



McKenzie County
1300 12th Street SE, Suite 240
Watford City, ND 58854
Ph. 701-444-2600
mckenziecountynd.gov

MCKENZIE COUNTY ROAD AND BRIDGE DEPARTMENT
SECTION LINE AND ROAD IMPROVEMENT AND MAINTENANCE BY PRIVATE ENTITY POLICY

POLICY

The purpose of the Section Line and Road Improvement and Maintenance by Private Entity Policy is to provide guidance to a private entity that desires to improve or maintain a County road, section line, or other public road under the jurisdiction of the McKenzie County Board of Commissioners (Commission). This policy is not applicable to Township roads and section lines in organized townships, unless adopted by the organized township. The guidelines herein are provided to create consistent guidelines for section line and road improvements, promote safety for roadway users, and protect the public road system within McKenzie County.

This policy shall not be utilized when a project and/or proposed road improvement falls under the guidance of the *McKenzie County Land Development Ordinance*.

GENERAL REQUIREMENTS

1. For purposes of this policy, the following are defined as:
 - a. Routine Maintenance is to include, but not be limited to, blading a road surface, plowing snow, replacing an existing culvert, replacing road surfacing, fixing a soft spot, and repairing an eroded area to previous grade.
 - b. Improvements are to include, but not be limited to, widening a road top, constructing new ditches and drainage ways, installing culverts where a culvert was not previously located, grading of inslopes, ditch bottoms, and back slopes, and modifying the road centerline horizontal and vertical profiles.
2. A private entity shall not do any improvements or routine maintenance on a County road or within the right of way without prior approval from the Commissioners, or their designated appointee.
3. Improvements to section lines, County roads, or other public roads under the jurisdiction of the Commission need to be approved by the Commission, or designated appointee.
4. Routine maintenance of existing sections lines or public roads that are not considered a County road may occur without the Commission's approval.

IMPROVING A SECTION LINE, COUNTY ROAD, OR PUBLIC ROAD

The process to improve a section line, County road, or public road under the jurisdiction of the Commission is as follows:

1. Submit a Road Improvement Agreement Application to the County Road and Bridge Department.
2. Meet with the County Road and Bridge Department to discuss and align expectations regarding proposed road improvements.
3. Private entity and the Commission enter into a Road Improvement Agreement, included as Exhibit A.
4. Private entity submits road improvement plans to County Road and Bridge Department for review and approval.
 - a. Road improvement plans are to be approved by the Engineering Director prior to construction commencing.
 - b. Road improvement plans are to be prepared by a professional engineer licensed in the State of North Dakota.
 - c. The following shall make up the road improvement plans, as applicable and agreed upon:



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- i. Title Sheet.
 - ii. List of Standard Drawings
 - iii. Plan Notes
 - iv. Construction Details
 - v. Typical Sections
 - vi. Plan and Profile Sheets
 - vii. Grading Plans
 - viii. Striping and Signage Plans
 - ix. Cross Sections
 - x. Temporary Traffic Control
 - xi. Erosion Control Plans
 - d. Road improvements shall meet the design requirements of the current version of the *McKenzie County Design Standards for New Construction or Reconstruction of Roads*. Private entity and Engineering Director shall agree upon which design criteria road is to be improved to.
 - e. Approval of road improvement plans shall expire 12 months from the date of approval unless construction of the Road is diligently pursued.
 - i. An extension of the approval may be granted once for a total period of not more than an additional 12 months. A request for extension must be made in writing not more than 30 days before the expiration of the original approval. An extension approval may only be granted if the documents require no modification and remain consistent with the purpose and intent of the originally approved documents.
 - ii. If the approval of the documents expires and an extension to the approval is not, or cannot be granted, new documents for the improvement work must be filed and approved prior to the approval to construct.
5. Private entity constructs road at no cost to the County or the public.
 - a. County roads shall be constructed and tested per the current NDDOT Standard Specifications for Road and Bridge Construction.
 - b. All roads shall be constructed by a licensed and insured Contractor in the State of North Dakota.
 - c. The County will complete a final inspection of the road improvements after project completion.
 - d. An Engineer shall provide a certification to the County after completion of the construction that the road was built in accordance with the road improvement plans.
6. The private entity will acquire any additional right of way and/or easements needed to construct the road improvements and shall submit all adjacent landowner agreements to the County prior to construction commencing.

