

TOWN OF LOMIRA

ROADS PLAN

This Roads Plan ("Roads Plan") is entered into by and among the Town of Lomira ("Town") and _____ ("Owner"). Together the Town and Owner may be referred to as "Parties."

Section 1. Definitions

As used in this Roads Plan:

- (a) **"Approved Haul Route"** means the Town roads identified in Exhibit A, including beginning and ending points, distances, and surface types.
- (b) **"Independent Consultant"** means the road-condition consultant selected and retained by the Town, at Owner's expense, to conduct the Pre-Use Survey and Post-Use Survey.
- (c) **"Owner's Personnel"** means Owner and its successors, assigns, employees, agents, contractors, subcontractors, material suppliers, and their respective transport providers.
- (d) **"Post-Use Survey"** means the independent post-use roadway condition survey described in Section 4.
- (e) **"Pre-Use Survey"** means the independent pre-use roadway condition survey described in Section 3.
- (f) **"Project"** means the hauling or construction activities described in Exhibit A.
- (g) **"Road Superintendent"** means the Town's Road Superintendent or such other designee as the Town Board may appoint.
- (h) **"Security"** means the performance bond, irrevocable letter of credit, or cash escrow posted by Owner under Section 5.
- (i) **"Town Roads"** means the Town roads included in the Approved Haul Route as identified in Exhibit A.

Section 2. Owner Undertakings

Owner agrees to undertake the following in connection with its _____ project, which is further described in Exhibit A ("Project"):

- (a) Owner must provide the Town a detailed transport schedule at least 30 days before using any Town Roads in connection with the Project.

- (b) Owner must provide the Road Superintendent with a copy of each overweight and oversize permit issued by the Wisconsin Department of Transportation or Dodge County promptly upon receipt.
- (c) Owner must schedule Project traffic to reasonably minimize adverse impact on local agricultural hauling. Where practicable, Owner must use County roads rather than Town Roads and limit Town Road use to access to specific properties or driveways.
- (d) If the Project involves school bus routes, Owner must meet with the relevant school district and bus operators before commencing hauling to ensure the safe and timely transport of students.
- (e) The Road Superintendent has unrestricted access to all Town Roads to inspect roads, culverts, and adjacent ditches at any time during the Project.
- (f) Within 30 days of receipt of the Town's detailed invoice of actual costs, Owner must pay the Town up to a total of \$35,000 as reimbursement of the Town's legal fees, engineering fees, inspection costs, other administrative costs, and costs incurred in connection with third-party review of the Pre-Use Survey described in Section 3.
- (g) Owner must widen existing driveways accessing Town Roads to no less than _____ feet wide over the culvert.
- (h) Upon completion of the Project and receipt of the files required in Section 4(c), Owner must provide the Town any as-built drawings of improvements to the Town Roads that Owner, its engineers, contractors, or subcontractors possess.

Section 3. Pre-Use Roadway Condition Survey

- (a) Before commencing any use of Town Roads, Owner must, at its sole expense, engage the Independent Consultant to conduct a Pre-Use Survey of all Town Roads on the Approved Haul Route. The Pre-Use Survey must establish the baseline condition of each road segment ("Pre-Use Condition").
- (b) The Pre-Use Survey must include: (1) video recording of each road segment; (2) still photographs of the full route and specific locations of concern; (3) roadway testing for surface strength and structural adequacy; and (4) a written narrative describing the condition of the road surface, subsurface, culverts, and adjacent ditches. The pre-use inspection form attached as Exhibit B must be completed for each road segment.
- (c) Owner must deliver a copy of the completed Pre-Use Survey to the Road Superintendent promptly upon receipt. The completed Pre-Use Survey is attached to this Roads Plan as Exhibit B.

(d) Owner must pay the Town \$75 per road segment for the pre-use inspection. The Road Superintendent will invoice Owner upon completion of the Pre-Use Survey.

Section 4. Post-Use Roadway Condition Survey

(a) Upon completion of all hauling and construction activities, including any road repairs made by Owner, Owner must, at its sole expense, engage the Independent Consultant to conduct a Post-Use Survey.

(b) The Independent Consultant must compare the Pre-Use Condition with the post-use condition and issue a written Post-Use Condition Report identifying: (1) any damage or degradation to Town Roads caused as a direct result of the Project; and (2) the estimated cost to repair that damage.

(c) Owner must deliver the Post-Use Condition Report to the Road Superintendent promptly upon receipt. The completed Post-Use Survey is attached to this Roads Plan as Exhibit D.

(d) Owner must pay the Town \$75 per road segment for the post-use inspection.

Section 5. Security

(a) Before commencing any use of Town Roads, Owner must post Security in the amount of \$25,000 per centerline mile of Town Road on the Approved Haul Route, multiplied by _____ miles, for a total of \$_____. Security documentation is attached as Exhibit C.

(b) Security may be in the form of a performance bond, irrevocable letter of credit, or cash escrow, each in a form and from an institution acceptable to the Town.

(c) Security must remain in effect until the Post-Use Survey is completed and the Town issues a written release. The Town will issue a written release within 30 days after the Road Superintendent confirms that all repairs required under Section 6 have been satisfactorily completed.

