

**OGEMA TOWNSHIP
ROAD USE AND RESTORATION AGREEMENT**

This Road Use and Restoration Agreement ("Agreement") is made and entered into this ____ day of _____, 20__ by and between Ogema Township, Pine County, Minnesota, 41040 Alma Razor Rd., Hinckley, MN. 55037, ("Town") and _____, with offices located at _____, _____, _____ ("Hauler").

Recitals

- A. The Town Board of Supervisors ("Town Board") is the road authority for the Town's roads and is authorized by Minnesota Statutes, sections 164.02; 164.36, and other law to manage and regulate its roads;
- B. On April 10, 2003, the Town Board adopted the Ogema Township Road Ordinance ("Ordinance") to regulate its right-of-ways, including Section 12 which requires those proposing to engage in continuous use of any Town roads for hauling heavy loads to enter into an agreement with the Town that imposes such conditions, including requiring a security deposit, as the Town determines are necessary or appropriate to provide for maintenance, dust control, and the restoration of any deterioration caused to the roads as a result of such use;
- C. The Ordinance defines "continuous use" as more than 5 round trips per day or 20 round trips per week and defines "heavy loads" as any vehicle having a gross vehicle weight of the lesser of 7 ton per axle, or 40,000 pounds;
- D. The Town Board has witnessed the damage heaving hauling can cause to its roads, the negative impacts to those living along the roads, the public safety and health concerns resulting from the dust generated and damage done to the roads from continuous hauling, and the costs imposed on the public and the Town's taxpayers by having to spend limited Town funds to repair the damage;
- E. It is a misdemeanor violation, punishable by up to a \$1,000 fine and/or up to 90 days in jail, under Minnesota Statutes, sections 160.2715 and 609.74 to damage or render dangerous for travel a public road and, under Minnesota Statutes, section 169.88(c), any person who by willful acts or failure to exercise due care damages a public road is liable for the amount of resulting damages; and
- F. The Hauler proposes to engage in the following described hauling project ("Project"), which it acknowledges and agrees constitute continuous use for heaving loads under the Ordinance:

Properties being hauled to or from: _____

Period of hauling: From _____ To: _____

Town roads used for hauling: _____

Agreement

In consideration of the mutual promises contained herein, and intending to be legally bound, the parties hereby agree as follows:

1. Haul Routes. The Town roads the Hauler will use for hauling associated with the Project shall be limited to those identified above (collectively the "Haul Roads") and no other Town roads shall be used for hauling related to the Project. At the request of either party, the Town and the Hauler shall conduct a joint inspection of the Haul Roads to occur prior to start of the Project in order to evaluate the pre-hauling condition of the Haul Roads.
2. Security. Prior to initiating any hauling associated with the Project the Hauler shall deposit with the Town cash or a certified check in the amount of \$500.00 ("Security") to serve as security in support of its maintenance and restoration obligations under this Agreement. The Town will deposit the Security in its account and use the funds as needed to perform or complete any maintenance or repair work required by this Agreement if the Town determines the Hauler has failed to adequately perform any such work. Upon completion of the Project and the restoration work, the Town will return any remaining Security to the Hauler without interest.
3. Special Permit. The Hauler represents to the Town that a special permit to haul in excess of applicable weight restrictions [____ is] [____ is not] needed and, if needed, that no hauling in excess of the weight restrictions shall occur on the Haul Roads without first obtaining a special permit from the Town as provided in its Ordinance.
4. Maintenance During Project. The Hauler shall be responsible, at its own cost, for providing the maintenance work outlined in this section on the Haul Roads during the period of the Project. The Hauler must obtain the Town's approval for its plans for providing the required maintenance and restoration work prior to commencing the Project, including approval of any contractors the Hauler intends to have perform any work. The Hauler may request the work be provided by the Town through its road maintenance contractor, to the extent such services are provided by the road contractor, and paid for directly by the Hauler.
 - (a) Dust Control. The Hauler shall provide dust control on the Haul Roads as often as reasonably needed to control the dust generated by its hauling activities, but shall at a minimum provide the following dust control services: _____
_____.
 - (b) Gravel. The Hauler shall provide Class V gravel on the Haul Roads as reasonably need to keep the roads properly graveled, but shall at a minimum provide the following gravel services: _____
_____.
 - (c) Grading. The Hauler shall provide for the grading of the Haul Roads as often as needed to maintain the shape of the roads and to remove any rutting or washboarding that may occur, but shall at a minimum provide the following grading services: _____
_____.

