



ROAD USE AGREEMENT

THIS AGREEMENT made effective this ___ day of _____, 20__.

BETWEEN: **MUNICIPAL DISTRICT OF BIGHORN NO. 8**
PO Box 310
Exshaw, Alberta
T0L 2C0
(the "Municipal District")

AND:

WHEREAS:

- A. The Municipal District has direction, control and management of all public roadways within its boundaries;
- B. The Licensee desires to operate _____ on Municipal District roads to transport goods and materials within the jurisdiction of the Municipal District associated with the Licensee's operations (the "**Permitted Road Use**");
- C. The Licensee has agreed to enter into this Agreement for the Permitted Road Use of certain Municipal District roads, subject to the terms, covenants and conditions contained within this Agreement and the schedules attached hereto; and
- D. The Municipal District is agreeable to granting the Licensee a non-exclusive license and permit for the Permitted Road Use, subject to the terms, covenants and conditions contained within this Agreement and the schedules attached hereto.

NOW THEREFORE in consideration of the sums and deposit contemplated by **Schedule "B"** attached hereto, paid or provided by the Licensee to the Municipal District, and of the mutual covenants herein contained, the Municipal District and the Licensee hereby agree as follows:

- 1. **GRANT OF LICENSE** - The Municipal District hereby grants to the Licensee a non-exclusive license respecting the parts of a) _____, and b) _____ where the Municipal District has jurisdiction as referenced on the map attached as **Schedule "D"** (the "**Permitted Roads**"), subject to the terms, covenants and conditions contained within this Agreement and the schedules attached hereto.
- 2. **TERM** - The Term of this License shall be for a period commencing _____ and expiring on _____ subject to earlier termination as herein provided (the "**Term**").
- 3. **PERMITTED ROAD USE** - Subject to this Agreement and all schedules attached hereto, the Licensee shall be permitted to use the Permitted Roads throughout the Term for the Permitted Road Use, in accordance with the applicable provisions of this Agreement and for no other purpose whatsoever. Unless otherwise specifically provided by the Municipal District, the Licensee shall not park or store vehicles or equipment upon or within any public roadways including, without restriction, the Permitted Roads.

4. SCHEDULES - The recital above and all schedules attached hereto shall be deemed to be part of, and included in this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by the hands of their authorized signatories, under their corporate seals effective the date specified on page 1 above.

MUNICIPAL DISTRICT OF BIGHORN NO. 8

Per: _____ c/s

Per: _____ c/s

Per: _____ c/s

Per: _____ c/s

SCHEDULE "A" – TERMS AND CONDITIONS

1. Use and Occupation - The Licensee acknowledges and agrees that its rights to enter upon and use the Permitted Roads granted under the Road Use Agreement to which this schedule is attached (the "Agreement") shall not confer upon the Licensee any exclusive right whatsoever with respect to the use or occupation of the Permitted Roads, and that the Licensee shall have no claim to the Permitted Roads other than as herein provided.

2. Municipal District Rights - The Municipal District shall have the full right to occupy and use the Permitted Roads in any manner whatsoever deemed appropriate by the Municipal District, including but not limited to inspection of the Permitted Roads to ensure that the Licensee is adhering to the terms and conditions of this Agreement and the schedules attached thereto, provided that the Municipal District shall not unreasonably interfere with the rights conferred upon the Licensee.

3. Municipal District Operations - The Licensee acknowledges and agrees that the Municipal District may deem it necessary or appropriate, from time to time, to close any Permitted Roads due to safety and/or repairs, cause or allow third parties to construct or install permanent underground or above ground utility lines, pipeline facilities and transmission lines which will cross the Permitted Roads, or to perform such other work upon the Permitted Roads as may be deemed necessary in the sole discretion of the Municipal District, and the Licensee acknowledges and agrees that the Licensee shall in no way interfere or hinder the construction, installation, repair or maintenance undertaken by the Municipal District or any person to whom the Municipal District has granted such permission.