(d) If repair costs exceed the Security amount, Owner remains fully liable for all additional costs under Section 6 and Wis. Stat. § 82.01.

(e) If Owner fails to make any required repair within the time specified in the Town's notice under Section 6(d), the Town may draw on the Security to pay all reasonable repair costs, including administration, engineering, attorney, and consultant fees. The Town will provide Owner with an itemized accounting of amounts drawn within 30 days after drawing.

Section 6. Damage Liability and Repair Obligations

- (a) "Damage" means any damage or degradation to Town Roads, including the road surface, subsurface, culverts, and adjacent ditches, caused as a direct result of the Project. Damage is interpreted broadly.
- (b) Owner is responsible for 100% of the cost to repair all Damage, including associated engineering, inspection, and administrative expenses. This obligation applies to Damage caused by Owner's Personnel.
- (c) If any Town Road on the Approved Haul Route is an unpaved or unimproved road, Owner must, at its sole expense and subject to the Road Superintendent's approval, improve the road with a gravel surface and install or improve culverts to meet Town road standards before commencing use.
- (d) Upon receipt of the Post-Use Condition Report, the Town will notify Owner in writing of any Damage and the required repairs. Owner must begin repairs within 10 days after receiving the Town's notice and complete all repairs within 30 days (or such longer period as the Road Superintendent approves in writing for weather or other legitimate reasons).
- (e) As an alternative to performing repair work, Owner may pay the Town an amount equal to the repair cost estimate in the Post-Use Condition Report plus a 20% administrative fee, within 30 days after the Town's invoice.
- (f) If any repair completed by Owner fails within one year after Project completion, Owner must repair the failure at its own expense within the time specified in the Town's written notice. If Owner fails to make the repair within that time, the Town may complete the work and invoice Owner; Owner must pay within 30 days. If unpaid, the Town may draw on the Security.
- (g) Nothing in this Roads Plan requires Owner to pay for repairs that are part of routine road maintenance unrelated to the Project.

Section 7. Insurance

- (a) Before commencing any use of Town Roads, Owner must furnish the Town Clerk with certificates of insurance evidencing the following coverage, written by a carrier rated B+ or better by A.M. Best:
 - (1) Commercial General Liability: \$1,000,000 per occurrence / \$2,000,000 general aggregate.

(2) Commercial Automobile Liability: \$1,000,000 combined single limit per occurrence.

(3) Umbrella / Excess Liability: \$5,000,000 per occurrence and aggregate, following form over the CGL and Auto policies.

(4) Workers' Compensation: Statutory limits under Wisconsin law.

(b) Each policy must: (1) name the Town of Lomira, its Town Board, officers, employees, agents, and Road Superintendent as Additional Insureds on a Primary and Non-Contributory basis; (2) include a Waiver of Subrogation in favor of the Town; and (3) provide that coverage may not be canceled or materially reduced without 30 days' prior written notice to the Town. The insurance must be written by a company rated B+ or better by A.M. Best.

(c) If Owner allows any required policy to lapse before the Town issues a written release under Section 5(c), the Town may draw on the Security for funds sufficient to procure comparable coverage until Project completion.

(d) As an alternative, Owner may self-insure for the risks described in this Section, provided Owner delivers to the Town written evidence of its self-insurance program and financial capacity acceptable to the Town Board before commencing any use of Town Roads.

Section 8. Indemnification

(a) Owner must defend, indemnify, and hold the Town harmless against all claims, losses, costs, and expenses (including reasonable attorney fees) arising out of or resulting from Owner's use of Town Roads or the Project, except to the extent caused solely by the Town's negligence or willful misconduct.

(b) This indemnification covers claims arising from acts or omissions of Owner's Personnel.

(c) This obligation survives termination or expiration of this Roads Plan and release of Security.

Section 9. Town Obligations

In consideration of Owner's obligations under this Roads Plan, the Town agrees to:

(a) Issue required permits in a timely manner upon Owner's filing of complete and proper applications.

(b) Coordinate with the Road Superintendent and Owner to minimize the impact of Project traffic on local traffic and to minimize delays in moving Project equipment and materials.

(c) Provide Owner, upon request, with electronic files in a standard industry format of available Town road drawings and specifications for the Approved Haul Route.

Section 10. Owner Compliance

Owner must comply with all applicable Wisconsin statutes, Wis. Admin. Code provisions, WisDOT requirements, and posted weight and bridge restrictions while operating on Town Roads. All traffic control devices, signage, and roadway practices must conform to the Wisconsin Manual on Uniform Traffic Control Devices (WMUTCD). Owner is responsible for all activities of Owner's Personnel on Town Roads.

Section 11. Default and Enforcement

(a) Owner is in default if it: (1) fails to post Security before commencing use of Town Roads; (2) allows required insurance to lapse; (3) fails to complete required repairs within the time required under Section 6(d); (4) fails to pay any amount owed to the Town within 30 days after invoice; or (5) materially violates any other provision of this Roads Plan.

