**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:**
   1. 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.
   2. 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.
        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.
   3. The Road shall be centered on the section line, if applicable.
   4. The Company will submit all adjacent landowner approvals to the County that are necessary to construct the road.
   5. All required Federal, State, and Local permits shall be acquired prior to construction commencing of the Road Improvements.
2. **CONSTRUCTION REQUIREMENTS:**
   1. The Company agrees that the Road shall be constructed per the current NDDOT Standard Specifications for Road and Bridge Construction.
   2. 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.
   3. 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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. The Road shall be completed no later than twelve (12) months from the Effective Date of this Agreement.
  2. 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.

1. **POST CONSTRUCTION REQUIREMENTS:**
   1. 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.
   2. The County shall not be responsible for the repair or maintenance of the Road before, during, or after construction.
   3. 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.
2. **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.

1. **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.

1. **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.

1. **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.

1. **EFFECTIVE DATE**

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

1. **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.

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| --- | --- | --- |
|  | **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**