

# LARAMIE COUNTY ROAD USE AGREEMENT

THIS AGREEMENT is made and entered into on this date by and between Laramie County, Wyoming hereinafter referred to as "County", and \_\_\_\_\_ hereinafter referred to as "Operator".

WITNESSETH:

WHEREAS, the Operator is engaged generally in \_\_\_\_\_ and (Type Of Business)

WHEREAS, the Operator is planning to (project description) \_\_\_\_\_ in Section \_\_\_\_\_, Township \_\_\_\_\_ North, Range \_\_\_\_\_ West, on Road \_\_\_\_\_ in Laramie County; and

WHEREAS, said operation and/or project may continue for as long as \_\_\_\_\_ (weeks, months, or years); and

WHEREAS, the Operator has obtained and filed all of the necessary permits with the respective County, State and Federal agencies; and

WHEREAS, the Operator has reported that as a result of the above described activities, traffic on Road \_\_\_\_\_ from said site to Road \_\_\_\_\_ could include up to \_\_\_\_\_ total loads or \_\_\_\_\_ loads per day, week, month or year (with said loads being within legal load limits as currently defined by the Wyoming Department of Transportation); and

WHEREAS, the County and the County residents are concerned about damage to the County Roads, culverts, cattle guards, and appurtenances and are also concerned about noise disturbance from trucks, dust creation, the safety of residents driving the road including use by the farmers, ranchers, tourists and sightseers, interference with wildlife, road maintenance and open range protection; and

WHEREAS, it is the desire of the County, the operator and the residents of the area to work cooperatively

NOW, THEREFORE, in and for the mutual promises and consideration as described herein, the parties agree as follows.

1. The County agrees to post speed limits, stop signs and other control signs as necessary and agrees to have the County Sheriff's Department patrol for speed control, with respect to the above described Roads.
2. The Operator agrees to provide training and information emphasizing safety, speed limits, potential hazards, local traffic and wildlife, relative to the Roads hereon proposed for use, for all their employees and all contracted and subcontracted employees.

3. The Operator shall notify the County, in writing, a minimum of ten (10) working days in advance of the beginning of any of the above described operations so that the County can video the condition of the Roads proposed for use prior to Operator's use of said Roads.
4. The Operator shall certify to the County in writing the final completion date of all of the Operator's use of the above described Roads. Upon the receipt of such certification, the County will video the condition of the Roads within ten (10) working days to document any damages in order to assess repairs needed to return the Roads to their original condition, before operations began.
5. The Operator agrees to keep equipment noise as low as possible while using the County Roads and respect to resident housing located in the above described area.
6. The Operator agrees to respect open range and the danger of livestock grazing along the County Roads, both with speed control and stopping as necessary along the County Roads.
7. The Operator agrees to provide dust control measures on the above described Roads as dictated and required by the Department of Environmental Quality and The County. For the purposes of this agreement water applied in sufficient quantity to suppress dust shall be considered to be an adequate dust control measure.
8. The County Public Works Department will inspect the above described Roads from time to time and shall report, in writing, necessary repairs and maintenance to the Operator. The Operator hereby agrees to repair said damage and provide such maintenance within three (3) days of written notice from the County, the County at its option may elect to make such repairs and the Operator will be responsible for the cost of such repairs. These costs may include, but are not limited to materials, use of The County equipment, labor and other related expenses.
9. The Operator and the County acknowledge that other companies may conduct industrial projects in the area which may require use of the same Roads during the Operator's planned use of said Roads. Should the County or the Operator become aware of another company's use of said Roads during the Term of this agreement, the County or the Operator shall promptly notify the other. In the event one or more of those companies and the Operator utilize said Roads concurrently during the Term of this Agreement, the County shall bill the Operator for the Operator's proportionate share of the costs of damages. Proportionate share shall be determined by the County in its sole discretion, based on its inspections and review of available information. Disagreements by operators as to proportionate shall be resolved before the County Commissioners using the process described in Section 11 of this agreement.
10. During Operator's use of the above described County Roads, the operator may be subject to imposition of load restrictions by the County should any damage occur to said Roads that endangers the public safety as a result of the Operator's activities on said Roads. Should the County conclude that such damage to said Roads requires immediate repair, the County may make such reasonable repairs and seek reimbursement from the Operator.

