

AGREEMENT FOR USE AND RESTORATION OF HAUL ROAD

THIS AGREEMENT entered into by and between _____ TOWNSHIP, a political subdivison of the State of South Dakota, of _____ County, South Dakota, hereafter referred to as the "Township" and _____, of _____, South Dakota _____, hereinafter referred to as the "Hauler" as follows:

WHEREAS, Hauler plans to use township roads in transporting any item including but not limited to products, equipment, materials, and/or supplies over township roads; and

WHEREAS, the Township and the Hauler anticipate that as a result of the Hauler's use of township roads, accelerated deterioration or wear may occur. Thus repairs or improvements will be required and additional maintenance expenses will be incurred by the Township; and

WHEREAS, the Township is responsible for constructing, altering, improving, and maintaining township roads under the supervision and direction of its Board of Supervisors; and

WHEREAS, the Township does not have the assets or resources necessary to adequately maintain the roads in the proper condition for public safety.

NOW THEREFORE, in consideration of the terms, conditions, and covenants contained herein, it is mutually agreed as follows:

1. PURPOSE:

This Haul Route Agreement shall be completed for existing, new, and expanded hauling operations that may cause accelerated deterioration of township roads. These hauling operations shall include but not be limited to: Haulers, subcontractors and employees.

2. DEFINITIONS

- A. Additional Maintenance. "Additional Maintenance" means grading, graveling, reshaping, repair, and/or modification performed on township roads in excess of the same operations performed as routine maintenance by the Township.
- B. Township Road. "Township Road" means a street, road, or other public way, including shoulders, and right-of-way designated for the purpose of vehicular traffic and under the jurisdiction of the Township.
- C. Haul Road. "Haul Road" means any Township road, bridge, or other structure which is used for transporting items including but not limited to products, equipments, materials and/or supplies and as a result incurs deterioration.
- D. Haul Route. "Haul Route" means the system of haul roads between a source site and the destination and/or the source site and the nearest major intersection as determined by the Township.

E. Improvements. "Improvements" mean roadway improvements required by the Director because of the Hauler's use of the haul road.

3. GENERAL AGREEMENT AS TO ROAD USE:

A. The Hauler understands and agrees that, although the haul roads covered by this Agreement are on the Township Road System and are subject to normal traffic use the Hauler, by virtue of its use of the road as a haul route, assumes responsibility for additional maintenance and signing costs on such roads resulting from its use of such roads as a haul route.

B. The Township hereby agrees to the Hauler's use of the haul roads, as shown on the attached map "A", covered by the Agreement subject to the conditions contained herein. The Hauler shall be responsible for obtaining any other permits or licenses which the Township or any other governmental entity may required to operate or move its vehicles on county roads. This Agreement shall not serve to relieve any operator of a Hauler's vehicle from complying with applicable speed limits, weight restrictions, or other posted restrictions.

C. Any improvements to or widening of the road necessitated by the Hauler's operations, including modification of roadway approaches to accommodate transport vehicles, shall be considered incidental to the hauling performed, shall be made at the Hauler's sole expense unless otherwise authorized in an addendum to this Agreement. Any such improvement shall be authorized by Township permit.

4. TERMS:

A. The Townships have determined that a Hauler is using Township roads between the source site in such a quantity for usage as to cause accelerated deterioration or damage. Said route is described as township road running east and west and township road known as bordered by on the east and on the west and township road running north and south bordered on the south and on the north. Said road described in this paragraph is hereby designated as "Haul Road".

B. The Township shall maintain the Haul Road at the same level of maintenance as other roads within the township including but not limited to blading, graveling and snow removal.

C. The Hauler shall be responsible for any costs associated with extraordinary maintenance and graveling, specifically additional blading, grading, gravel, or snow removal done by the Township over and above the customary maintenance done on other roads within the township.

5. Extraordinary maintenance and graveling shall be determined by comparing the maintenance and graveling required for the Haul Road to the maintenance and graveling required for other Township roads. In other words, the Township shall maintain and gravel the roads in the same schedule as the other Township roads. To the extent additional maintenance and graveling is required, the Hauler shall be responsible for those costs.

6. Unless the Hauler receives prior authorization from the Township, any extraordinary

maintenance and graveling shall be done by and through the Township contractor and shall meet Township specifications. The Township agrees to designate one of its supervisors as the contact person for the Hauler to call seeking authorization to improve, repair or maintain any portion of the Roads. The Township agrees to promptly schedule a special meeting of the Board of Supervisors to consider any Hauler's request, and to thereafter promptly report back its decision to the Hauler through the designated contact person.

7. The Township will bill Hauler each month for any costs Hauler is responsible for under the terms of this Agreement. Hauler shall reimburse the Township within ten (10) days of receipt of the bill. If the Hauler fails to promptly make payment interest shall accrue at the rate of eighteen (18%) percent per annual, or the rate which is charged by the contractor to the Township, whichever is less.
8. The Hauler acknowledges that, to the extent already provided for by law, the Hauler shall be responsible for any and all damage to the road or road right-of-way caused by trucks, semis or other vehicles conducting business with the Hauler. However, no unique standard or obligation not otherwise provided for by law is created by this acknowledgment.
9. The Township shall be responsible for all ordinary snow removal on the above described Haul Road on the same basis as provided to the remainder of the Township by the contractor of the Township. Any additional snow removal shall be at the Hauler's expense.
10. The Township shall be responsible for supervision of traffic and law enforcement upon said Township roads including but not limited to closure of the roads which requires closure of the roads to protect the safety of the public and to preserve said roads from destruction.
11. The Township will not impose load limits or speed limits at this time as there are restrictions through the county. However, the Township reserves the right to establish the same if necessary.
12. It is agreed by and between the parties herein to encourage all vehicles traveling upon said roads drive in a friendly and neighborly manner giving full consideration to the rights and needs for others to use these roads.
13. This Agreement is entered into by the parties based upon current circumstances, and the anticipated use of the Roads by the Hauler following expansion. Depending upon actual traffic patterns after expansion, and depending upon changes in the future use of the Roads by the Hauler following expansion. (Depending upon actual traffic patterns after expansion) and depending upon changes in the future use of the Roads by both the Hauler and other third parties, this Agreement shall be open to modification to the extent future circumstances may warrant, either by agreement of the parties, or by a Court of competent jurisdiction. However, before seeking judicial modification, the parties agree negotiate in good faith in an effort to obtain a mutually agreeable modification of the Agreement which addresses the circumstances as they then exist.

This agreement is binding upon the heirs, executors, successors, assignees and successors of

interest of the parties herein.

IN WITNESS WHEREOF, the parties hereto executed this Haul Route Agreement on the
____ day of _____, 20 ____.

_____ TOWNSHIP

Chairman

Supervisor

ATTEST:

Supervisor

Clerk

Hauler
