

Master Road Use Agreement
Road Use Agreement No. _____

THIS AGREEMENT ("Agreement") made in duplicate originals effective as of this ____ day of _____, 20__ ("the Effective Date")

BETWEEN:

CHEYENNE COUNTY
51 South 1st
P.O. BOX 567
CHEYENNE WELLS, CO 80810
(719) 342-0641

(the "**County**")

-AND-

[Company Name]
[Company Address]
[Company Phone Number]

(the "**Company**")

1. DEFINITION OF TERMS USED IN THIS AGREEMENT

"**Affiliate**" shall mean and refer to any person or entity controlling, controlled by, or under common control with Company.

"**Appurtenance**" means:

A sidewalk, ditch, or any type of wall, fence, guardrail, curb, pavement marking, traffic control device, illumination device, mailbox or barrier adjacent to or in, along or on a road, or any construction, obstruction, erection or any situation, arrangement or disposition of any earth, rock, tree or other material or thing adjacent to or in, along or on a road that is not on the traveled portion of the road.

"**Business Days**" means:

Monday thru Friday, during normal business hours of 8am to 4pm, excluding statutory holidays.

"**Haul Route**" means those Roads that are identified in the map submitted by the Company that specifies all Roads to be used by the Company to move/haul goods, equipment, and materials for any purpose and which have been approved as Haul Routes by the County, either with or without restrictions, together with any appurtenances and all associated improvements to said Roads for

intersection upgrades and access points. The Company shall not move or haul goods, equipment or materials on any road which is not designated as a Haul Route.

"Legal Load" means:

(i) the maximum gross weight that may be borne by a tire, an axle or an axle group or any of them; or

(ii) the maximum gross weight that may be borne by a public vehicle or combination of public vehicles on a highway, secondary road, rural road or street and as set out from time to time under the Traffic Safety Act and regulations or orders made there under.

"Road" means:

A road under the direction, control and management of the County, including:

(i) a developed road on which improvements such as grading or surfacing have been made for the purpose of public access and includes any Appurtenances, and includes any culvert or bridge forming part of a public road and any structure incidental to a public road including but not limited to the support of any roadway;

(ii) undeveloped surveyed road allowance or road plan.

"Pre-Inspection" means:

Haul Routes will be inspected and photographed prior to the haul or rig move before commencing.

"Post-Inspection" means:

Haul Routes will be inspected and photographed after the haul or rig move out has been completed.

"Commodity" means:

A physical substance, such as food, grains, and metals, which is interchangeable with another product of the same type, and which investors buy or sell, usually through futures contracts. The price of the commodity is subject to supply and demand.

2. PURPOSE OF AGREEMENT

The purpose of this Agreement is to define the terms and conditions under which the Company shall be permitted to utilize roads within Cheyenne County in connection with its [Project Name] project (the "Project"). The parties to this Agreement agree:

(a) that in the event there is damage from the use of any Roads within Cheyenne County which damage in any way results from, or is in any way related to, the use of said Roads by the Company during the course of the Project, its agents, employees, contractors and/or any person or entity providing services to the Company for the hauling or moving of goods, equipment or materials, the Company shall be solely responsible for all costs associated with the complete repair of all such damage and for the restoration of any damaged Road to a condition which is at least as good as, or better than, the condition in which the Road existed before use by the Company;

(b) the Company shall be responsible for dust control on all Roads it proposes to use as specified herein;

(c) prior to entering into this Agreement, the Company shall provide the County with a detailed map showing all Roads which the Company proposes to use as Haul Routes in connection with the Project which proposed Haul Routes shall be subject to review and approval by the County as provided below;

(d) the Company shall not utilize any Roads in connection with its Project except as provided herein. It is this Agreement's intention to establish routing for, and regulations governing, the movement of vehicles and equipment, including all surface servicing equipment for the Project;

This Agreement is intended to engage both the County and the Company in an effort to avoid damage to Roads and Appurtenances and to minimize interruptions to the traveling public. The parties acknowledge that this Agreement is entered to address these matters and to protect the Roads and Appurtenances from damage.

3. TERM

(a) This Agreement shall commence on the Effective Date shown on page 1 and shall continue until such time as the Project is decommissioned and all materials, equipment and infrastructure used in connection with the Project is removed from Cheyenne County unless terminated by the County before that date

(b) This Agreement may be terminated by the County in the event Company violates any term hereof provided however that, at least fourteen days before giving any such termination, the County shall give Company written notice of violation specifying the specific nature of the violation and setting forth the County's specific requirements which the Company must meet in order to correct any claimed noncompliance. Company shall have no right to terminate this Agreement for any reason except that the decommissioning of the Project and the removal from Cheyenne County of all materials, equipment and infrastructure used in connection therewith.

(c) Notwithstanding the termination of this Agreement, the provisions respecting liability and indemnification, to the extent of liabilities may have accrued prior to the termination, and provisions respecting settlement of accounts, shall remain in full force in accordance with their terms.

