

ROAD CONSTRUCTION AGREEMENT

THIS AGREEMENT MADE BETWEEN:

DUFFERIN AGGREGATES, A DIVISION OF HOLCIM (CANADA) INC.
(“DUFFERIN”)

- and -

THE CORPORATION OF THE COUNTY OF BRANT
(the “County”)

WHEREAS:

- A. the County is the owner of those lands known as Watt’s Pond Road, legally described as part of Watt’s Pond Road btn West River Road & Hwy 24A (Pinehurst Road); Pt RDAL Btn Conc. 2&3, South Dumfries, Co. of Brant – PIN 32029-0002;
- B. Dufferin is the holder of Aggregate Resources Act Licence ID No. 5601, issued by the Ministry of Natural Resources and Forestry pursuant to the Aggregate Resources Act, R.S.O. 1980. It is a condition of Licence ID No. 5601 that Dufferin pave to municipal road standards the portion of Watt’s Pond Road from the pit entrance to Hwy 24A (this portion of which only is hereinafter referred to as “**Watt’s Pond Road**”);
- C. Dufferin has further agreed to reconstruct Watt’s Pond Road to good Engineering Practices;
- D. Dufferin has the knowledge and ability to Construct and Pave Watt’s Pond Road to the satisfaction of the County;
- E. Dufferin shall construct Watt’s Pond Road from Pinehurst Road to approximately 1.46 km east of Watt’s Pond Road (as shown in Attachment No. “A”) subject to the terms and conditions of this Agreement, all as hereinafter set forth.

NOW THEREFORE in consideration of the premises and mutual covenants herein contained, and the payment by each party hereto to the other of the sum of TWO DOLLARS (\$2.00) (the receipt and sufficiency of which are hereby acknowledged by the parties), the County and Dufferin hereby agree as follows:

1. DESIGN OF THE ROAD

- (a) **Associated Costs** All costs associated with the pre-engineering, design survey, design, geo-tech reports, topo pickup data collection shall be borne by Dufferin. Further, The County of Brant shall bear no costs for the design of the roadway.
- (b) **Design Plan** Dufferin will submit an initial draft of its proposed design plan of Watt’s Pond Road (the “**Design Plan**”), which Design Plan shall be in accordance with the requirements of the applicable Ontario Provincial Standards for Roads and Public Works manual and Section 7 of the June 2012 County of Brant Development and

Engineering Standards. The County will then have a period of ten (10) days from receipt of the initial draft of the Design Plan to review the Design Plan and submit comments or requested amendments, if any, to Dufferin. The County and Dufferin will co-operate to incorporate the County's comments and requested amendments into a final Design Plan.

Once settled, the final Design Plan will not be materially altered or amended without the written consent of the County, not to be unreasonably withheld. For the purposes of this Section 1(b), the parties acknowledge and agree that the County, acting reasonably, shall determine what constitutes a "material alteration or material amendment" to the Design Plan.

- (c) **Condition of Existing Road** Except as otherwise provided herein, the Existing Road is on an "as is, where is, with all faults" basis as and without any express or implied agreement, representation or warranty of any kind whatsoever, including compliance with all applicable laws, as to condition, physical characteristics, soil conditions, or any environmental matter, and the County does hereby disclaim and renounce any such agreement, representation or warranty. In the event that during road construction Dufferin encounters an existing hazardous substance on Watt's Pond Road, Dufferin shall notify the County immediately and the County shall be responsible for all costs and agency reporting associated with the hazardous substance.

2. **CONSTRUCTION OF THE ROAD**

- (a) **Road Construction** Dufferin shall reconstruct the road as per the final plans and specifications as agreed to in Section 1(b). Dufferin shall, at its expense, bear the full cost of the road construction including but not limited to the construction, consulting work for construction layout, inspection, contract administration and quality control.
- (b) **Road Closure Period** Dufferin will not close the road during the construction of Watt's Pond Road under this agreement.
- (c) **Utility Relocates** Dufferin shall, at its expense, comply with any requirements from the utility companies in respect to the relocating of any buried public utility lines or networks due to the construction of Watt's Pond Road.
- (d) **Condition of New Road** Except as otherwise provided herein, Dufferin shall, with ordinary wear and tear excepted, guarantee and maintain Watt's Pond Road in complete repair, for a period of one year from the date of substantial performance of the work and make good in a permanent manner, satisfactory to the Director of Roads any and all damages or injury to Watt's Pond Road which, in the opinion of the Director of Roads, results from faulty workmanship or materials, both during construction and during the specified period of maintenance. Should Dufferin, for any cause, fail to do so when ordered in writing, then the Director of Roads at his/her option, after giving Dufferin forty-eight (48) hours notice, may do so and the whole costs, charges, expenses so incurred, may be collected from Dufferin.
- (e) **Post Construction** In the future, if any other aggregate producer(s) obtains the necessary approvals to permit aggregate extraction and the portion of Watts Pond Road that was reconstructed by Dufferin is used by the aggregate producer for

hauling their aggregates, the County shall use its best efforts to have the other aggregate producer(s) participate in a cost sharing agreement which would provide funding for road infrastructure projects required to facilitate shipping the aggregate to market.