ROUTINE MAINTENANCE OF A COUNTY ROAD

The process to perform routine maintenance of a County road is as follows:

1. Submit a Road Use Agreement Application to the County Road and Bridge Department.
2. Meet with McKenzie County Road and Bridge Department to understand expectations associated with the Road Use Agreement.
3. Private Entity and Commission enter into a Road Use Agreement, included as Exhibit B.
4. The Road Use Agreement may not be utilized on major collector roads.

ADOPTED DATE: November 18, 2025



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EXHIBIT A

Road Improvement Agreement

ROAD IMPROVEMENT AGREEMENT

THIS AGREEMENT (this "Agreement"), made and entered into this ____ day of _____, 202__ (the "Effective Date"), by and between _____ (hereinafter referred to as "Company") and McKenzie County (hereinafter referred to as "County"), a political subdivision of the State of North Dakota. The Company and the County shall hereinafter sometimes be individually referred to as a "Party" or collectively as the "Parties".

WHEREAS, the Company wishes to improve a road located _____ and known as _____ (the "Road"), as shown on Exhibit A, in the County to foster ingress and egress to Company interests adjacent to the Road; and

WHEREAS, the County desires that Road improvements subject to the County's jurisdiction be constructed to County standards as approved by the McKenzie County Board of Commissioners; and

WHEREAS, the County and Company agree that such improvements to the Road are beneficial to the life of the Road; and

WHEREAS, the County desires to grant to Company a non-exclusive right to utilize the Road for the purposes described herein, subject to the terms stated herein; and

WHEREAS, the County approves of the improvement of the Road contingent upon this Agreement, which is stated herein; and

NOW, THEREFORE, in consideration of the mutual benefits and covenants contained herein, the Company promises and agrees, at no expense to the County or its citizens, to complete the following:

1. PRE-CONSTRUCTION REQUIREMENTS:

- a. The Road is to be designed to meet the standards of the County Design Standards for New Construction or Reconstruction of Roads and, as applicable, the North Dakota Department of Transportation (NDDOT). The Road is to be constructed to the Local Roads (Other) design criteria.
- b. The construction documents for the Road improvements shall be prepared by a registered Professional Engineer in the State of North Dakota and shall be approved by the County Engineer prior to construction commencing on the Road improvements. The construction documents should include the components listed per Exhibit B.
 1. The approval of the construction documents shall expire 12 months from the date of approval unless construction of the Road is diligently pursued by the Company.

Commented [GD1]: To be updated based on type of road.

2. An extension of the approval may be granted once for a total period of not more than an additional six (6) months. A request for extension must be made in writing not more than 30 days before the expiration of the original approval. An extension approval may only be granted if the documents require no modification and remain consistent with the purpose and intent of the originally approved documents.
3. If the approval of the documents expires and an extension to the approval is not, or cannot be granted, new documents for the improvement works must be filed and approved prior to the approval to construct.
- c. The Road shall be centered on the section line, if applicable.
- d. The Company will submit all adjacent landowner approvals to the County that are necessary to construct the road.
- e. All required Federal, State, and Local permits shall be acquired prior to construction commencing of the Road Improvements.

2. CONSTRUCTION REQUIREMENTS:

- a. The Company agrees that the Road shall be constructed per the current NDDOT Standard Specifications for Road and Bridge Construction. _____
- b. The Road shall be constructed by a licensed and insured Contractor in the State of North Dakota. A copy of the North Dakota Contractors License and insurance certificates shall be attached to with this Agreement.
- c. The Company designates the following person as a contact person for the project who shall keep the County informed throughout the duration of the construction.

Name: _____

Cell: _____

Email: _____

- d. The Road shall be completed no later than twelve (12) months from the Effective Date of this Agreement.
- e. The Company shall notify the County when the construction of the Road is complete and allow the County to complete a final inspection of the improvements. Any non-approved deviations from the approved construction documents shall be fixed by the Company within one months of being notified of the issue, or other time frame agreed to by the Parties.

