

County of St. Paul No. 19



STANDARD ROAD BUILDING AND MAINTENANCE AGREEMENT

MEMORANDUM OF AGREEMENT made this day of _____, ____.

The County of St. Paul No. 19,
A Municipal Corporation in the Province of Alberta
(Hereinafter known as “the Municipality”)

And

Canadian Natural Resources Limited
(Hereinafter known as “the Industry Partner”)

WHEREAS the Municipality has jurisdiction over all local roadways within the County of St. Paul No. 19;

AND WHEREAS the Municipality is committed to protecting and maintaining every road under its management in a reasonable state of repair, having regard for the character of each road and the area of the Municipality in which it is located;

AND WHEREAS the Industry Partner requires the use of a road that is currently undeveloped or under developed for its purposes in order to carry out its operations, and will benefit from the construction of an improved road;

AND WHEREAS the Industry Partner wishes to ship, haul or receive certain goods, equipment or materials over the road, the movement of which in the Municipality's opinion is likely to result in damage;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the Municipality allowing the Industry Partner to build or improve a road on a statutory road allowance and the mutual covenants and conditions set out herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1) LOCATION:

Location of road to be upgraded or built:

CNRL is accessing 12-1-56-5 W4 through an existing approach off RR 51 which directly accesses an existing surface location. The road to be Upgraded is the 0.8km portion of RR 51 from this approach location headed south to Township Road 560.

as outlined and shown in **Schedule "A"** to this Agreement. (the "Road")

2) CONSTRUCTION OF ROAD

- a. The Industry Partner shall at its sole cost and expense construct the Road, or cause the Road to be constructed, to the standards set out in the County's Municipal Servicing Standards Bylaw, as amended from time to time.
- b. The Industry Partner shall be responsible for the repair and restoration of all damage caused by it or any third party in constructing and installing the Road. Without restricting the generality of the foregoing, the Industry Partner shall restore all open areas, ditches, public roadways and other public areas as nearly as possible to the condition in which they were in immediately prior to the construction and installation of the Road.
- c. The Industry Partner shall arrange for the design, supply, and installation of all required pavement markings and traffic control signs, in accordance with County standards and specifications, as amended from time to time.
- d. Where the Industry Partner is required to obtain a crossing, proximity, ground disturbance or encroachment agreements, or any other agreement, permission, permit or approval required for the construction and installation of the Road, the Industry Partner shall be responsible for payment of all application fees, advertising costs, extra costs, damage claims, and insurance costs related to the noted agreements.
- e. The Industry Partner's obligations with respect to the construction of the Road, as set out in this Part 2 of this Agreement, shall be carried out with reasonable dispatch and to the satisfaction of the County.

3) REPAIRS AND MAINTENANCE

- a. The Industry Partner shall be responsible for all repairs and replacements to the Road, and maintenance of the Road, which may become necessary from any cause whatsoever for a period of twenty (20) years from the date on which the County confirms in writing that the Road has been constructed to its satisfaction in accordance with the requirements of this Agreement (the “Maintenance Term”).
- b. Without limiting the generality of the Industry Partner’s obligations pursuant to this Part 3 of this Agreement, the Industry Partner shall be responsible for the following:
 - i. the removal of obstructions such as gravel, rocks, silt, or concrete, and excess dirt and debris, which are located upon the Road as a result of construction;
 - ii. remedying failure of or damage to the Road resulting from defective materials, improper installation, or third party damage, and;
 - iii. maintenance of the Road to the applicable municipal standards, as amended from time to time, including but not limited to: gravelling, grading, and blading; repairs to and/or replacement of road surfaces; regrading of drainage course, swales, or ditches, and; snow removal.
- c. The Industry Partner’s obligations with respect to the repair and maintenance of the Road, as set out in this Part 3 of this Agreement, shall be carried out at the Industry Partner’s sole cost and expense and to the satisfaction of the County.

4) OTHER INDUSTRY PARTNER OBLIGATIONS

- a. The Industry Partner shall comply with the requirements and regulations under the *Workers Compensation Act*, RSA 2000, c. W-15, as amended from time to time, and shall arrange such insurance as required by the said Act. The Industry Partner shall comply with the requirements and regulations under the *Occupational Health and Safety Act*, RSA 2000, c. O-2, as amended from time to time. For the purposes of the *Occupational Health and Safety Act* the Industry Partner is the Prime Contractor for the work performed pursuant to this Agreement.