- (d) Warning Signs. The Hauler shall be responsible for erecting such warning signs on the Haul Roads as may be required or as is otherwise appropriate to warn the traveling public of its hauling activities or of any road maintenance or restoration services it is providing.
5. Restoration of Haul Roads. The Hauler shall be required to restore the Haul Roads to at least the same condition they were in prior to the start of the Project. The Town may exercise reasonable discretion in determining what work is needed to restore the Haul Roads to their pre-Project condition and to determine when the restoration work has been satisfactorily completed.
 6. Failure to Maintain or Restore. If the Hauler fails to perform the maintenance or restoration work on the Haul Roads as provided in this Agreement, the Town may use the Security to perform the work. If the Security is not sufficient to pay for the work, the Town will bill the Hauler for the unpaid costs. If the Hauler fails to fully reimburse the Town for the unpaid costs it incurs within 30 days from the date of the bill, the Hauler agrees that such amount constitutes an unpaid service charge that may be collected against any real property the Hauler owns in the state pursuant to Minnesota Statutes, section 366.012. The Town shall certify the unreimbursed amount, together with collection costs, to the appropriate county auditor for collection together with the taxes imposed on such property. The Town may also pursue any other option available to it under law to collect any unreimbursed amounts from the Hauler.
 7. Compliance. The Hauler is responsible for comply with all applicable federal, state, and local laws, rules, regulations, and ordinances and for obtaining all other permits and permissions that may be required related to the Project and its hauling activities.
 8. Insurance. During the entire term of this Agreement the Hauler shall maintain, and ensure any contractors performing any maintenance or restoration work have, commercial general liability insurance and business automobile liability insurance coverage for bodily injury and property damage, each with a per occurrence limit of at least \$500,000.
 9. Indemnification. The Hauler hereby agrees to protect, defend and hold the Town, its officers, employees, and agents harmless from and indemnified against any and all loss, costs, fines, charges, damage and expenses, including, without limitation, reasonable attorneys' fees, and consultants' and expert witness fees due to claims or demands of any kind whatsoever made against the Town arising out of or related to: (i) the Project; (ii) any claim by the State of Minnesota, any of its agencies, any other person pertaining to the violation of any law, rule, regulation, ordinance, permit, or permission; (iii) by reason of the execution of this Agreement or the negligence or non-performance of this Agreement; or (iv) any negligence, omission, or misconduct of the Hauler. This indemnity shall be continuing and shall survive the performance, termination or cancellation of this Agreement. Nothing in this Agreement shall be construed as a limitation of or waiver by the Town of any immunities, defenses, or other limitations on liability to which the Town is entitled by law, including but not limited to the maximum monetary limits on liability established by Minnesota Statutes, Chapter 466.
 10. Term. This Agreement shall remain in effect until the Project is completed, all restoration work is completed to the Town's satisfaction, and the Town has been fully reimbursed for its costs.

11. Miscellaneous Provisions.

- (a) Authority. The Hauler and Town represent and warrant that they have the respective power and authority, and are duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to execute, deliver and perform its obligations under this Agreement.
- (b) No Third-Party Beneficiary. This Agreement is made and entered into solely for the benefit of the parties and no other person shall have any interest in or right of action based upon any provision of this Agreement.
- (c) Severability. If any provisions of this Agreement are determined to be unenforceable, invalid or excessive, this Agreement shall be modified as needed to implement the intent of the parties to the maximum extent allowable under law and the remainder of this Agreement shall remain unaffected and in full force and effect.
- (d) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota.
- (e) Modifications. This Agreement constitutes the entire agreement between the parties and no amendments, modifications, or waivers of this Agreement shall be effective unless reduced to writing and signed by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and is effective as of the day and year first above written.

(Hauler)

Print Name

Sign Name

Date: _____

Ogema Township
(Town)

Chairperson

Attest: _____
Clerk

Date: _____