4. Licensee Operations - The Licensee and its employees shall, at all times, operate upon the Permitted Roads in a safe, efficient and prudent manner, and in compliance with all laws, bylaws, legislative and regulatory requirements of any governmental or other competent authority relating to the use and operation of the Permitted Roads including, without restriction, all road bans and restrictions, as well as all traffic safety rules and regulations in force from time-to-time respecting the Permitted Roads.

5. Indemnity - The Licensee shall indemnify and hold harmless the Municipal District, its employees, councillors and agents from and against any and all claims, damages, costs (including without restriction, all legal and other professional costs on a solicitor and his own client full indemnity basis), losses, expenses, actions and suits of every kind and nature caused by, or arising directly or indirectly out of the existence of this Agreement and the schedules attached thereto, the exercise or purported exercise of any of the rights granted within this Agreement or the schedules attached thereto, including without limitation environmental indemnity, arising by reason of any matter or anything done, permitted or omitted to be done by the Licensee, or its successors or permitted assigns, whether occasioned by negligence or not.

6. Licensee's Risk - The Licensee acknowledges and agrees that all property of the Licensee which may hereafter be located on, under, or over to the Permitted Roads shall be

at the sole risk of the Licensee, and the Municipal District shall not be liable for any loss or damage thereto, howsoever occurring and the Licensee hereby releases the Municipal District from all actions, claims, demands, suits or proceedings whatsoever in respect of any such loss or damage.

7. No Limitation of Liability - Nothing contained within this Agreement shall in any way limit or restrict the Licensee's liability under this Agreement nor in any way limit or restrict the rights and remedies available to the Municipal District in the event of a default by the Licensee under the terms of this Agreement, nor limit or restrict the rights remedies available to the Municipal District under statute.

8. Hazardous Substances - For the purposes of this schedule, the term "Hazardous Substances" shall mean any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority having jurisdiction over the Permitted Roads.

9. No Hazardous Substances - The Licensee hereby represents, covenants and warrants to and in favour of the Municipal District that it:

(a) shall not allow any Hazardous Substance to be placed, held, located or disposed of on, under or at the Permitted Roads without the prior written consent of the Municipal District, which consent may be arbitrarily or unreasonably withheld;

(b) shall not allow the Permitted Roads to be utilized in any manner in contravention of any applicable laws intended to protect the environment, including without limitation, laws respecting the handling, disposal and emission of Hazardous Substances;

(c) to the extent that Hazardous Substances are, with the Municipal District's consent, placed, held, located or disposed of on, under or at the Permitted Roads in accordance with the terms hereof, the Licensee shall:

(i) comply with, or cause to be complied with, all applicable laws and regulations relating to the use, storage and disposal of the Hazardous Substances, as well as all terms or conditions required by the Municipal District; and

(ii) at the request of the Municipal District, provide evidence to the Municipal District of compliance with all applicable laws and regulations, such evidence to include inspection reports and such tests as the Municipal District may reasonably require, all at the Licensee's expense.

10. Insurance - Throughout the existence of this Agreement, the Licensee shall take out and maintain insurance in such form as listed below, and upon request provide the Municipal District with written confirmation of the existence of such insurance. Without limiting the generality of the foregoing, the insurance shall have at least the following coverage, and contain the following terms:

(a) Commercial automobile insurance with insurable limits of no less than \$2,000,000.00 for vehicle used;

(b) Commercial general liability insurance with insurable limits of no less than \$2,000,000.00 for each occurrence or incident covering all risks associated with the use of the Permitted Roads by the Licensee.