3. POST CONSTRUCTION REQUIREMENTS:

- a. An Engineer shall provide a certification to the County after completion of the construction that the Road was built in accordance with the contract documents.
- b. The County shall not be responsible for the repair or maintenance of the Road before, during, or after construction. _____

Commented [GD2]: Omit if not an existing County road.

Commented [GD3]: Omit if an existing County road.

- c. Specific to this Road and while under the terms of this Agreement, the public is exempt from and not obligated to comply with the County's Inclement Weather Restrictions or Overweight/Oversized permitting requirements while the road is not maintained by the County.

Commented [GD4]: Omit if an existing County road.

4. COST ESTIMATES FOR ROAD IMPROVEMENT AND SECURITY

Cost estimates of said Road improvements totaling _____ are attached as Exhibit C. The complete performance of construction of all Road improvements is secured by a performance bond in the amount of _____, representing an amount which is equal to the required one hundred twenty five percent (125%) of the cost of all required Road improvements.

Upon completion of the Road improvements and written request by the Company, the County shall release the full amount of the performance bond. By releasing the performance bond, the County is acknowledging the satisfactory completion of the terms of this Agreement.

5. LIABILITY

Company agrees to indemnify, defend, and hold the County harmless from any injury, loss, claims, actions, damages, liability, causes of action, demands, judgments, suits, costs, and expenses including reasonable attorney's fees, resulting from loss of life, personal or bodily injury, damage to property, or any other incident arising from Company's negligence during the Company's construction of the Road pursuant to this Agreement which creates an unreasonably dangerous condition on the Road for a driver exercising ordinary care; should Company undertake any repair, maintenance, or improvement of the Road, then for Company's negligent repair, negligent maintenance, or negligent improvement of the Road; Company's performance of any of its obligations under this Agreement; or Company's actions under or related to this Agreement, including actions resulting in the loss of life, personal or bodily injury, damage to property.

6. SUCCESSORS OF COMPANY

This Agreement shall be binding upon, and inure to the benefit of all heirs, executors, administrators, successors, assigns, or purchasers of the respective parties to this Agreement, and all terms and conditions contained herein shall be equally binding on said heirs, executors, successors, assigns, or purchasers.

7. ENTIRE AGREEMENT; SEVERABILITY

The Agreement together with the exhibits and attachments constitutes the entire agreement of the Parties concerning the Road. The provisions of this Agreement shall be severable if any of the provisions hereof are held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

8. EFFECTIVE DATE

This Agreement shall become effective on the date that it is signed by both parties.

9. COUNTERPARTS; ELECTRONIC SIGNATURES

The County and Company agree that this Agreement may be executed in counterparts all of which are one agreement and that signatures transmitted electronically in PDF or other electronic format are binding.

IN WITNESS WHEREOF, County and Company as of the date(s) listed below.

MCKENZIE COUNTY, NORTH DAKOTA

By: _____
Howdy Lawlar, Chairman
McKenzie County Board of County Commissioners

ATTEST:

Erica Johnsrud, McKenzie County Auditor

Dated: _____

By: _____
Name: _____
Title: _____

Exhibit A
The Road

Exhibit B
Construction Documents Requirements

Construction documents submitted for review shall include the following at a minimum:

1. Title Sheet including certification language and signature block for the County Engineer.
2. List of Standard Drawings
3. Plan Notes
4. Construction Details
5. Typical Sections
6. Plan and Profile Sheets
7. Grading Plans
8. Striping and Signage Plans
9. Cross Sections
10. Temporary Traffic Control
11. Erosion Control Plans

Exhibit C
Road Improvement Cost Estimate



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EXHIBIT B

Road Use Agreement

MCKENZIE COUNTY ROAD USE AGREEMENT

THIS AGREEMENT is entered into on this ____ day of _____, 20____ (“Commencement Date”) by and between **McKenzie County, North Dakota**, whose office address is 201 5th Street NW, Watford City, ND 58854 (hereafter “County”) and _____, whose address is _____ (hereinafter “Company”), its successors and assigns. County and Company may also be referred to herein individually as “Party” or collectively as “Parties”.