4. PRE-INSPECTION BY COUNTY

Upon receipt by the County of the Company's detailed map of proposed Haul Routes, the County shall conduct a review of such Roads to determine their suitability for use as Haul Routes. Within thirty days after receipt of the Company's map of proposed Haul Routes, the County shall conduct a pre-inspection of the proposed Haul Route Roads. County will attempt to give Company notice of the scheduling of any such inspection so that Company may participate in the inspection but any failure by County to give such notice or of Company to participate in any such inspection shall not in any way affect the inspection or the Company's

obligations hereunder to correct damages caused by the Company's use of any Roads. If, following the pre-inspection, the County, acting reasonably, determines that it is not necessary to impose any restrictions on the Company in relation to the activities specified in the Agreement the County shall notify the Company accordingly, and the Company may proceed to use the Roads as Haul Routes in strict compliance with this Agreement. If, following the pre-inspection, the County determines, in its absolute discretion, that any restriction on the use of the Road as a Haul Route, including, but not limited to, load limits, limitations on hours or conditions or manner of operation, dust control or any other matters relating to the use of the Roads, or that any improvements to any Roads are required prior to their use as Haul Routes in order to protect either the Roads themselves or to ensure their safe use by the Company and by the travelling public, or that any variation from County road standards or restrictions may be necessary or beneficial to the preservation of the Road or to the health or safety of the traveling public, the County shall provide the Company written notice of all restrictions which it determines necessary to impose on the use of any Road as a Haul Route. The Company's use of any Haul Route shall be subject to any restrictions or conditions imposed by the County and shall be in strict compliance with this Agreement. Before any use of any Road as a Haul Route, the Company shall pay to have all such Haul Routes videoed and any observed defects photographed so as to establish the condition of the Road prior to its use as a Haul Route.

5. RESTRICTIONS AND DEVIATIONS FROM ROAD RESTRICTIONS

(a) In the event the Company wishes to alter, change or modify any Haul Route, Company shall notify County in writing of its desire to make such a revision, providing County with a proposed revised Haul Route map and specifying in detail all reasons for any requested change. No change in any Haul Route shall occur until the parties have completed a pre-inspection of the proposed route in accordance with paragraph 4 above. The Company is hereby expressly forbidden from implementing any alteration, change or modification of any Haul Route until it has fully complied with the provisions hereof and has received written approval from the County for any such proposed change, alteration or modification and such route has been videoed and all defects thereon have been photographed. Any deviations from road restrictions granted by the County must comply with County regulations.

(b) In the event the Company is permitted to move any loads which exceed statutory load limits, the Company shall pay for the cost of videoing the road and photographing any visible damage immediately following any such movements.

(c) The Company shall pay to have all Roads used as Haul Routes videoed and any observed damage photographed within thirty days after completion of all movements associated with the construction of the Project.

(d) Both parties shall be provided copies of any road videos or photographs taken by or for or on behalf of either party in connection with the Company's use of any Roads.

6. SECURITY

(a) The County may require that the Company post security for repairs and dust control that are required by paragraph 8(c) below, in an amount to be specified by the County.

(b) If the County requires that the Company post security, the Company shall not haul goods, equipment or materials on the Roads forming the Haul Route until:

(i) it has delivered to the County the security required (in the form of a surety bond for an amount to be determined by the County's Board of Commissioners that is appropriate for the size and scale of the given project); and

(ii) a pre-inspection pursuant to 7(a)(i) has been completed.

7. INSPECTIONS

(a) If Inspections of the Roads identified within this Agreement are required pursuant to Section 4 above, such inspections shall be carried out at the following times in the presence of official designates of both the County and the Company at a time set by the County or by the designate of the County alone if so agreed to by the Company:

(i) prior to use of the Roads and

(ii) following completion of use of the Roads in connection with the construction of the Project.

(b) The County or the Company may, at any time during the term of this Agreement, request that an inspection of the Roads be carried out.

(c) Inspections requested under paragraph 7(b) shall be carried out within two business days of receipt of a request for such inspection, and in the presence of official designates of both the County and the Company.

(d) The County and the Company shall both acknowledge the results of all inspections by having the inspection document(s) signed by their official designates.

(e) Inspection fees shall be paid by the Company to the County as required by County policy.

8. OTHER TERMS AND CONDITIONS

The following terms and conditions shall apply at all times during the term of this Agreement:

(a) Restriction on Use

The County reserves the right to determine the hours during which vehicles and equipment may be moved on the Roads covered by this Agreement, and may temporarily suspend approvals under this Agreement if, in the opinion of the County, acting reasonably, the prevailing weather conditions, or emergencies warrant such suspension.

(b) Maintenance

If required by the County, the Company shall provide, at its sole expense, all equipment, materials and labor required to maintain the road surface in the same condition it was immediately prior to the use of the Road.

(c) Damages

(i) Pursuant to CRS 42-4-512, the Company shall be liable at all times for the repair, to the reasonable satisfaction of the County, of any damage to the Roads caused in whole or in part by the Company's use. Any repairs undertaken shall restore the road surface to the same condition it was in immediately prior to the use of the Road. The Company shall, providing that the weather and weather-related conditions permit, complete these repairs within five (5) business days of being notified by the County of the need for such repairs.

