report TR-TAPS-66-13 Electric Power Transmitter or Distributor and Road Use Agreements) for oversized/overweight cargo loads for wind turbine developments;

AND WHEREAS Grey Highlands Nominee (No.1) Ltd., the Grey County Solicitor, and Grey County staff have negotiated modifications to the generic agreement for Distributor and Oversize/Overweight Cargo;

AND WHEREAS the Road Assessment Study identified that the combine Grey Highlands Nominee (No.1) Ltd. and Grey Highlands Clean Energy Development LP damage to the Grey County Roads could be up to \$47,265 (\$23,632.50 each);

AND WHEREAS the combination of Grey Highlands Nominee (No.1) Ltd. and Grey Highlands Clean Energy Development LP is offering \$25,000 (\$25,000 each) for Grey Road compensation;

NOW THEREFORE BE IT RESOLVED THAT Report TR-TAPS-63-15 be received;

AND THAT the Warden and Clerk be authorized to execute an agreement for Permitting Use of Grey County Highway to Transport Over-sized/Over-weight Cargo agreements with Grey Highlands Nominee (No.1) Ltd. provided Grey Highlands Nominee (No.1) Ltd. agree to pay a lump sum of \$23,632.50 for compensation identified in the Road Assessment Study.

Background

Report TR-TAPS-66-13 Electric Power Transmitter or Distributor and Road Use Agreements were endorsed by County Council on November 5, 2013. This report addressed the implementation of generic agreements for the electrical power transmitter or distributor to locate structures, equipment or facilities on Grey County Highways and the permitting of Grey County Highways to transport oversized cargo agreements be utilized for wind turbine developments.

Grey Highlands Nominee (No.1) Ltd. wishes to enter into an agreement with Grey County to permit the transport of oversized/overweight cargo on Grey Roads 2, 4 and 124.

Grey Highlands Nominee (No.1) Ltd. has reviewed the generic agreement identified in Report TR-TAPS-66-13, and has requested a variety of modifications. Grey County's Solicitor, Grey County's Clerk's, and Transportation Services staff have negotiated the revised agreements and are satisfied that the proposed modifications will not negatively affect Grey County.

Grey Highlands Nominee (No.1) Ltd. is aware that Grey County cannot approve modifications to roads under the jurisdiction of the Municipality of Grey Highlands.

Capstone Power Development has been project managing the Grey Highlands Nominee (No.1) Ltd. and the Grey Highlands Clean Energy Development LP.

Capstone Power Development LP completed a joint Structural and Road Assessment study on behalf of Grey Highlands Nominee (No.1) Ltd. and the Grey Highlands Clean Energy Development. In the study, three different scenarios were used for transporting building materials and turbine components. The estimated damage for the Grey County roads varied from \$25,744 to \$47,265, and the Capstone estimates varied from \$9,396 to \$16,621. Capstone has offered \$25,000 compensation total or \$12,500 per client. Transportation is recommending that the combine payment should be the \$47,265 or \$23,623.5 per client.

Financial / Staffing / Legal / Information Technology Considerations

These agreements will identify the responsibilities of Grey Highlands Nominee (No.1) Ltd. and Grey County to minimize any future financial and legal issues.

Grey Highlands Nominee (No.1) Ltd. will supply security in the amount of \$150,000 to Grey County, to ensure that the intersection work is properly completed. In addition, Grey Highlands Nominee (No.1) Ltd will supply all applicable insurance and indemnification.

In accordance with the terms of the agreement Grey Highlands Clean Energy Development LP shall pay Grey County \$15,000 for processing this agreement.

The Road Assessment Study confirmed that there will be damage caused to the Grey County Roads and as a result compensation shall be required.

Link to Strategic Goals / Priorities

Not applicable

Attachments

[TR-TAPS-66-13 Electric Power Transmitter or Distributor and Road Use Agreements](#)

Grey Highlands Nominee (No. 1) Ltd. (Capstone) - Wind Turbine - Oversize Overweight Load Haulage Agreement

Respectfully submitted by,

M.J. Kelly
Director of Transportation Services

**Agreement permitting use of Grey County Highway
to transport Over-sized/ Over-weight Cargo**

This Agreement made in duplicate this ____ day of _____ 2015

BETWEEN:

THE CORPORATION OF THE COUNTY OF GREY

Hereinafter called the “County”

AND

GREY HIGHLANDS NOMINEE (NO. 1) LTD.