RECITALS

WHEREAS, Company wishes to use the following portions of a McKenzie County Road(s), which is an existing public gravel road located in McKenzie County, North Dakota owned by the County, to access, construct, operate, maintain and service its various oil and gas well locations (“Company Facilities”), the location and description of the road being as described below and in Exhibit A, attached hereto and incorporated herein:

Road # _____ beginning at the intersection of _____ and _____ and ending at the intersections of _____ and _____; total miles _____. See also, Exhibit A attached hereto (hereinafter, the “Road”);

WHEREAS, Company's agents, employees, affiliates, contractors, subcontractors, and workforce may utilize the Road under the terms of this Agreement for access to Company Facilities and as a haul route to deliver materials and components necessary to erect, construct and operate the Company Facilities beginning START DATE and ending END DATE;

WHEREAS, Company's access and/or use of the Road may cause impacts on the Road which require mitigation to ensure the public's continued ability to access and use the Road;

WHEREAS, County desires to grant to Company a non-exclusive right to utilize the Road for the purposes described herein, subject to the terms stated herein, in exchange for Company's maintenance and mitigation of impacts caused by Company's use of the Road;

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, County and Company agree as follows:

1. GRANT: County hereby grants to Company, subject to the terms of this Agreement, a non-exclusive right to access, enter upon, and utilize the Road to access, construct, maintain, service and operate various Company's Facilities. County hereby acknowledges that, for adequate consideration discussed below, Company is exempt from and not obligated to comply with any of the County's Spring Frost Law weight restrictions or County's Inclement Weather Restrictions of 20,000 lbs on gravel portions of the Roads for the term of this Agreement. Company's use of the Road does not affect any obligation of Company to obtain any necessary LoadPass and other necessary permits. LoadPass permits, when required, will be issued at no cost to all parties for the Roads and time duration associated with this Agreement. Company's use of the Road does not give Company the authority to block or close, in whole or in part, the Road at any time. Company's non-exclusive use shall mean that all other persons or entities, private or public, shall have the same access and non-exclusive use of the Road as Company under the terms of this Agreement.

The Parties acknowledge and agree the terms of this Agreement only apply to the Road described herein and that separate agreements with Company are required for use of additional roads owned by County in conjunction with access, operation, and maintenance of Company's Facilities.

2. CONSIDERATION FOR USE: Company's use of the Road for access, construction, operation, and maintenance of Company's Facilities is expected to generate roadway usage exceeding normal use and may result in damage to the roadway surface or sub-surface of the Road or property adjacent to the Road, including, but not limited to, rutting, loss of gravel, damage to subgrade, damage in or to right of way, culverts and/or ditches, and/or damage to drainage and/or to drainage ways, structures, or facilities.

- 1) As consideration for non-exclusive use of the Road under the terms of this Agreement, Company shall, at its own cost and expense: Prior to use of the Road by Company under this Agreement, the County and Company shall complete a pre-haul road inspection of the Road and adjacent areas. Company shall provide meeting minutes from the pre-haul road inspection and the County shall approve the meeting minutes. Company shall provide the County a video-tape, digital imaging, or other similar media documenting the pre-haul condition of the Road including the rights of way, culverts, ditches, drainage ways, structures, and facilities at Company's sole cost, expense, and in a format acceptable to the County.
- 2) Employ procedures to prevent excess dirt and/or debris from being deposited onto the Road and/or rights of way, or the culverts, ditches, or drainage ways, structures, or facilities, regardless of the source or cause of any such dirt and/or debris. Upon becoming aware of dirt and/or debris, Company agrees to immediately remove such items from the foregoing areas, regardless of the source of dirt and/or debris, keep the Road passable and safe for vehicular traffic or other public access or use at all times, and keep the rights of way, culverts, ditches, and drainage ways, structures, or facilities clear. All loads hauled by Company, or its agents, employees, affiliates, contractors, subcontractors, and workforce, should be tarped for aggregate loads while accessing or using the Road. In the event a load hauled is not tarped, Company hereby agrees to fully and completely liable for any damages caused as a result of the failure to tarp.
- 3) Keep the Road open for access and travel by the public, County employees, officials, contractors, agents, and by emergency vehicles at all times during the term of this Agreement. Company shall take all measures to ensure the Road is in good condition and repair and remains passable and drivable in all weather conditions, inclement or otherwise.
- 4) Perform routine maintenance on the Road to meet the standards as prescribed by County, including dust control, blading, snow and ice removal, gravel replacement or addition, or other County requirements related to routine maintenance. This Agreement pertains to routine maintenance, repairs needed as a result of an "Act of God" are specifically excluded from this Agreement
- 5) Make improvements to the Road agreed to by the County and Company, at Company's sole expense, unless agreed to otherwise by the County and Company.

- 6) Upon awareness of any damages to the Road, or any of the rights of way, culverts, ditches, and drainage ways, structures, and facilities, during the term of this Agreement, Company shall contact County immediately to report the location and the nature of the damages and consult and work with the County to repair any such damages at Company's sole expense, regardless of whether the damages resulted from Company or from any other third-party. Any such repair must be completed in accordance with the County's road standards and approved by the County before commencing such repair and after completion of such repair.
- 7) Be responsible for snow and ice removal on the Road and shall meet the standards as prescribed by County for snow and ice removal. Snow removal for the Road will be performed at Company's sole expense.
- 8) Install any track-out pads or track-out measures deemed necessary by the County.
- 9) Bear the costs of the purchase and installation of any additional signage, or other traffic control devices, needed during Company's use of the Road. Signage and traffic control devices must meet MUTCD requirements and be approved by County before purchase and installation, including the location for signage and traffic control devices.
- 10) Comply with all applicable County, State, and Federal laws, regulations, statutes, rules, or orders related to Company's access and use of the Road under this Agreement, including obtaining any necessary permits or licenses, except as stated in this Agreement.
- 11) Send written notice to the County Road & Bridge Department prior to completion of its operations in order for a joint post-inspection of the Road to be conducted and documented, at a time agreeable to County and Company. Photographs and/or a digital recording, at the County's discretion, will be taken during this joint post-inspection.
- 12) Obtain any necessary approach and/or road crossing permits from the County or adjacent landowners related to the use of the Road or performing any work under this Agreement. Company shall not relocate any driveway or approach without obtaining the County's prior written permission.
- 13) Reseed any disturbed areas within the County's right-of-way, if requested by the County Highway Department.

(B) County hereby authorizes Company to perform the repairs, maintenance, and improvements to the Road authorized under this Agreement. Except in the case of an emergency, Company must give the County Highway Department seventy-two (72) hours advance notice before commencing any such repair, maintenance, or improvement to the Road. Any such repairs, maintenance, and improvements must be in accordance with the County's road standards and within the time frames set by the County Highway Department. Company shall have the sole authority with respect to selecting and hiring contractors for repairs or improvements to the Road, except that any contractor hired to repair, maintain, or improve the Road, or any part thereof, must be licensed and in good standing in the State of North Dakota at the time any such repair, maintenance, or improvement is performed by said contractor. Company, at its sole expense, shall

timely pay and discharge all contractors for services and materials furnished in repairing, maintaining, and/or improving the Road, and ensure that no lien for such services and materials encumber the Road or any other County property. The County reserves the right to monitor and inspect any work to repair, maintain, or improve the Road and to require remediation and completion of any work which does not meet the County's road standards or is not satisfactory to the County Highway Department.

(C) During the term of Company's use of the Road under this Agreement, if an Engineer for the County or the County Road Superintendent believes there is damage to the Road, the County shall notify Company of such damage and Company shall make repairs to the Road, as deemed appropriate by the County Highway Superintendent. Company shall commence work within forty-eight (48) hours and have fourteen (14) calendar days to complete the repairs. If the repairs are not able to be completed in fourteen (14) calendar days, Company shall notify the Engineer for the County or the County Road Superintendent as to why the repairs are not able to be completed, along with an estimated timeline for their completion which shall be approved by the County. Should the repairs not be completed after fourteen days, or within the County approved timeline, the County shall retain the right to utilize the posted performance and maintenance bond for the repairs.

(D) Upon notification to the County at the conclusion of Company's use of the Road or per this Agreement, Company must restore the Road to the original pre-haul condition or better than was recorded during the pre-haul road inspection conducted in accordance with this Section 2. Company's obligation to restore the Road, includes, but is not limited to, subgrade condition, thickness and gradation of gravel, roadway profile, rights-of-way, shoulders, culverts, bridges, ditches, drainage, signage, seeding, and other structures.

3. COUNTY'S OVERSIGHT: Notwithstanding anything in this Agreement, the Parties acknowledge and agree that the County, by state law, has and shall continue to have during the term of this Agreement oversight and supervision of the Road for the purpose of inspecting and monitoring the Road, including with regard to any repair, maintenance, and improvements by Company.

4. HAZARDOUS OR DANGEROUS CONDITIONS: Each Party, to the extent it becomes aware or has knowledge, shall notify the other Party of any hazardous or dangerous conditions on the County Roads. The County retains the right to suspend Company's use of the Road should it determine significant, life-threatening, public safety hazards exist on the Road, until said hazard is remedied.

5. EMERGENCY CONTACTS: The County and Company shall provide the name and contact information (phone number and email address) to one or more persons to be contacted in the event of emergencies related to the Road.

6. FINANCIAL SECURITY POSTING: Cost estimates for the repair, maintenance, and improvement of the Road shall be prepared by Company and approved by the County. The cost estimates are found within Exhibit D, attached hereto and made part of this Agreement. Prior to the commencement of access and use of the Road under this Agreement, Company shall post a

performance and maintenance bond in a form approved by the County to be delivered to the County, in the amount of: \$_____ per gravel mile of road used by Company, to ensure the Road is repaired, maintained, and/or improved by Company as required under this Agreement and to otherwise ensure Company complies with its obligations under this Agreement. The amount of financial security or the actual draws thereon in no way limits the liability of Company to reimburse the County for expenses and costs associated with this Agreement. Any further payment by Company above and beyond the amount of financial security posted by Company shall be by mutual written agreement between the Parties.

7. **INDEMNITY:** Company agrees to indemnify, defend, and hold County harmless from any injury, loss, claims, actions, damages, liability, causes of action, demands, judgments, suits, costs, and expenses including reasonable attorney's fees resulting from loss of life, personal or bodily injury, damage to property, or any other incident arising during Company's access to or use of the Road, Company's repair, maintenance, or improvement of the Road, Company's performance of any of its obligations under this Agreement, or Company's actions under or related to this Agreement, including actions resulting in the loss of life, personal or bodily injury, damage to property, or any other incident on the Road caused by a third party.

8. **INSURANCE:** Company shall procure and endeavor to maintain in effect throughout the duration of this Agreement, and for a period of two (2) years thereafter, insurance coverage not less than the types and amounts specified below. Certificates of Insurance shall be provided to the County prior to the use of the Road by Company under this Agreement and shall list the County as an additional insured.

- Commercial General Liability – not less than \$1,000,000 per occurrence and \$2,000,000 aggregate;
- Automobile Liability – not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and
- Worker's Comp-Statutory per North Dakota law

Company must maintain the required insurance coverage in force at all times. Company's failure to do so will not relieve Company of any liability or contractual obligation or responsibility. In the event of Company's failure to maintain the required insurance, the County may order Company to immediately stop work and upon seven (7) calendar days' notice give Company an opportunity to cure. In the event Company does not cure with that time period, the County may terminate this Agreement, and/or pursue its remedy for breach of this Agreement as provided herein and by law, or pursue any other remedy provided by this Agreement or the law.

9. **DEFAULT:** Except as stated herein, any failure by a Party to perform an obligation hereunder which is not remedied within thirty (30) calendar days after receipt by the defaulting party of written notice of such failure shall be deemed a default under this Agreement and allow the non-defaulting party to exercise all remedies available at law or equity. Notwithstanding the foregoing, in the event any default does not create an imminent hazardous condition and is not reasonably capable of being cured within such thirty (30) day period, so long as the defaulting

party has initiated a cure within seven (7) calendar days and is diligently attempting to effect a cure, the defaulting party's cure period shall extend for a time period reasonably acceptable to the non-defaulting party for the default to be remedied.