11. The County and the operator agree they shall cooperate with each other regarding all matters necessary to carry out the full intent and purpose of the Agreement. If the parties are unable to agree on necessary repairs and maintenance, then the parties agree that the matter will be brought before the Laramie County Commissioners. The County Commissioners at the first regular meeting following notice of such disagreement will appoint a third party independent viewer. The third party independent viewer shall be a freeholder and elector of Laramie County, independent of the parties. The viewer shall be a person possessing the requisite knowledge and skills to evaluate the claims of the Operator and the County. Such persons may be, but are not limited to, civil engineers licensed to practice in the State of Wyoming. The third party independent viewer shall, within ten (10) days of appointment, make arrangements and provide notice to both the County and the Operator, setting a date and time for an on-site inspection of the damage in questions and review of any information or data relevant to the issue. Following the on-site inspection, the third party independent view shall submit an assessment and damage estimate to the County Commissioners. At the next regular meeting, the County Commissioners shall review the third party independent viewer's assessment, estimate of damages and costs to be paid. All parties to the agreement may be heard in regard to the viewer's determination. Upon the completion of any hearing in regard to the viewer's report, the Commission shall make a determination of the damages, necessary repairs and/or costs. In the event costs and/or repairs are determined to be appropriately assessed against the Operator by the Commissioners the Operator shall within ten (10) days of the County Commissioners' decision and/or certification of third party independent viewer's assessment and estimate, pay to the County the assessed estimate of damage costs and shall commence any repairs at a time to be determined by the Director of Laramie County Public Works. Any party aggrieved by the decision of the county Commissioners may appeal the matter to the District Court, First Judicial District as provided in the Wyoming Administrative Procedures Act.
12. In the event of a violation of this agreement by the Operator and/or in the event that the Commissioners determination is affirmed upon judicial review and/or any legal action is required to enforce compliance with this agreement, the Operator shall be responsible for all fees and attorney's costs accrued in any litigation to enforce this agreement or the decision of the Laramie County Commissioners.

### **General Provisions**

- A. **Amendments.** Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by and between the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.
- B. **Applicable Law.** The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdictions over any action arising out of this Agreement and over the parties, and the venue shall be the Eighth District, Laramie County Wyoming.

- C. **Entirety of Agreement.** This Agreement, consisting of five (5) pages represents the entire integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.
- D. **Severability.** Should any portion of the Agreement be judicially determined to be illegal or unenforceable, the remainder of this Agreement shall continue in full force and effect.
- E. **Sovereign Immunity.** The County does not waive its governmental immunity by entering into the Agreement, and specifically retains immunity and all defenses available to it under state law.
- F. **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in the Agreement shall operate only between the parties to this Agreement, and shall be solely to the benefits of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement. The parties to this Agreement intend and expressly agree that only parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.
- G. **Indemnification.** The Operator shall indemnify, defend, and hold harmless the State, the County, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses, and liability, including reasonable costs and attorney fees, arising out of Operator's negligence, actions or its failure to perform any of the Operator's duties and obligations hereunder.
- H. **Applicable Law and Venue.** The parties mutually understand and agree this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. The foregoing provisions of this paragraph are agreed by the parties to be a material inducement to Operator and to Laramie County in executing this Agreement. This provision is not intended nor shall it be construed to waive COUNTY's governmental immunity as provided in this Agreement.
- I. **Force Majeure.** If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure, the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use reasonable efforts to avoid or remove such causes of nonperformance and removed. "force Majeure" shall mean any fire, earthquake, flood, or other casualty or accident; war, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any governmental agency; or any other act or condition beyond the reasonable control of a party hereto.

- J. **Notices.** All notices required and permitted under this Agreement shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.
- K. **Compliance with Laws.** CONTRACTOR shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

**Signatures.**

In witness whereof, the parties to this Agreement, through their duly authorized representatives, have executed this agreement on the days and dates set out below, and certify, that they have read, understood and agreed to terms and conditions of this Agreement as set for the herein.

**OPERATOR:**

**LARAMIE COUNTY**

**By:**

**By:**

\_\_\_\_\_

\_\_\_\_\_

**(Authorized Signature)**

**(Authorized Signature)**

\_\_\_\_\_

\_\_\_\_\_

**Printed Name**

**Printed Name**

\_\_\_\_\_

\_\_\_\_\_

**Date**

**Date**