11. Default - If in the sole opinion of the Municipal District the Licensee undertakes or permits any activity whatsoever within the Permitted Roads which is outside of the permitted uses contemplated within this Agreement, or which may be a nuisance or cause damage, or if the Licensee is in default of any of the terms, covenants or conditions of this Agreement or the schedules attached thereto, the Municipal District may, in its absolute discretion:

(a) give the Licensee 1-day written notice to rectify or remedy any such nuisance, improper activity, or default, failing which, this Agreement and the rights therein conferred upon the Licensee shall automatically terminate and the Licensee shall forthwith vacate the Permitted Roads; or

(b) give the Licensee notice of immediate termination of this Agreement and the rights and privileges granted to the Licensee, and the Licensee shall forthwith vacate and cease use of the Permitted Roads.

12. Right to Perform - If the Licensee fails or neglects to perform any of its obligations under this Agreement or the schedules attached thereto, in addition to any and all other rights or remedies available the Municipal District shall have the right, but shall not be obligated, to take such action as is reasonably necessary in the sole discretion of the Municipal District to perform such obligations. In such event, the Licensee shall be responsible for the payment of all costs incurred by the Municipal District forthwith to the Municipal District, plus an administration charge of 15% of such costs contemplated within this Section.

13. Damage by Licensee - The Licensee shall, at its sole cost and expense, forthwith repair any damage above normal wear and tear directly caused by the Licensee or its employees, agents, contractors to the road and road allowances comprising the Permitted Roads (reasonable wear and tear excepted), or to any property of the Municipal District located within the Permitted Roads. Furthermore, the Licensee shall, upon completion of said repair, forthwith restore the Permitted Roads to a level and condition equivalent to that which existed prior to the damage occasioned by the Licensee or its employees, agents or contractors. If the Licensee fails or neglects to repair and restore the Permitted Roads as aforesaid within 30 days of the occurrence or as otherwise agreed in writing of such damage, the Municipal District shall have the right, but not the obligation, to undertake such repair and restoration on behalf of the Licensee, and the Licensee shall reimburse the Municipal District forthwith without demand for the costs it incurs in doing so, plus an administration charge of 10% of such costs contemplated by this Section.

14. Assignment - The Licensee shall not be entitled to assign this Agreement, either in whole or in part, without the prior written consent of the Municipal District, which consent may be unreasonably or arbitrarily withheld. For the purposes of this Section an assignment requiring the consent of the Municipal District shall include any change in voting control if the Licensee is a corporation.

15. Survival - The Licensee's obligations contained in this Agreement and the schedules attached thereto shall

survive the expiration or termination of this Agreement for any reason whatsoever until satisfied in full, and shall not be merged upon the execution of any other documentation by the parties.

16. Notices - Any notice to be given by the parties hereto shall be in writing and shall either be delivered personally or mailed by prepaid registered mail as noted on page 1 of this Agreement. Notice given in any such manner shall be deemed to have been received by the party on the day of delivery or upon the 7th day after the day of mailing. Any party may change its address for service from time to time upon written notice to that effect.

17. Entire Agreement - The terms and conditions set forth within this Agreement shall constitute all of the terms and conditions of this Agreement, and there are no other terms, conditions, covenants, agreements, representations or warranties, either express or implied, arising between the parties hereto except as expressly set forth herein. If any provision of this Agreement or the schedules attached hereto is illegal or unenforceable it shall be considered separate and severable from the remaining provisions, which shall remain in force as if the unenforceable provisions had never been included.

SCHEDULE "B" – DEPOSIT

1. The Licensee shall pay to the Municipal District a security deposit in the sum of \$ _____ payable before the execution of this Agreement.
2. The deposit is payable in a form as set out by the Municipal District’s “Acceptable Forms of Security Deposits” Policy F-12.
3. The Licensee acknowledges that the deposit paid under this Agreement may be used by the Municipal District to cover all costs whatsoever incurred by the Municipal District as a direct result of the Licensee’s use of the Permitted Roads.
4. The Licensee understands that the deposit may be used in whole or part, without in any way limiting the liability of the Licensee under this Agreement.
5. The Licensee understands that any remaining balance of the deposit will be returned within thirty (30) days after the final settlement of all costs and damages associated with the Licensee’s use of the Permitted Roads.

SCHEDULE "C" – SPECIAL TERMS/REQUIREMENTS

The following special terms, conditions and requirements shall apply to the Licensee’s use of the Permitted Roads:

1. Goods and materials to be hauled: _____.
2. The maximum number of Single Trip Hauls permitted:
 - a) Total: _____;
 - b) Daily: _____; and
 - c) In a thirty day period: _____.

For the purposes of this Agreement a Single Trip Haul is a single directional trip from a point of origin to a destination and does not include the return trip.

3. Hauls are not permitted between 22:00 hours to 7:00 hours, and during school bus hours of ____ and ____.
4. The Licensee shall not use engine retarder brakes on the Permitted Roads.
5. The Licensee shall maintain all vehicles free and clean of weeds and dirt and debris.
6. Weight Bans/Weight Restrictions:
 - a) The Licensee is authorized only to Haul to (applicable as checked):
 - Posted road bans and weight restrictions.
 - A maximum _____ % axle weight.
 - b) Notwithstanding the foregoing, the Licensee is not permitted to exceed any posted weight restriction on any bridge.
 - c) The Licensee acknowledges that the Municipal District cannot ascertain the structural adequacy of the roads for the Permitted Road Use. Furthermore, the Licensee shall not rely on the accuracy of any posted weight bans or weight restrictions, or the lack of any posted road ban or weight restrictions or any other information or authorizations provided by the Municipal District.
 - d) The Municipal District may at its sole discretion suspend the haul or impose a road ban or weight restriction during warm or wet weather conditions which are not conducive to hauling.
7. The Licensee is responsible for providing all traffic accommodation as indicated on (applicable as checked):
 - Schedule “D” - Map of Permitted Roads.
 - Schedule “E” – Traffic Accommodation Plan.
8. Additional Maintenance:
 - a) The Licensee shall suspend its operations whenever the Municipal District deems that additional maintenance, including but not limited to additional snow maintenance, gravelling, grading, pothole filling, dust control, and the cleaning of tracked dirt and debris etc., is necessary to make repairs resulting from the Licensee’s Operations’ or to accommodate the Licensee’s Operations, and which is considered to be over and above the basic level of service normally provided by the Municipal District.

- b) The additional maintenance will be provided by the Municipal District at the Licensee's sole cost.
- c) The Municipal District will not be held responsible to the Licensee for delays or any other costs while the Licensee's operations are suspended.
- d) Notwithstanding the foregoing, the Municipality may as part of and under the terms conditions, covenants and indemnities of this Agreement authorize the Licensee or a contractor of the Licensee who has been approved by the Municipal District to perform any such additional maintenance subject to the Municipality's standards and requirements for conducting the work.

9. Inspections and Damages:

- a) The Licensee will provide the Municipal District a minimum five (5) business days' notice to schedule a pre-haul inspection.
- b) Any pre-existing damage that is not documented during the pre-haul inspection may be considered a direct result of the haul and the responsibility of the Licensee.
- c) The Licensee shall suspend all hauling activities and immediately notify the Municipal District upon noticing any damage to the Permitted Roads.
- d) All repairs resulting from the haul shall be conducted by the Municipal District at the Licensee's sole cost and to the complete satisfaction of the Municipal District.

10. The Licensee acknowledges that all costs incurred by the Municipal District, including but not limited to inspections, and any additional professional services shall be borne by the Licensee upon the execution of this Agreement.

11. The development of any new driveway approaches, and/or use of any undeveloped road allowances, if any, are authorized only under separate approval.

SCHEDULE "D" – MAP OF PERMITTED ROADS

The Map of Permitted Roads is attached separately and forms part of this Agreement.

SCHEDULE "E" – TRAFFIC ACCOMMODATION PLAN

The Traffic Accommodation Plan is attached separately and forms part of this Agreement.