3. DISPUTE RESOLUTION

The parties agree to use their best efforts to resolve any disputes or matters which may arise between them in respect of this Agreement through good faith negotiations and the parties further agree that they shall resort to binding arbitration against one another only as a last resort. If, after using their efforts to resolve any such dispute or matter, and such dispute or matter cannot be resolved by good faith negotiations, then any such dispute shall be determined in the following manner. Dufferin and the County shall appoint a single arbitrator to pass upon the particular question or matter in dispute. In the event that Dufferin and the County are unable to agree upon a single arbitrator, Dufferin and the County shall each appoint an arbitrator within seven (7) days of written notice by either Dufferin or the County indicating that the matter is incapable of being resolved without arbitration. The arbitrators so appointed shall, within seven (7) days of the appointment of the last arbitrator so appointed, choose a single arbitrator who is to pass upon the particular question or matter in dispute. If any party neglects or refuses to name an arbitrator within seven (7) days of being requested to do so by another party, the arbitrator named by the first party to appoint an arbitrator shall proceed to resolve the dispute in accordance with the *Arbitrations Act, 1991* (Ontario), as amended, and the parties agree that the arbitrator's decision shall be final and shall not be subject to appeal by either party other than on a question of law and in accordance with subsection 45(2) of the *Arbitrations Act, 1991* (Ontario), as amended, or pursuant to a specific ground for appeal or for setting aside the arbitrator's award pursuant to Section 46 of the *Arbitrations Act, 1991* (Ontario), as amended.

4. ASSIGNMENT OF AGREEMENT

Neither the County nor Dufferin shall be permitted to encumber or assign its interest in this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.

5. INDEMNIFICATION

(a) **Indemnities** Dufferin shall indemnify and save harmless the County including the officers, directors, shareholders, employees and agents of the County from any and all claims, demands, causes of action, loss, costs or damages that the County may suffer, incur or be liable for, resulting from the performance of Dufferin of its obligations under this agreement, save and except damages, claims, demands, actions or causes of action arising out of or as a result of the actions of the County, its agents or employees.

(b) **Insurance – General** Without restricting the generality of Clause 5(a), Indemnities, Dufferin shall provide, maintain and pay for the insurance coverages specified under Clause 5(c), Commercial General Liability Insurance and Clause 5(d), Automobile Liability Insurance.

(c) **Commercial General Liability Insurance** Dufferin shall provide and maintain during the term of the road reconstruction Commercial General Liability Insurance

acceptable to the County and subject to limits of not less than Five Million Dollars (\$5,000,000.00) inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof.

The Commercial General Liability Insurance shall include coverage for:

- 1) premises and operations liability;
- 2) products or completed operations liability;
- 3) blanket contractual liability;
- 4) cross liability;
- 5) severability of interest clause;
- 6) employer's liability; and
- 7) liability with respect to non-owned licensed motor vehicles.

Such Commercial General Liability Insurance policies shall be in the name of Dufferin and shall name the County as an additional insured thereunder.

The insurance policies shall be endorsed to provide the County with not less than thirty (30) days written notice in advance of cancellation, change or amendment restricting coverage.

(d) Automobile Liability Insurance Automobile liability insurance acceptable to the County in respect of licensed vehicles shall have limits of not less than Five Million Dollars (\$5,000,000.00) inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof, in the following forms endorsed to provide the County with not less than thirty (30) days written notice in advance of any cancellation, change or amendment restricting coverage:

- i. standard non-owned automobile policy including standard contractual liability endorsement; and
- ii. standard owner's form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned or operated by Dufferin.

(e) Insurance Requirements and Duration Unless specified otherwise, the duration of each insurance policy shall be from the date of commencement of the road reconstruction until ten (10) business days after date of final acceptance of the road reconstruction.

Dufferin shall provide the County with a certificate of insurance verifying the coverage listed in Clause 5(c), Commercial General Liability Insurance and Clause 5(d), Automobile Liability Insurance. If requested, Dufferin shall promptly provide the County with a certified true copy of each insurance policy exclusive of information pertaining to premium or premium bases used by the insurer to determine the cost of the insurance. The certified true copy shall include a signature by an officer of Dufferin and in addition, a signature by an officer of the insurer or the underwriter or the broker.

Where a policy is renewed, Dufferin shall provide the County renewed proof of insurance immediately following completion of renewal.

