

**CEDAR LAKE TOWNSHIP  
SCOTT COUNTY  
STATE OF MINNESOTA**

**RESOLUTION NO. \_\_\_\_\_**

**OVERWEIGHT PERMIT  
ROAD USE AGREEMENT**

This Overweight Permit/Road Use Agreement (“Agreement”) is entered into and effective this \_\_\_\_ day of \_\_\_\_\_, 2015 by and among \_\_\_\_\_ (the “Owners”) and Cedar Lake Township, a political subdivision of the State of Minnesota (the “Township”) (collectively, the “Parties”).

**RECITALS**

- A. The Owners desire and intend to \_\_\_\_\_ (the “Project”).
- B. In connection with the development and construction of the Project, it will be necessary for the Owners and their contractors and each of their respective agents, employees, and representatives to: transport heavy equipment and materials over roads located in the Township, which may in certain cases be in excess of the design limits of such roads.
- C. This Agreement specifies the commitments made by the Township and by the Owners for the purpose of ensuring that the Owners’ use of the Township’s roads is consistent with existing Township policies.

**AGREEMENT**

In consideration of mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. No vehicles shall exceed a 5-ton axle weight at any time while hauling on Township roads.
2. The Parties understand and agree the authorizations provided by the Township in this Agreement are limited to the following public road rights-of-way: \_\_\_\_\_ (collectively, the “designated haul roads”).
3. The Township shall not acquire additional right-of-way for the Project and makes no representations or guarantees as to the current widths of its public right-of-ways. Owners are solely responsible for securing, at their own cost, such easements, leases, or other interests in land as needed for the Project and hauling activities, and any other uses of, improvements to, or repairs to Township road rights-of-way the Owners.

4. Owners shall drive the shortest rout from the haul site to the closest main haul road.
5. The Township shall monitor Owners hauling activities for any negative impacts resulting from the increased weight of the hauling vehicles including, but not limited to, extensive damage to the roads or unfavorable subgrade conditions.
6. The Township reserves the right, in its sole discretion, to modify or revoke this Agreement at any time upon giving written and/or verbal notice to Owners. The Township shall immediately notify the Scott County Sheriff's Office of any changes in the Agreement terms or status.
7. If this Agreement is modified or revoked by the Township, Owners agree that they shall immediately notify all employees and contractors of the change in Agreement terms or status.
8. While Project hauling and construction activities are in progress, Owners shall maintain the designated haul roads in a condition reasonably satisfactory to the Township Engineer to accommodate the traveling public. Maintenance during the Project shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces to the end of the Project such that all roadways are kept in satisfactory condition at all times. If, at any time, the Owners fail to comply with these provisions, the Township Engineer will notify the Owners of the deficiencies. If the Owners fail to remedy unsatisfactory maintenance within 24 hours after receipt of notice to do so, the Township may immediately proceed to maintain the roadway at the expense of the Owners. If the Township Engineer determines the failure to maintain creates an immediate hazard to public safety, the Township may immediately act to correct the hazard at the Owners' expense without having to wait 24 hours. Maintenance may include, but is not limited to, dust control, sweeping, blading of gravel surfaces, and aggregate surfacing. The Township may, in its discretion, make inspections of the designated haul roads to ensure compliance with the Owners' maintenance and safety obligations.
9. Owners shall be responsible to make certain all of its contractors, subcontractors, agents, employees and representatives comply with all terms of this Agreement.
10. The Owners shall, throughout Project construction, provide and maintain all traffic control devices as deemed necessary for the safe and efficient movement of the public. Should any road become impassable at any time, the Owners shall notify local law enforcement immediately and make necessary accommodations for the traveling public and emergency vehicles. Maintenance of traffic shall be in conformance with the Minnesota Manual of Uniform Traffic Control Devices; this includes, but is not limited to, the following:
  - (a) To advise, warn, and alert the traveling public of construction on all roads, streets, and public trails approaching or crossing the Project; and