5) ACCESS AND INSPECTION

- a. The Industry Partner shall provide the County with free and interrupted access to all parts and aspects of the construction and installation of the Road for the purposes of inspection of construction procedures, sampling of materials used in construction and enforcing compliance by the Industry Partner with the terms and conditions of this Agreement including with respect to repair and maintenance of the Road.
- b. The County is not liable for any damages or claims by the Industry Partner for delays resulting from any inspection. The acceptance or lack of comment on the part of the County with regard to construction of, repairs to, or maintenance of the Road shall not relieve the Industry Partner of its obligations under this Agreement.

6) INSURANCE

- a. Without in any way limiting the obligations or liabilities of the Industry Partner, the Industry Partner shall provide and keep in force during the term of this Agreement insurance policies acceptable to and approved by the County. This protection shall include, but not be limited to the Industry Partner's contingent liability with respect to the activities or anyone, including contractors and subcontractors, or anything done pursuant to this Agreement. The minimum amount of coverage for General Liability for bodily injury, death, and damage to property shall be an amount not less than \$5,000,000.00 per occurrence.
- b. The County shall be named as an additional insured with respect to this Agreement, and the policy shall not be capable of cancellation or material change without a minimum of thirty (30) days' prior written notice to the County. The Industry Partner shall provide a signed original of the insurance policy referred to herein to the County within FIVE (5) DAYS of the execution of this Agreement.

7) SECURITY

- a. The Industry Partner shall, in order to ensure performance of its covenants and obligations under this Agreement, supply to the County on or before the date of this Agreement taking effect, security in the form of an Irrevocable Letter of Credit in a form and on terms and conditions satisfactory to the County in the amount of _____ DOLLARS. The Irrevocable Letter of Credit shall be effective for a period of one year and automatically renewed for additional, one-year periods until the County authorizes its lapse in writing. Security shall remain in effect until

such time as the County has confirmed in writing that the Industry Partner has complied with its obligations pursuant to this Agreement including with respect to the repair and maintenance of the Road.

8) INDEMNITY

- a. The Industry Partner shall indemnify and save harmless the County, its elected officials, officers, employees, and agents from, of, and against all claims, proceedings, demands, damages, actions, costs, expenses (including legal fees on a solicitor and own client full indemnity basis) and judgments of every nature or kind including, without limiting the generality of the foregoing, all damages for personal injury or death arising out of or attributable to:
 - i. any and all actions or conduct of the Industry Partner, its employees, agents, contractors and sub-contractors pursuant to this Agreement, and;
 - ii. any work or act committed or omitted by the Industry Partner, its employees, agents, contractors and sub-contractors in the performance of this Agreement, including but not limited to with respect to the Industry Partner's repair and maintenance obligations pursuant to Part 3 of this Agreement.

This indemnity shall survive the expiration or termination of this Agreement, howsoever it occurs.

9) DEFAULT

- a. If the Industry Partner fails to comply with any provision of this agreement, including its obligations with respect to the maintenance of the Road, the County may, without prejudice to any other rights or remedy the County may have, give notice to the Industry Partner that the Industry Partner is in default of its contractual obligations and instruct the Industry Partner to correct the default within FIVE (5) BUSINESS DAYS immediately following the receipt of the notice. If the Industry Partner fails to correct the default within the time specified in this provision, or such other period of time as is agreed upon by the County and the Industry Partner, then without prejudice to any other right of remedy the County may have, the County may do one or both of the following without further notice to the Industry Partner:
 - i. immediately rectify or cure the default described in the notice. Any and all costs and expenses incurred by the County in rectifying or curing the default described in the said notice shall be amounts

owing by the Industry Partner to the County, and the County shall be entitled to immediate payment from the Industry Partner or from the security provided by the Industry Partner pursuant to this Agreement, or;

- ii. immediately terminate this Agreement, in which case the provisions of Part 10(a) shall apply.

Notwithstanding any other provision of this Agreement the County shall not be under any obligation to complete all or any of the work required to be performed by the Industry Partner pursuant to this Agreement.

- b. In addition to any other remedy the County may have available to it, the County may realize upon the security provided to it by the Industry Partner under the following circumstances:
 - i. at any time during which the Industry Partner is in default of the terms, conditions, and obligations herein contained with respect to the construction and installation of the Road;
 - ii. for the purpose of repairing or maintaining the Road as herein required to be maintained by the Industry;
 - iii. for payment of any amount owing to the County, or;
 - iv. for damages and extra costs incurred by the County.