- (f) **Notice of Claims** In the case of claims made by a third party with respect to which indemnification is sought, Dufferin or the County (as the case may be) shall give prompt notice to the other party from which it is seeking indemnification of any such claims made upon it. If Dufferin or the County (as the case may be) fails to give such notice, such failure shall not preclude it from obtaining such indemnification but its right to indemnification may be reduced to the extent that such delay prejudiced the defence of the claim or increased the amount of liability.
- (g) **Control of Claims** Dufferin shall have the right, by notice to the County given not later than thirty (30) days after receipt of the notice described in Section 5(f), to assume the control of the defence, compromise or settlement of the claim, provided that such assumption shall, by its terms, be without cost to the County and provided Dufferin acknowledges in writing its obligations to indemnify the County in respect of that claim.
- (h) **Expense for Claims** Upon the assumption of control of any claim by Dufferin, Dufferin shall diligently proceed with the defence, compromise or settlement of the claim at its sole expense, and, in connection therewith, the County shall cooperate fully, but at the expense of Dufferin with respect to any reasonable out-of-pocket expenses incurred, make available to Dufferin all pertinent information and take such other steps as in the opinion of counsel for Dufferin are reasonably necessary to enable Dufferin to conduct such defence. The County shall also have the right to participate in the negotiation, settlement or defence of any claim at its own expense, but the County shall not have the right to withhold its consent to or change the terms of any settlement for which it has received written indemnification from Dufferin.
- (i) **Settlement of Claims** If Dufferin does not assume control of a claim as permitted above, the County shall be entitled to make such settlement of the claim as in its reasonable discretion may appear advisable, and such settlement or any other final determination of the claim shall be binding upon Dufferin to the extent that Dufferin is obliged to indemnify the County in law or through the terms of this Agreement.

6. **NOTICE**

Any notice, demand, approval, consent, information, agreement, offer, request or other communication (herein referred to as a "**Notice**") to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery during regular business hours on any business day or by facsimile transmission or other electronic communication which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice:

To Dufferin at:

Dufferin Aggregates
2300 Steeles Avenue West
4th Floor
Concord, Ontario L4K 5X6

Attention: General Manager

To the County at:

County of Brant,
Clerk's Department
26 Park Avenue
Burford ON N0E 1A0

Any Notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by facsimile transmission or other electronic communication with confirmation of transmission prior to 5:00 p.m., shall be deemed to have been validly and effectively given and received on the business day it was sent unless the confirmation of transmission was after 5:00 p.m. in which case it shall be deemed to have been received on the next following business day.

7. CONFIDENTIALITY

Except for the Notice contemplated by Section 6 , the parties acknowledge and covenant with one another that this Agreement and all provisions hereof including, without limitation, the financial provisions of this Agreement which are not otherwise generally available to the public or required at law to be disclosed (collectively, the "**Information**"), shall be subject to the following:

- (a) the Information is confidential;
- (b) the Information is to be used solely for the purposes contemplated by this Agreement and may not be disclosed or delivered by either party to any person or entity other than the parties to this Agreement's directors, officers, employees, agents, and representatives, financial advisors and consultants whom either party wishes to be advised of such Information solely for the purposes of this Agreement (collectively, the "**Advisors**"). The Advisors will be informed by each party of the confidential nature of the Information, will be directed by each party to treat the Information confidentially and will agree in writing to be bound by and to disclose the Information only to other persons and entities to whom either party may disclose the same; and
- (c) these obligations shall survive any termination or expiration of this Agreement.

8. FORCE MAJEURE

Despite anything to the contrary in this Agreement, if either party hereto is bona fide delayed, hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes, labour troubles, inability to procure materials or services, power failure, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, act of God, or other reason whether of a like nature or not and which is not the fault of the party delayed, then the performance of such term, covenant or act is excused for the period of the delay and the party so delayed, hindered or prevented shall be entitled to perform such term, covenant or act within the appropriate time period of such delay.

9. GENERAL

- (a) This Agreement and the rights and obligations of the parties hereunder shall be governed and construed in accordance with the law of the Province of Ontario.
- (b) This Agreement contains and sets forth the entire agreement between the parties and there are no representations, warranties or agreements except as expressly contained herein. Any amendment to this Agreement must be by way of a further written agreement between the parties.
- (c) This Agreement, and each and every provision contained herein, shall be binding upon, shall enure to the benefit of and shall be enforceable by and against the parties and their respective successors and permitted assigns.
- (d) Time shall be of the essence of this Agreement.
- (e) The parties and their successors and assigns shall execute and deliver such additional documents and instruments and shall perform such additional acts as may be necessary or appropriate in connection with this Agreement and all matters contemplated hereby to effectuate, carry out, and perform the intent of this Agreement and all the obligations and agreements contained herein.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the ____ day of _____, 2015.

SIGNED, SEALED AND DELIVERED)

in the presence of)

Dufferin Aggregates, a division of Holcim (Canada) Inc.

Per: _____
 Name: John Pontarollo
 Title: Senior Vice President Ontario & Western Canada

I have authority to bind the Corporation.

THE CORPORATION OF THE COUNTY OF BRANT

Per: _____
 Name: R.E.F. Eddy, Mayor
 Title: Mayor

Per: _____
 Name: Heather Boyd
 Title: Clerk

I have authority to bind the Corporation.