Hereinafter called the “Company”

WHEREAS pursuant to sections 28 and 52 of the *Municipal Act, 2001* (Ontario) as amended, the County has jurisdiction over the upper-tier highway system in the County of Grey;

AND WHEREAS the Company seeks the County’s permission to transport certain over-sized and/or over-weight cargo over the County’s highways and may possibly need to make temporary alterations thereto,

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:

“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.

“Cargo” means the equipment that is to be transported by the Company on the County’s Highway as contemplated by this Agreement.

“County Highway” means a highway under the jurisdiction of the County as referred to in the first recital.

“Director” means the most senior County official employed as staff to manage its Transportation Services Department, or his/her delegate.

“Over-sized or Over-weight Cargo” means Cargo that either exceeds the standard maximum weight or the standard maximum size contemplated by the either the load restrictions set by the County in accordance with the *Highway Traffic Act* (Ontario) as amended for the County Highway over which the Company proposes to travel with the Cargo or the general load restrictions applicable to all highways under the *Highway Traffic Act* (Ontario) as amended.

“Parties” means the parties to this Agreement, and “Party” means either 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. “Transportation Plan” means the plan contemplated in section 4.3 of this Agreement and attached as Schedule “A” once approved by the Director.

“Travelled Highway” means the portion of the County Highway that is customarily travelled upon by vehicles.

“Schedule “A”” means the Transportation Plan.

“Schedule “B”” means the County’s Tree Removal Policy and Procedure.

“Schedule “C”” means the Secured Creditor Rights and Remedies.

“Schedule “D”” means the form of security to be used as per section 23 of this Agreement.

2. Term

This Agreement shall be effective on the date of execution, and the Term shall expire on the date that the Company has completed all work required of the Company in the Transportation Plan which shall be attached as Schedule “A”.

3. Permission to Use County Highway

3.1 Subject to the terms of this Agreement, and throughout the Term of this Agreement and pursuant to section 110(1) of the *Highway Traffic Act* (Ontario), the County grants the Company rights to complete the transportation in accordance with the Transportation Plan.

3.2 For greater certainty, no transportation shall take place until such time as the Transportation Plan has been approved in writing by the Director.

4. Responsibilities of the Company

4.1 Before commencing any transportation of Over-sized or Over-weight Cargo, the Company shall provide a Transportation Plan for review and consideration by the County. Once the Parties are satisfied with the Transportation Plan, and the Director has approved it in writing, it shall be attached as Schedule "A".

4.2 The Company shall compensate the County in the amount of fifteen thousand dollars (\$15,000) in Canadian funds, which amount represents the reasonable costs, including reasonable legal fees, expected to be incurred by the County for the negotiation of this Agreement, the review and approval of the Transportation Plan, the use of County staff and vehicles to monitor any preparation for the transportation contemplated in the Transportation Plan, the monitoring of such transportation and the inspection of the County Highway. Such amount shall be payable by the Company to the County within thirty (30) days of the date of execution of this Agreement by both Parties.

4.3 The Company shall reimburse the County for any repairs required to County Highways and/or within the Road Allowances after such transportation is completed. The Company shall reimburse the County for such reasonable costs within thirty (30) days upon receipt of an invoice from the County detailing such costs, and providing reasonable supporting invoices or other evidence of same. In the event of a dispute between the Parties with respect to the amount payable by the Company under this Section 4.3, such dispute shall be referred to arbitration pursuant to the Arbitration Act, 1991 (Ontario) as amended.

4.4 The Transportation Plan shall include the following:

- (1) the specific details of the planned route for transporting Over-sized or Over-weight Cargo;
- (2) the date and timing of the transportation, which date and time may be updated by the Company at least thirty (30) days prior to commencing such transportation;
- (3) particulars of the precautionary measures to be taken in completing the transportation, which particulars may be updated by the Company at least thirty (30) days prior to the commencement of such transportation;
- (4) the accommodations or temporary changes to the County Highways necessary for the transportation;
- (5) the proposed manner of protecting any utility infrastructure on the transportation route; and
- (6) the method and timing of rehabilitating the County Highways to correct any planned temporary changes or damage to the Highway that occurs as a result of the transportation.

- 4.5 Before commencing any transportation of Over-sized or Over-weight Cargo, the Company shall also provide a copy of a pre-transportation highway condition report to the satisfaction of the Director, acting reasonably, which shall include, as applicable, a Bridge Condition Index Inspection report and Pavement Condition Index Survey. The Transportation Plan shall require that the Company shall complete all work to return the County Highways and bridges that the transportation of Over-sized or Over-weight Cargo occurs on to a condition as good as or better than the condition set out in the Bridge Condition Index Inspection report and Pavement Condition Index Survey.
- 4.6 If the Transportation Plan includes any proposed physical alteration to the County Highway, the Transportation Plan shall require that the Company shall complete all work to return the County Highway to a condition as good as or better than the condition before the alteration.
- 4.7 The Transportation Plan shall, to the extent possible, minimize the disruption of the public's use of the County Highway and in particular shall not, at any time, cause any land owner adjacent to the County Highway to have access to and from his property blocked.
- 4.8 The Company shall be responsible for obtaining all other necessary approvals including but not limited to Federal, Provincial or Municipal approvals required in order to carry out the transportation and to notify all utilities located on the County Highway of the transportation. The Company shall comply with all applicable laws in making use of the County Highway pursuant to this Agreement.
- 5. Responsibilities of the Company when Performing Work on the County Highway**
- 5.1 The Company shall, wherever practicable, use the Travelled Highway for the transportation contemplated by this Agreement.
- 5.2 The Company's use of the County Highway shall be at its own expense.
- 5.3 The Company shall provide a letter of credit in the form attached hereto at Schedule "D" in the amount of \$150,000.00 in form and amount reasonably satisfactory to the County to be held as security for the Company's completion of its obligations under this Agreement and the Transportation Plan and to be released to the Company within thirty (30) days of the completion of all such obligations to the satisfaction of the Director, acting reasonably. The security shall be applied to remedying any default by the Company in complying with its obligations under this Agreement or the Transportation Plan, provided such default is not cured or in the process of being cured with reasonable dispatch within ten (10) days of the County giving notice to the Company with respect thereto.
- 5.4 Where the work done under this Agreement may affect a municipal drain, the Company shall also file a copy of the Transportation Plan with the Clerk's office of the respective local municipality for purposes of the Drainage Act (Ontario) or such other person designated by the respective municipality as being responsible for the drain.

- 5.5 The Company shall not cut, trim, or interfere with any trees on the County Highway without the approval in writing of the Director, acting reasonably. In the event the Director does not review, process and render a decision on any request by the Company to cut, trim or interfere with any trees on the Highways within ten (10) business days of receiving same, the County shall be deemed to have approved such work.
- 5.6 Where written permission has been granted to cut, trim or remove any trees or brush on the County Highway, 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 "B". All work done under this Agreement is subject to the approval and direction of the Director on behalf of the County, and the Company shall comply with any directions and orders that may be given by the Director.
- 5.7 The Company shall provide advance written notice of any change to the date and/or timing of the transportation of any Over-sized or Over-weight Cargo from the date and timing in the Transportation Plan and shall abide by the directions of the Director, acting reasonably, with respect to re-scheduling.
- 5.8 The Company shall provide advance written notice to the County of any proposed changes to the Transportation Plan, and shall abide by the directions of the Director, acting reasonably, with respect to the proposed changes to the Transportation Plan. No changes shall be made to the Transportation Plan without the written approval of the Director.

6. Limitations of Permission

- 6.1 The permission granted in this Agreement to use the County Highway is subject to the following:
- (a) the right of free use of the County Highway by all other persons entitled to it except as specifically limited in the Transportation Plan;
 - (b) the rights and privileges that the County may have previously granted to any persons, other utilities, etc. for use or occupation of the County Highway;
 - (c) the rights and privileges that the County may grant to any persons, other utilities, etc. for use or occupation of the County Highway in the future provided such future rights and privileges shall recognize the Company's permission herein; and
 - (d) the restriction that the Company shall not permit any lien to be filed or registered against any Road Allowance, notwithstanding that the Company may register any security interest in this Agreement that is assigned to a Secured Party pursuant to section 23 hereof.
- 6.2 The Company acknowledges that this Agreement does not create an interest in any land, howsoever arising; and in consideration of the rights and privileges granted herein, the Company does hereby release and revoke any claim to the land against the County, its successors and assigns.