10) TERMINATION

- a. Termination by the County
 - i. If the Industry Partner is unable to pay its lawful debts as they become due, is adjudged bankrupt, makes a proposal pursuant to the *Companies' Creditors Arrangement Act*, RSA 1985, c C-36, as amended from time to time, commits or threatens to do any act of bankruptcy, commits or seeks to liquidate or be involved in any similar action under any law relating to bankruptcy or insolvency, the County may, without prejudice to any other right or remedy it has, terminate this Agreement by giving the Industry Partner notice that the Agreement will be terminated effective immediately.
 - ii. If the County terminates this Agreement in whole or part, whether pursuant to subsection (1) or otherwise, the County shall if applicable be entitled to (but has no obligation to) finish

the construction and installation of the Road by whatever method the County may consider proper or expedient. In addition to other amount that may be owing under this Agreement the Industry Partner shall be liable to the County for any costs incurred by the County related to the termination of this Contract including but not limited to the County's cost to complete construction and installation of the Road, if applicable, and to repair and maintain the Road for the Maintenance Term or such portion of the Maintenance Term as is unexpired at the date of termination of the Agreement, prorated accordingly. For the purposes of this provision, the County's costs with respect to repair and maintenance of the Road for the balance of Maintenance Term shall be the Maintenance Costs set out in subsection (b)(ii) of this Part.

- iii. Notwithstanding any other provision of this Agreement, termination of this Agreement in any manner by the County shall not limit, affect or invalidate in any manner: those provisions of this Agreement for the benefit of the County which, expressly or by implication, are to operate or have effect after termination; any right of action the County may have as at the date of termination; or any other right or remedy the County may have as a consequence of the Industry Partner's default and the resulting termination of this Agreement.
- iv. The County shall not be liable for any penalties, claims, expenses or costs incurred or suffered by the Industry Partner as a result of the termination of this Agreement.

b. Termination by the Industry Partner

- i. The Industry Partner may not terminate this Agreement prior to completion of construction and installation of the Road (which shall be to the County's satisfaction and in accordance with the requirement of this Agreement) without the County's express written consent, which consent may be unreasonably withheld or subject to such terms and conditions as the County in its sole discretion deems it necessary to impose.
- ii. The Industry Partner may terminate this Agreement at any time after completion of construction and installation of the Road (which shall be to the County's satisfaction and in accordance with the requirements of this Agreement) upon payment to the County of the sum of \$_____ for each year of the Maintenance Term as is unexpired at the date of termination of the Agreement (the "Maintenance Costs"), prorated accordingly. The Industry Partner acknowledges and

agrees that the Maintenance Costs are the parties' best estimate, and a genuine and reasonable pre-estimate, of the County's costs with respect to the repair and maintenance of the Road for the balance of the Maintenance Term.

11) GENERAL PROVISIONS

- a. The Schedules to this Agreement form a part of this Agreement and shall have effect as if set out in full in the body of this Agreement.
- b. If any provision of this Agreement is invalid, illegal, or incapable of being enforced by reason of any rule of law or public policy, all other provisions of this Agreement shall, nevertheless, remain in full force and effect. No provision of this Agreement shall be deemed dependent on any other provision unless expressly so stated herein.
- c. This Agreement embodies the entire Agreement between the parties, superseding any prior Agreement, either oral or in writing, and may only be amended by a subsequent written instrument signed by both parties hereto.
- d. The failure of either party to insist in any one or more instances upon the performance of any of the terms and conditions of this Agreement, shall not be construed as a waiver or relinquishment of any right granted hereunder of the future performance of any such term, covenant or condition, and the obligation of either party with respect thereto shall continue in full force and effect. Any forbearance by the County to seek a remedy for any breach by the Industry Partner shall not be a waiver by the County of its rights and remedies with respect to any subsequent breach.
- e. This Agreement shall be binding upon and shall ensure to the benefit of the successors and assigns to the parties hereto.

IN WITNESS WHEREOF the parties have hereunto caused their respective signatures to be affixed through their respective agents in this regard.

COUNTY OF ST. PAUL NO. 19

Canadian Natural Resources Ltd.

Superintendent of Public Works or Designate

Signature of Representative

Print Name:

Print Name:

Signatures:
