



Form B

Road Use Agreement

File# _____

THIS AGREEMENT executed and dated for reference this _____ day of _____ 20____.

BETWEEN

AND

Flagstaff County
Box 358, Sedgewick Alberta
T0B 4C0

(the "Company", "you" or "your" as applicable)

County Representative

Company Representative:

Phone: _____

Phone: _____

Accepts to use the roadway located on:

(the road or roads)

Subject to the attached terms and conditions the County grants you use of the road(s).

(herein described as the "Use")

The termination of this agreement will be upon 30 days written notice by either party.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the day and year first above written.

SIGNED AND DELIVERED on behalf
of the County

SIGNED AND DELIVERED on behalf
of the Company

(Authorized Signing Authority)

(Company Authorized Signing Authority)

(PRINTED NAME of above)

(PRINTED NAME of above)

TERMS AND CONDITIONS

1. The Company shall provide 48 hours notice prior to commencement of Use.

In the event that the County is of the opinion that:

- a) the Company is in default or breach of any provision of this Agreement; and such default continues for a period of thirty (30) days after receipt of notice from the County to remedy such default or the Company fails to remedy the default with all due diligence thereafter;
- b) the County has been required to repair any damage in the road allowance in accordance with the provisions of this Agreement and the Company has failed to pay the costs and expenses of such repair within thirty (30) days after receipt from the County of an account therefore;
- c) emergency repair work has been done to the road allowance by the County in accordance with the provisions of this Agreement and the Company fails to pay the costs and expenses of such repair work within thirty (30) days after receipt from the County of an account therefore; or
- d) the Company by any act or omission is in default of any term, condition or covenant of this Agreement; and such default continues for a period of thirty (30) days after receipt of notice from the County to remedy such default or the Company fails to remedy the default with all due diligence thereafter;

the County may invoke the provisions of this Section, and apply weight restrictions on the road(s) of this Agreement to protect the integrity of the infrastructure.

The weight restriction will remain in effect until the County deems that the default has been rectified.

2. The Company for the purpose of this agreement will be deemed an independent Contractor and not the servant, employee or agent of the County.
3. In signing this Agreement, the Company agrees to conform and comply with all conditions set forth in the Occupational Health and Safety Act and Regulations pursuant thereto, and to pay all assessments pursuant to the said Act. Under this agreement the Company is deemed the "prime contractor".
4. The Company shall not, without first obtaining the written consent of the County, make any assignment or award any subcontracts for the performance and execution of the Works under this Agreement.

The Company will not in any manner whatsoever commit or purport to commit the County to the payment of any money to any person, firm or corporation.

GENERAL CONDITIONS

1. Use Conflict

Where the Company during its term of use experiences conflict by other resource sector users they must take all practicable efforts to negotiate (or participate in negotiations) an equitable solution (i.e. share of maintenance/repair costs). Where an equitable solution between the parties cannot be reached the County reserves the right to the final decision.

2. Public Conflict

The Company will not, during the term, perform a service for any person, firm or corporation where the performance of the service may or does, in the reasonable opinion of the County, give rise to a conflict of interest between the obligations of the Company to the County under this Agreement and the obligations of the Company to such other person, firm or corporation.

3. Agricultural Disturbance

The Company is responsible to mitigate, address and correct any and all damage or disturbance to adjacent lands / landowners that may be caused through their Use of the roadway under this Agreement. This may include but is not limited to:

- Fence damage or requirements
- Crop disturbance
- Required cattle movement
- Dust Control

4. Signage

During the Use of the road way the following signage must be placed at the worksite.

- Company Information (“under agreement the road is being used by, for information contact”)

5. Public Access /Maintenance and Repair

Provision for the Use of a partially developed road allowance may include:

- provide a stable grade for all conditions of use
- installation and maintenance of approved construction signage
- company identifier signage (company name and contact)
- if required, the minimum stripping width is 10 meters. Soil conservation (stripping & storage of topsoil), in accordance with the Alberta Environmental Protection Enhancement Act (AEPEA)
- tree/brush removal and disposal (burn and bury)
- road surface may require aggregate materials for grade stabilization
- drainage improvements may be required, including culvert installation

At all times the roadway must be maintained to facilitate public use and access. As soon as practicable the Company must notify the County of road repair and maintenance requirements.

The County will perform the required remedial action either on notice by the Company or on its own initiative (if not reported).

The Company agrees that if damage or destruction to the Worksite, as determined by the County acting reasonable, results from exercise by the Company and its servant, agents, employees, contractors and subcontractors of the rights herein granted, the Company shall, at the County's request, restore the worksite to its previous condition. If the Company fails to comply with such instruction within a reasonable time, the County may restore the worksite to its previous condition at the expense of the Company.

The Company is liable for the required costs of repair or maintenance caused through its Use. Costs will be invoiced to the Company (at County cost). At no time is the Company to perform maintenance, repair or upgrade work within the road allowance unless the County provides written authorization to the Company for such work.

6. Regulations

The Company shall keep himself fully informed of and shall comply with all applicable municipal, provincial and federal legislation and regulations.

7. Permits and Regulations

The Company shall, at his own expense, obtain all required permits incidental to the Use of the roadway. Upon request, the Company shall provide the County with proof of having obtained such permits.

8. Workers' Compensation Board Coverage

The Company shall, at its own expense, obtain Workers' Compensation Board coverage for itself, all workers and any shareholders, directors, partners or other individuals employed or engaged in the execution of the Work, and shall comply with all conditions of the Occupational Health And Safety Act and Regulations there under. Upon request, the Company shall provide the County with proof of such compliance.

9. Site

The Company shall confirm that it has visited the Worksite and is familiar with all conditions pertaining thereto.

10. Work Area

All Work is to be confined to "the area" as defined and/or ordered by the County.

11. Indemnity / Insurance

Notwithstanding the provision of any insurance coverage by the County, the Company hereby agrees to indemnify and save harmless the County, its successor(s), assign(s) and authorized representative(s) and each of them from and against losses, claims, damages, actions and causes of action (on a solicitor and his client full indemnity basis) (collectively referred to as "Claims"), that the County may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of:

- a) any errors, omissions or negligent acts of the Company or its employee(s) servant(s), agent(s), subcontractor(s) or authorized representative(s); or
- b) any default or breach of any provision of this Agreement;

excepting always that this indemnity does not apply to the extent, if any, to which the Claims are caused by errors, omissions or the negligent acts of the County, its other contractor(s), assign(s) and authorized representative(s) or any other persons.

Notwithstanding the other provision of the Section, with regard to the subject matter of this Agreement, neither the County nor the Company shall have any liability to the other for any loss of profit or consequential or indirect damages suffered by the other.

The Company shall provide, maintain and pay for Commercial General Liability insurance protecting the County and the Company from and against any and all claims which may arise out of the Company's performance of the Work:

- a. The amount of such insurance shall be not less than \$2,000,000 inclusive of any one occurrence,
- b. The Company shall provide the County with evidence of such insurance prior to the commencement of Work under this Agreement.
- c. The Commercial General Liability insurance policy shall name the County as Additional Insured.

12. Superintendence

The Company shall give efficient and effective supervision to the maintenance of the roadway, using its best skill and attention. The Company shall carefully study and compare all specifications and other instructions, and shall at once report to the County any error, inconsistency or omission which it may discover, but it shall not be held responsible for their existence or discovery.

Notwithstanding the provisions contained herein the County may, from time to time, give such instructions to the Company as it considers necessary in connection with the progression of the use, but the Company will not be subject to the control of the County in respect of the manner in which such instructions are carried out.

13. Inspection of Work

The County shall at all times have access to the road(s) under agreement, and the Company shall provide proper facilities for such access and for inspection.

Once construction has been completed the Use will have a one (1) year warranty period after acceptance of the Use by the County. At the end of this period, the Use will be inspected and if the conditions within the Agreement are fulfilled, the agreement will be concluded.

14. Clean-up

The Company shall at all times keep the road allowance free from any accumulation of waste material or rubbish. Upon completion of the Use, the Company shall remove all rubbish from and about the worksite, and shall leave the work in a clean and tidy manner.

15. Damages

The County may cancel the Agreement in case of failure by the Company to comply with the terms and conditions of this Agreement.

16. Non-Waiver

No provision of this Agreement and no breach by the Company of any such provision will be deemed to have been waived unless such waiver is in writing, signed by the County. The written waiver by the County of a breach of any provision of this Agreement by the Company will not be deemed a waiver of such provision or of any subsequent breach of the same or any other provision of this Agreement.

17. Survival of Terms

Upon termination of this Agreement, all applicable rights and obligations as between the County and the Company shall terminate except that the Company shall remain liable to the County for all of its obligations and liabilities arising pursuant to the Agreement prior to the date of such termination, including but not limited to the indemnity to the County under Section 11 of the General Conditions.