- (b) To control and guide traffic through the Project; and if necessary to provide necessary flag persons and pilot vehicles.
11. When hauling activities over any designed haul roads are completed, the Owners shall return said road back to conditions that existed prior to use of the road by Owners. Any damage occurring to a designated haul road during its period of use by the Owners shall be presumed to have been caused by Owners shall be responsible for repairing the damage unless the Owners can reasonably establish the damage was caused by parties other than Owners.
  12. Unless otherwise agreed by the Township Engineer, Owners shall repair any Township roads damaged as the result of Owners activities carried out pursuant to this Agreement within thirty (30) days of being notified by the Township. Where severe damage has occurred which produces unsafe driving conditions, Owners shall repair the damaged road immediately. In the event that the Owners fail to repair any Township roads in accordance with the terms and conditions of this Agreement, the Township may cause the necessary repairs to be completed and bill the Owners. Owners agree that upon being billed by the Township that Owners shall pay the invoice within thirty (30) days.
  13. Owners warrant to the Township for a period of two years from the date the Township Engineer accepts in writing the finished repairs to any Township roads repaired under the terms of this Agreement, that all such repairs have been constructed to their condition for the type of road that existed prior to the use of the road by Owners and shall suffer no significant impairments, either to the structure or to the surface or other usable areas due to improper construction, said warranty to apply both to poor materials and faulty workmanship.
  14. To guarantee compliance with the terms of this Agreement, payment of costs incurred by the Township, or the remediation of any nuisance caused by Owners' failure to comply with the terms of this Agreement, Owners shall furnish to the Township an irrevocable letter of credit or such other security as is acceptable to the Township. The letter of credit or other acceptable security shall be in a form that automatically renews and shall be issued by a banking institution acceptable to the Township. The security shall be in an amount equal to 125% of the Township Engineer's estimated cost of the potential road and drainage impacts from the Project. The letter of credit shall be maintained for at least two years following Project Completion in order to provide financial security for the entire warranty period. Owners and the Township Engineer may agree on a reduced amount for the letter of credit for the warranty period once all items for the restoration work are completed to the satisfaction of the Township in its sole discretion.
  15. It is understood and agreed that Owners shall reimburse the Township for all administrative, legal, planning, engineering and other professional fees and costs incurred in the creation, administration, enforcement or execution of this Agreement. Property Owner agrees to pay all such costs within thirty (30) days of billing by the Township. Bills not paid within thirty (30) days of billing by the Township shall accrue interest at the rate of 6% per year. Further, if the Owners fail to pay said amounts, then the Township may specially assess the costs

thereof against any property owned by Owners within the Township and/or bring legal action against Owners to collect any sums due to the Township pursuant to this Agreement, plus all costs, engineering and attorney's fees incurred in enforcing this Agreement. Should the Township assess Owners' property pursuant to the terms of this Agreement, Owners, their successor or assigns, agree not to contest or appeal such assessment and waives all statutory rights of appeal under Minnesota Statutes, including Minnesota Statutes §366.012 or any other relevant statute(s).

16. Owners agree to pay the Township a permit fee of \$200 per vehicle or \$800 per occurrence that is to be paid to the Township within ten (10) days from the execution of this Agreement.
17. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota, and hereto intend that Minnesota law shall apply to the interpretation hereof. For the purpose of resolving any dispute with respect to this Agreement, each party agrees that the venue for any legal action shall be in Scott County, Minnesota.
18. If any provisions of this Agreement are determined to be unenforceable, invalid or excessive, this Agreement can thereafter be modified, to implement the intent of the Owners and the Township to the maximum extent allowable under law and the remainder of this Agreement shall remain unaffected and in full force and effect.
19. The Parties represent and warrant that it has the respective power and authority, and is 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.
20. This Agreement is made and entered into for the sole protection and benefit of Owners, and its successors and assigns, and the Township. No other person shall have any right of action based upon any provision of this Agreement.
21. Owners shall appoint an agent for service of process in Minnesota and shall provide written notice setting out the name, address and telephone number of said agent to the Township upon the final execution of this Agreement.
22. This Agreement, together with all exhibits hereto, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. Agreement is specifically intended to supersede all prior agreements whether written or oral.

IN WITNESS WHEREOF, the Parties have caused this Road Use Agreement to be duly executed on the day and year first above written.

**CEDAR LAKE TOWNSHIP**

**OWNERS**

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Robert Puncochar, Chairman

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Norman Sticha, Supervisor

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Albert Bisek, Supervisor

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Arnita Novotny, Clerk