

ROAD USE AGREEMENT
BETWEEN
McKENZIE COUNTY & TERVITA LLC

This Road Use Agreement (“**Agreement**”) is made and entered into, effective as of _____, 2013 (“**Effective Date**”) by and between McKenzie County, whose address is 201 5th Street NW, Suite 1221, Watford City, ND 58554 (“**McKenzie County**”), and Tervita, LLC, whose address is 10613 West Sam Houston Parkway North, Suite 300, Houston, Texas 77064 and its successors and assigns (collectively referred to as “**Tervita**”).

WHEREAS Tervita intends to construct, own, and operate a treatment, recovery, and disposal facility located in McKenzie County, North Dakota (the “**Facility**”);

WHEREAS recent activity related to the exploration and production of oil and gas in McKenzie County has necessitated the upgrade of certain existing county roads;

WHEREAS Tervita and McKenzie County desire to enter into an agreement regarding the upgrade, maintenance, and use of certain county roads in McKenzie County;

WHEREAS McKenzie County intends to rebuild portions of County Route 14 (“**CR14**”) in 2014 to handle vehicles carrying maximum allowable gross weights as currently defined by the North Dakota Department of Transportation (“**NDDOT**”);

NOW THEREFORE, for and in consideration of the terms and covenants set forth herein, McKenzie County and Tervita hereby agree as follows:

1. **Construction, Maintenance, and Use:**

A. **Construction and Maintenance of CR14:** McKenzie County will be solely responsible to plan, design, procure and oversee the rebuild of CR14 (“the Work”) in accordance with NDDOT recommended standards so that the CR14 will be able to carry maximum allowable gross weights. Tervita will share equally with McKenzie County in the cost of rebuilding the segment of CR14 that is located between Highway 23 and 108th Avenue NW, under the following conditions: (1) CR14 will be built to handle maximum allowable gross weights; (2) Tervita’s obligation shall not exceed \$1.7 million and will make payment for its share to McKenzie County on May 1, 2014 or authorization of the construction work, whichever is later; and (3) McKenzie County will be solely responsible at all times for the usual maintenance of County Route 14, including all costs associated therewith.

B. **Construction and Maintenance of 108th Avenue NW:** Tervita shall upgrade the segment of 108th Avenue NW that is located between County Route 14 and the Facility entrance (the “**Facility Segment**”) with gravel and dust suppressant.

Tervita shall maintain the Facility Segment of 108th Avenue NW for all traffic associated with its Facility so long as the Facility remains in operation. This maintenance shall include the following:

- 1) In the one-year period following the Effective Date, Tervita shall apply magnesium chloride, in accordance with McKenzie County standards, a minimum of three times. In subsequent and successive one-year periods, Tervita shall apply magnesium chloride, or other dust control materials approved by McKenzie County, a minimum of two times per one-year period.
- 2) McKenzie County shall also continue to provide maintenance of 108th Avenue NW including the Facility Segment that is equal to the county's historical maintenance at the sole cost of the county.
- 3) Tervita or its agent(s) shall provide at its sole cost such additional maintenance as necessary to maintain the traffic for its operations by filling potholes, grading, ditch cleaning, use of water to further enhance dust control, and litter pick up.

C. **Road Use:** Vehicles entering and exiting the Facility must meet the applicable requirements of the North Dakota Department of Transportation and other local, state, and federal agencies. Tervita, to the extent it is able, will assist McKenzie County in assuring such vehicles meet such requirements. Tervita will route its truck traffic, employees and visitors via CR14 and 108th Avenue NW.

D. **Weight Restrictions:** McKenzie County shall remove existing weight restrictions and may not enact new weight restrictions on the above-described segments of County Route 14 or 108th Avenue NW, so long as this Agreement remains in effect. However, McKenzie County may impose such weight restrictions as climatic conditions dictate, in order to prevent damage to the road.

E. **Signage:** Tervita may place appropriate and applicable signs, in accordance with McKenzie County zoning ordinances, on County Highway 23, County Highway 73, County Route 14, and 108th Avenue NW.

2. **Assignment:** This Agreement, and Tervita's rights herein, may be sold, assigned, or leased in whole or in part, and the terms, conditions, and provisions of this Agreement are a covenant running with the land and shall inure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, personal representatives, successors, and assigns.

3. **Force Majeure:** Tervita Parties to this agreement shall not be deemed to have defaulted or failed to perform any of its obligations under this Agreement if Tervita's their ability to perform or the alleged default shall have been caused by an event or events beyond the control and without the fault of Tervita either including, but not limited to acts of God, acts of government, embargos, fire, flood, explosions, acts of a public enemy, strikes, labor disputes, vandalism, civil riots or commotions, or the inability to obtain equipment, supplies, or materials, etc.

4. **Breach or Default:** No litigation shall be initiated by McKenzie County for damages or cancellation of this Agreement with respect to any alleged breach or default by Tervita

hereunder, for a period of at least 60 days after McKenzie County has provided Tervita written notice fully describing the breach or default, and then only if Tervita fails to commence to remedy the breach or default within such period. In the event the matter is litigated and there is a final judicial determination that a breach or default has occurred, this Agreement shall not be forfeited or cancelled in whole or in part.

~~5.~~ No part of this agreement shall prevent McKenzie County from closing temporarily any portion of CR14 or 108th Avenue NW should conditions or circumstances cause the roadway or its use to threaten the safety, health, or wellbeing of potential users of such roadways here addressed. If temporary closing is required in the sole discretion of the McKenzie County Road Department, McKenzie County will take steps to remedy the situation and reopen the roadway as is reasonable. During this closing, McKenzie County will work with Tervita as is reasonable so that an alternate route can be used by Tervita for its operations.

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~~4-6.~~ Nothing in this agreement shall be construed as a promise, agreement, or obligation to require McKenzie County to continue CR14 or 108th Avenue NW in their current location and route.

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~~5-7.~~ **Governing Law:** This Agreement and all transactions and activities contemplated herein shall be governed by and construed in accordance with the laws of the State of North Dakota without regard to principals of conflicts of law.

~~6-8.~~ **Construction:** McKenzie County and Tervita acknowledge and represent that this Agreement is the result of an arm's length transaction and negotiation and each party has had the benefit of advice of counsel. Any ambiguity that may arise regarding the terms of this agreement now or in the future shall not be construed against either party.

~~7-9.~~ **Counterparts:** This Agreement may be executed in counterparts, each of which will be deemed an original document but all of which, when taken together, will constitute a single document.

EXECUTED as of the date of acknowledgement, but this Agreement is effective as of the Effective Date mentioned above.

