

ROAD USE AGREEMENT

MEMORANDUM OF AGREEMENT

Made in duplicate this _____ day of _____, 200_ at the Town of Pincher Creek, in the Province of Alberta

Between:

MUNICIPAL DISTRICT OF PINCHER CREEK NO. 9
(of the First Part)

AND

(of the Second Part)

WHEREAS THE PARTY OF THE SECOND PART in order to carry out its business, requires the use of _____ kilometers of public road(s) as detailed in Appendix A, hereto attached and forming part of this Agreement,

AND WHEREAS THE PARTY OF THE FIRST PART deems the said transportation to be an extraordinary use, likely to damage the aforementioned public road(s) or to cause persons living on or near the said road(s) to be annoyed by dust, noise, traffic, or other nuisance arising from the said transportation,

AND WHEREAS the party of the First Part has agreed to such transportation by the Party of the Second Part in consideration of and upon and subject to the terms and conditions hereinafter set forth,

NOW THEREFORE this Indenture Witnesseth:

Definitions:

1. For the purpose of this Agreement the following definitions shall apply:

“road” or “roads”: shall have the same meaning and effect as “road” as defined in the Municipal Government Act S.A., 1994, Chapter M-26.1 as amended.

“the road(s)” : shall mean the road or roads as specified or identified under “Appendix A” of this Agreement

2. That the party of the Second Part may transport loads of said material at legal axle weights and in accordance with The Traffic Safety Act and The Commercial Vehicle Dimension and Weight Regulations.

.../2

3. In consideration of the permission hereby granted to it by the Party of the First Part, the Party of the Second Part covenants and agrees to:
 - I. At the direction of the Party of the First Part, to pay for or discharge any and all costs relating to damages which may result to the road(s) or other property on road allowances during such transportation and any expenses or out-of pocket disbursements that may be incurred by the Party of the First Part in connection therewith whether they be for inspection, supervision or repair of The Road(s). The Party of the Second Part agrees that should they not act on the direction of the Party of the First Part within seven (7) days, the Party of the First Part shall undertake the repairs and shall be entitled to recover the costs of the repair(s) through invoice or pursuant to Section 5 (VI).
 - II. In the case of a road repair of an emergent nature, the Party of the Second Part agrees that the Party of the First Part shall be entitled to undertake whatever repairs are required to make The Road(s) safe and passable without notification of the Party of the Second Part and the Party of the First Part shall be entitled to recover the costs of such repair(s) through invoice or pursuant to Section 5 (VI)
4. The Party of the Second Part hereby indemnifies and saves harmless the Party of the First Part from any and all losses, costs, liabilities, damages and expenses (including any and all liabilities to third Parties, whether in contract, tort or otherwise) which may arise for any reason of any action or inaction on the part of the Party of the Second Part by reason of the said road disturbance and/or crossing. Such indemnification to survive this Agreement.
5. The Party of the Second Part covenants and agrees to:
 - I. Maintain, or pay for the maintenance, of The Road(s) in a safe and passable state of repair at all times during the term of this Agreement
 - II. Pay for the resurfacing or regravelling, as the case may be, of The Road(s) when and if such resurfacing or regravelling is required and deemed necessary by the Party of the First Part through its officers or agents
 - III. Cause dust suppression treatment to be consistently and adequately applied to The Road(s) so as to prevent annoyance to persons living near the said road(s).
 - IV. Operate and transport material solely on the route(s), marked out and specified in Appendix A, and no other.
 - V. Erect suitable signs and devices conducive to the safe use of the said road(s) at such places and in such numbers as the Party of the First Part, its officers or agents may, from time to time require or direct.
 - VI. Post a bond or other financial guarantee, in a form acceptable to the Party of the First Part, in the amount of \$____,000 upon which the Municipal District of Pincher Creek may draw, at its discretion, as reimbursement for costs incurred pursuant to this Agreement.
 - VII. Operate and transport at a maximum of ____0/kmh, or as otherwise posted.
 - VIII. Hauling shall be scheduled around school bus times

- IX. Limited hauling shall occur during wet weather, as approved by the Public Works Superintendent
 - X. This Agreement is subject to any and all applicable road bans and may be terminated by either Party upon twenty four (24) hours written notice.
6. The Party of the Second Part further acknowledges herewith that:
- I. Any deviation from the terms and conditions of this Agreement on its part shall be good and sufficient cause for the Party of the First Part to dissolve the said Agreement.
 - II. This Agreement is varied if and when the Municipal District of Pincher Creek imposes a general vehicular weight restriction known as a Road Ban under the provisions of the Motor Transport Act.
7. This Agreement may be amended, from time to time, upon agreement in writing or upon the development of an amendment to Appendix A.
8. This Agreement may be cancelled by either party upon twenty four (24) hours written notice.
9. This Agreement shall come into force and effect on the _____ day of _____ and remain in effect until _____, 20____.

IN WITNESS WHEREOF the Parties hereto have hereunto caused this respective signatures to be affixed through their respective agents in the regard.

Municipal District of Pincher Creek No. 9

PER: _____
Duly Authorized representative or
Signing Officer

NOTE: This agreement is subject to the Party of the Second Part obtaining the necessary permits and complying with any restrictions or regulations imposed by the HIGHWAY TRAFFIC BOARD OF TRANSPORTATION of the Province of Alberta.

This information is being collected under the authority of the Municipal Government Act, Part 3; Division 2; and the Freedom of Information and Protection of Privacy Act and will be used as an agreement for the use of a road. If you have any questions about this collection of information contact Wendy Kay, CAO at 403-627-3130.

ROAD USE AGREEMENTS

PROCEDURES

Introduction:

Road Use Agreements shall be required when extraordinary and/or extensive use of municipal road systems occurs. There are seven (7) different categories under which a hauler may be required to enter into a Road Use Agreement with the Municipal District of Pincher Creek. These categories are:

1. Oil & Gas Industry
2. Sand & Gravel Industry
3. Log Haul Industry
4. Agriculture Industry
5. Fertilizer Industry
6. Construction Industry
7. Other Industries

The Public Works Superintendent or his designate will:

1. **Conduct a pre-haul road inspection with a representative of the company**
2. Issue the Road Use Agreement
3. Conduct a post-haul inspection with a representative of the company and assess damages if applicable. Assessment of damages would include, but not be limited to: gravel loss, road shoulder damage, grader time above required above normal maintenance, and asphalt deterioration.
4. If applicable, invoice the appropriate party(ies)
5. If a dispute arises over the amount of damage assessed the matter shall be discussed with the Chief Administrative Officer, who shall provide a recommendation to Council, whose decision shall be final.

Bond Requirements:

1. The amount of the bond shall be as determined appropriate by the Public Works Superintendent.

Informative:

If the hauler supplies their own grader for the maintenance of the road, the bond may be reduced by 50%. Any work done by their grader shall be done to the municipal standards as determined by the Public Works Superintendent.

APPENDIX "A"

**ROAD USE AGREEMENT
MEMORANDUM OF AGREEMENT**

This agreement between _____ and The Municipal District Of Pincher Creek No. 9, will be for the use of the local road _____ for the purpose of accessing your _____.

No hauling will be allowed under wet, muddy or freeze/thaw conditions.

Any dust suppression product must be approved by the Municipal District prior to its application on the road. The dust must be controlled in the area of local residences and any time when the dust is jeopardizing the safety of the motoring public.

Definition 5 Point VI, referring to bond or financial guarantee will be waived, however by signing this agreement, _____ acknowledge their responsibility to pay for all repairs and replacement of gravel on the roads used by your forces in the execution of your work to the satisfaction of the Municipal District of Pincher Creek No.9.

Signed this _____ day of _____, 200_

For The Municipal District _____

For _____