7. Removal of Company Property on Demand

- 7.1 Except as specifically contemplated in the Transportation Plan or in any other agreement between the Parties, the Company shall, upon notice in writing from the County remove any of its property located on the County Highway to the extent such property is not located on the County Highways in accordance with a statutory or other legal right of the Company. In the event the Company has not complied with such notice within sixty (60) days of receiving same, the County may, to the extent permitted by applicable laws, remove the property described in the notice and charge the entire cost to the Company.

8. Additional Requirements

- 8.1 The Company shall be required to obtain and comply with any other valid and applicable permits in respect of the transportation of Over-sized or Over-weight Cargo over County Highways as may be required by the County throughout the Term of this Agreement.
- 8.2 At the request of the Director acting reasonably, the Company may be required to complete and pay for a Road Impact Study in relation to the Over-sized or Over-weight Cargo as well as a peer review of such Road Impact Study to the extent such Study has not already been covered by the pre-transportation highway condition report referred to in section 4.4 or otherwise completed by or on behalf of the Company or any affiliate thereof pursuant to any other agreement between the Parties or any agreement between the County and an affiliate of the Company. The Road Impact Study shall:
- (a) assess the structural integrity of the County Highways on which the Over-sized or Over-weight Cargo will be transported;
 - (b) assess the impacts of any drainage attributed to County Highway modifications proposed in the Transportation Plan;
 - (c) assess the alignment and intersections considering the Transportation Plan; and
 - (d) recommend any road improvements or other measures that are reasonably advisable to mitigate any impacts to County Highways by the Company or its contractors as identified in the foregoing assessments.

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

- 8.3 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 to County Highways by the Company or its contractors, as identified in the Structural Assessment Study.

9. Health and Safety and WSIB

- 9.1 The Company confirms that the Company and its contractors each have Health and Safety policies and procedures in place with respect to the performance of the specific services that each of them, respectively, will be performing pursuant to this Agreement. The Company agrees to provide those policies and procedures to the County upon request.
- 9.2 The Company is responsible for all costs associated with its workplace accidents and all premiums or assessments owing to the Workplace Safety and Insurance Board (WSIB), or insurance company if applicable for its own employees. The Company shall, throughout the Term of the Agreement, provide the County with evidence of coverage for itself, its employees, subcontractors and subcontractors' employees under the Workplace Safety and Insurance Act or insurance policy.
- 9.3 The Company shall comply with the Occupational Health and Safety Act (Ontario), the Workplace Safety and Insurance Act (Ontario), the Human Rights Act (Ontario), and applicable regulations under such legislation as well as the County's workplace health and safety policies and all other legal obligations with respect to worker health, safety and treatment and the Company hereby agrees to indemnify and hold the County, its elected officials, officers, employees, representatives and agents harmless from and against any and all liabilities, claims, demands, suits, losses, fines, surcharges, damages, costs and expenses (including legal fees and disbursements) arising out of the Company's failure to comply with such laws, regulations, policies and obligations. Notwithstanding the foregoing, the Company shall not be responsible for indemnifying the County, its elected officials, officers, employees, representatives and agents in respect of any liabilities, claims, demands, suits, losses, fines, surcharges, damages, costs and expenses (including legal fees and disbursements) resulting from the negligence, wilful misconduct or breach of contract by the County.

10. Insurance

- 10.1 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); limit may be attained through the purchase of an Excess Umbrella Policy; 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 named as an Additional Insured thereunder, with respect to the Company's operations, acts and omissions relating to its obligations under this

Agreement. This policy shall not be invalidated as respects the interests of the County by reason of any breach or violation of any warranties, representations, declarations or conditions;

- (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; limit may be attained through the purchase of an Excess Umbrella Policy;
- (c) Insurance upon property of every description owned by the Company, or for which the Company is legally liable, 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;
- (d) Insurance upon the Plants 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; and
- (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.

10.2 The Company shall also provide to the County evidence of transit insurance held by the Company's contractor responsible for delivering Over-sized or Over-weight Cargo.

10.3 As evidence of the required policies being in effect, the Company shall provide the County with a Certificate of Insurance thirty (30) days prior to the commencement of the first of any work under this Agreement, and upon each subsequent renewal period throughout the Term of this Agreement.

10.4 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.

10.5 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.

11. Designated Contact

The Company shall have a representative on site for the transportation or other activity on the County Highway subject of this Agreement or provide the Director with the name of an official of the Company or contractor who may be contacted with respect to any transportation or construction activities being carried out by the Company.

12. 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:

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:

Grey Highlands Nominee (No. 1) Ltd.

c/o Capstone Infrastructure Corporation

Attention: Aileen Gien, Associate General Counsel

155 Wellington Street West, Suite 2930

Toronto, ON M5V 3H1

Phone: (416) 649-1300

Fax: (416) 649-1335

Email: agien@capstoneinfra.com

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.

13. Termination

13.1 This Agreement may be terminated prior to the end of the term referred to in section 2:

- (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 consents to or makes a general assignment for the benefit of creditors, or 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; or
- (c) by either the County or the Company, if the Company 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 and the County or Company has not commenced to cure the default for a period of thirty (30) days after notice thereof from such other Party.

13.2 In the event of termination of this Agreement, the Company will, at its own expense, to the extent permitted by applicable laws, remove all its property from the County Highway and leave the County Highway in the same as, or better condition than when the term of this Agreement began within sixty (60) days, or failing such removal and repair, any property will be, to the extent permitted by applicable laws, removed and repair completed by the County at the expense of the Company, at the discretion of the County.

14. Representations and Warranties

Subject to the provisions of the *Municipal Act, 2001* (Ontario) as amended, the County has made no representations or warranties as to the state of repair of the County Highway or the suitability of same for any business, activity or purpose whatsoever, and the Company hereby agrees to accept the County Highway 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 County Highway, unless such damage or loss is caused by the negligence or intentional acts of the County, its elected officials, employees or authorized agents.

15. 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 1.5% per month (equivalent to 16.075 per annum) and shall run from the due date of the invoice until the date payment is received.

16. 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.

17. 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.

18. Schedules

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

19. 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, including but not limited to the Company's own employees, arising out of activities arising under this Agreement or in connection with the use of the County Highway by the Company, its agents, servants, employees, or invitees.

Notwithstanding the foregoing, the Company shall not be responsible for indemnifying the County, its elected officials, employees and agents in respect of any 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 resulting from the negligence, wilful misconduct or breach of contract by the County. 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 County Highway, (including but not limited to any liability for clean-up of any hazardous substance in, on, under, along, across and around the County Highway) caused by:

- (a) the operations of the Company in, on, under, along, across or around the County Highway; or
- (b) any products or goods brought in, on, under, along, across or around the County Highway by the Company, or by 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.

20. Waiver of Claims by Company

The Company shall use the County Highway 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.

21. 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.

22. 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 fifteen (15) 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.

23. Assignment

This Agreement may not be assigned, sold or transferred by the Company 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 consent of the County, assign 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 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 "D" 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 "D" 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.

24. 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.

25. Miscellaneous

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.

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.

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.

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, Kevin Eccles

Per: _____

Clerk, Sharon Vokes

We, together, have authority to bind the County.

GREY HIGHLANDS NOMINEE (NO. 1) LTD.

Per: _____

Per: _____

We have authority to bind the Company.

Schedule "A"
Transportation Plan



Corporate Policy

Tree Removal Policy

Approved by: County Council

Date Approved: June 4, 2013

Last Revision Date: June 4, 2013

Replaces: N/A

Scheduled for Review by: 2018

Policy Number: MS-TS-006

Section: Municipal Services

Sub Section: Roads

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

1. 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.

2. 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 “C”

Secured Creditor Rights and Remedies

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 Company 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 Company under the Agreement, within a period of 90 days commencing on the later of (i) the expiry of the cure period afforded Company 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 Company will be effective against Company 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 Company or the secured party or proposed the secured party, execute any agreements, certificates or acknowledgements that Company 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 “D” 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 Company 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 “D” and such notice will constitute notice of the existence of the Collateral Agent as the secured party.

Schedule "D"
Form of Security