(ii) In the event the Company is prevented by the weather or weather-related conditions from completing the repairs required by the County, pursuant to that specified in 8(c)(i) above, within five (5) business days, the County, acting reasonably, may specify a further period of time within which the Company must complete such repairs.

(d) Costs

In the event that the Company fails to complete the repairs required by the County, pursuant to paragraph 8(c)(i) or (ii) above, the County may draw upon the security to effect the repairs in accordance with the provisions of the surety bond. In the event that the security is not sufficient to cover the cost of repairs, or if no security was posted, the Company shall be liable to the County for all reasonable costs (including reasonable attorney fees and costs) incurred by the County in repairing the roads to the same condition they were in immediately prior to use by the Company and recovering the costs of such repairs. The Company shall have a right to receive, upon a written request to the County, for a full detailing of all expenses incurred by the County.

(e) Emergencies

(i) The County may, in emergency situations, and acting reasonably, and without giving any notice to the Company as required elsewhere in this Agreement, take immediate and all action necessary to complete repairs to the Roads that the County deems necessary for public safety.

(f) Notification

The County and the Company shall provide notification to each other of any action taken under 8(c), (d) and (e) above as soon as is reasonably practicable.

(g) Indemnity

The Company shall indemnify the County against all actions, proceedings, claims, demands and costs suffered by the County to the extent that they are directly or indirectly attributable to damage caused by the Company, its employees, agents, contractors or subcontractors to the Roads, but such indemnity shall not apply to the intentional acts or negligence of the County, its employees, agents, contractors or subcontractors. Each party's liability to the other party shall be limited to direct damages and shall exclude any other liability, including, without limitation, liability for special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise.

(h) Force Majeure

No party shall be deemed to be in default with respect to non-performance if due to strikes, lockouts, fire, storm, acts of God or terrorists, or any other cause (whether similar or dissimilar to those enumerated) beyond its control; but lack of finances shall in no event be deemed to be a cause beyond a party's control.

(i) Dust Control

The Company shall provide dust control on the Roads in the manner provided in the approved haul route map.

9. NOTICES

All notices required to be given under the terms of this Agreement, shall be in writing and may be mailed or electronically transmitted, addressed to the parties as follows:

County:

Cheyenne County
Attention: Marcy L. Brossman
Cheyenne County Administrator
P.O. Box 567, 51 S. 1st St.
Cheyenne Wells, CO 80810
Phone: 719-767-5872
Fax: 719-767-5753
Email: ccadmin@rebeltec.net

with a copy to:

Jerry Allen
Land Use Administrator
PO Box 567
Cheyenne Wells, CO 80810
Email: landuse@co.cheyenne.co.us

Company:

[Company Name]
Attention: _____

Address:

[Company Address]

Phone:

[Company Phone Number]

Fax:

E-Mail: _____

Either party may, from time to time, change its address for service by giving written notice to the other party. Any notice shall be deemed to have been given and received: if delivered personally, on the day delivered; if sent by registered mail, on the 4th business day following the day it was posted; and if electronically transmitted, at the start of the next regular business day. In the case of postal disruptions, or an anticipated postal disruption, all notices to be given under this Agreement shall be electronically transmitted or delivered by hand (including by reputable overnight courier).

10. ASSIGNMENT

Except as otherwise provided herein, this Agreement shall not be assigned by either party hereto without the prior written consent of the other party, which consent shall not unreasonably be withheld. Company shall be permitted to assign this Agreement to the following without the prior written consent of County: (a) an Affiliate; or (b) a public utility company provided however that no assignment of this Agreement by Company shall be effective until such time at the assignee has delivered to the County its written undertaking obligating it to fulfill all obligations of the Company hereunder.

11. WAIVERS

(a) Failure by either party, at any time, to require strict performance by the other party of any provision of this Agreement will in no way affect the first party's rights hereunder to enforce such provision; nor will any waiver by either party of any breach be held to be a waiver of any succeeding breach or waiver of any other provision;

(b) No waiver of any breach of a covenant or provision of this Agreement shall take effect or be binding upon a party unless it is in writing.

12. SUCCESSORS AND ASSIGNS

Subject to the limitations on Assignment set forth above, this Agreement shall inure to the benefit of, and be binding upon the County and the Company and their respective successors and permitted assigns.

13. TIME IS OF THE ESSENCE

Time shall be of the essence of this Agreement.

14. SEVERABILITY

If any provision of this Agreement shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof but the invalid, illegal or unenforceable terms shall be reformed, as nearly as possible, to achieve its original intent in a manner which is not invalid, illegal or unenforceable.

IN WITNESS WHEREOF the parties hereto have executed and delivered this Agreement as of the date and year first above written

Name: CHEYENNE COUNTY

By: _____

Print Name: _____

Title: _____

Date: _____

Name: [Company's Name]

By: _____

Print Name: _____

Title: _____

Date: _____

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