10. RELATIONSHIP OF THE PARTIES: The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between the Parties or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either party, except as required by law with regard to improvements, repairs, and/or restoration to County roads, bridges, culverts, and other existing road improvements under this Agreement. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party, except as required by law with regard to repairs, maintenance, improvements under this Agreement.

11. CHANGES; WAIVER: No change or modification of this Agreement shall be valid unless the same is in writing and signed by both Parties. No waiver of any provisions of this Agreement shall be valid unless in writing and signed by the Party against whom the waiver is sought. The failure of either Party at any time to insist upon strict performance of any condition, promise, agreement, or understanding set forth herein shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of the same or any other condition, promise, agreement, or understanding at a future time.

12. SEVERABILITY: The provisions of this Agreement shall be severable if any of the provisions hereof are held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

13. ASSIGNMENT: Neither Party may convey, assign, or otherwise transfer its rights under this Agreement to another party without the prior written consent of the other Party.

14. COUNTERPARTS: This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which taken together will constitute one and the same instrument. Any signature hereto delivered by a Party by email or facsimile transmission shall be deemed an original signature hereto.

15. ENTIRE AGREEMENT; AMENDMENT: It is mutually understood and agreed that this Agreement constitutes the entire agreement between the Parties and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representations or statements, verbal and written, have been made that modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in writing executed by the Parties.

16. VENUE AND CHOICE OF LAW: The laws of the State of North Dakota shall govern this agreement, and any legal proceeding regarding this agreement shall be brought before the District Court of McKenzie County, North Dakota. Further, by performing these services in

McKenzie County, North Dakota, the Company hereby submits to the jurisdiction of the District Court of McKenzie County, North Dakota.

17. NOTICES: Except as provided for elsewhere, all Notices required or permitted hereunder shall be given by certified mail, postage prepaid, return receipt requested, or by overnight express delivery by a nationally recognized overnight courier with signature receipt, directed as follows:

- If intended for County, to:
McKenzie County State's Attorney
201 5th Street NW, Ste 550
Watford City, ND 58854

- If intended for Company, to:
[Name and Title]
[ADDRESS]
[TELEPHONE]

18. TERM OF AGREEMENT & TERMINATION: This Agreement shall commence on the Commencement Date and shall remain in full force and effect for a period of two (2) years (hereinafter "Term"). Either Party shall have the right at any time during the Term to terminate this Agreement for any reason effective upon thirty (30) days written notice to the other Party.

Upon termination of this Agreement and documentation of the Road condition as set forth in Section 2 of this Agreement, any repairs, maintenance, or improvements existing on the date of termination which are required to bring the Road to pre-haul condition or better than was recorded during the pre-haul road inspection conducted in accordance with this Section 2, or work related to Company's other obligations under this Agreement shall be performed in accordance this Agreement and at Company's sole expense. Failure of Company to do so shall entitle the County to draw upon and/or retain the financial security posted by Company to perform the repairs, maintenance, improvements, or other obligations of Company under this Agreement. Any remaining financial security may be returned to Company.

IN WITNESS WHEREOF, County and Company as of the date(s) listed below.

MCKENZIE COUNTY, NORTH DAKOTA

By: _____
Howdy Lawlar, Chairman
McKenzie County Board of County Commissioners

ATTEST:

Erica Johnsrud, McKenzie County Auditor

Dated: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

[MAP OF ROAD TO BE ATTACHED]

EXHIBIT B

Aggregate Class 13 MCK Modified	
Sieve Size or Testing Method	Percent Passing or Testing Requirement
1 Inch	100
¾ Inch	70-100
No. 4	38-75
No. 8	22-62
No. 30	12-45
No. 200	7-18
Plasticity Index (PI)	4.0-10.0
ND T 113, Shale (max %)	12%
AASHTO T 96, L.A. Abrasion (max %)	50%
NDDOT 4, Fractured Faces ¹	20%
¹ Minimum weight percentage allowable for the portion of the aggregate retained on a No. 4 sieve having at least 1 fractured face.	

EXHIBIT C

[COPY OF CERTIFICATE OF INSURANCE]

EXHIBIT D

[COPY OF POSTED FINANCIAL SECURITY AND COST ESTIMATE]