(b) Upon default, the Town will give Owner written notice identifying the default. Owner has 48 hours to cure a default involving active road damage and 10 days to cure any other default. If Owner fails to cure within that period, the Town may: (1) suspend Owner's hauling privileges; (2) draw on the Security; and (3) pursue civil recovery for all damages under Wis. Stat. §§ 82.01 and 349.16.

(c) The Town's remedies are cumulative and not exclusive of any other remedy available at law or equity.

Section 12. Term

This Roads Plan takes effect upon execution and remains in effect until: (a) all hauling activities are complete; (b) the Post-Use Survey is completed; (c) all required repairs are satisfactorily completed; and (d) the Town issues a written release of the Security under Section 5(c). The indemnification obligations in Section 8 survive termination.

Section 13. Future Projects

This Roads Plan is limited to the Project described in Exhibit A. Any future use of Town Roads by Owner for a different project, demolition, or other activity requires a separate roads plan or road use agreement with the Town.

Section 14. Notices

All notices under this Roads Plan must be in writing and delivered by: (a) personal delivery; (b) certified U.S. mail, return receipt requested; or (c) overnight courier with tracking. Notice is effective upon receipt. Notices to the Town must be sent to: Town of Lomira, Attn: Town Clerk, _____, Lomira, Wisconsin _____. Notices to Owner must be sent to: _____.

Section 15. General Provisions

- (a) **Governing Law and Venue.** This Roads Plan is governed by Wisconsin law. Any dispute arising under this Roads Plan must be brought in the Circuit Court of Dodge County, Wisconsin.
- (b) **Municipal Authority.** This Roads Plan is entered into under the authority of Wis. Stat. §§ 349.16 and 82.01 et seq. Nothing in this Roads Plan waives the Town's defenses under Wis. Stat. § 893.80, including applicable notice-of-claim requirements.
- (c) **Integration.** This Roads Plan, together with its Exhibits, is the complete agreement of the parties on the subject matter and supersedes all prior negotiations, representations, and understandings.
- (d) **Amendment.** This Roads Plan may be amended only by a written instrument signed by both parties.
- (e) **Assignment.** Owner may not assign this Roads Plan or delegate its obligations without the Town's prior written consent, which the Town may withhold in its reasonable discretion. Any permitted assignment does not release Owner from liability under this Roads Plan.
- (f) **Severability.** If any provision of this Roads Plan is held invalid or unenforceable, the remaining provisions remain in full force.
- (g) **Counterparts.** This Roads Plan may be executed in counterparts, each of which is an original, and all of which together constitute one agreement.

SIGNATURE PAGE
TOWN OF LOMIRA ROADS PLAN

IN WITNESS WHEREOF, the parties have executed this Roads Plan as of the date first written above.

TOWN OF LOMIRA

By: _____ Date: _____

Town of Lomira Chairperson

By: _____ Date: _____

Town of Lomira 1st Supervisor

By: _____ Date: _____

Town of Lomira 2nd Supervisor

OWNER

By: _____ Date: _____

Name: _____

Title: _____

Entity: _____

EXHIBIT A

APPROVED HAUL ROUTE AND PROJECT DESCRIPTION

Project Description:

Estimated Start Date: _____ **Estimated End Date:**

Estimated Weekly Trip Count: _____ **Vehicle Type / GVW:**

Approved Haul Route:

Road Name	Beginning Point	Ending Point	Distance (miles)	Surface Type
TOTAL			_____ miles	

Note: Distance measured in centerline miles to the nearest tenth (0.1) of a mile by the Road Superintendent. Partial tenths are rounded up.

EXHIBIT B

PRE-USE ROAD CONDITION INSPECTION REPORT

Date of Inspection: _____ **Inspector:** _____

Road Segment: _____

From: _____ **To:** _____

Item	Pre-Use Condition	Notes / Location of Concern
Road Surface (type, condition)		
Subsurface / Base		
Culverts (size, condition)		
Adjacent Ditches		
Bridge / Load Restrictions		
Existing Damage (describe)		

Video recorded: Yes No **Photos taken:** Yes No

Road Superintendent: _____ Date: _____

Owner Representative: _____ Date: _____

EXHIBIT C
SECURITY DOCUMENTATION

Form of Security (check one):

- Performance Bond
- Irrevocable Letter of Credit
- Cash Escrow

Security Amount: \$ _____

Issuing Institution / Surety: _____

Policy / Bond / LOC Number: _____

Expiration Date: _____ (must remain in effect through written release by the Town)

Security documentation is attached.

EXHIBIT D

POST-USE ROAD CONDITION INSPECTION REPORT

Date of Inspection: _____ **Inspector:** _____

Road Segment: _____

From: _____ **To:** _____

Item	Pre-Use Condition (from Exhibit B)	Post-Use Condition	Damage / Estimated Repair Cost
Road Surface			
Subsurface / Base			
Culverts			
Adjacent Ditches			
Bridge / Load Restrictions			
Other			
TOTAL ESTIMATED REPAIR COST			\$

Damage caused by Project (Independent Consultant determination): Yes No
Partial

Road Superintendent: _____ Date: _____

Independent Consultant: _____ Date: _____

Owner Representative: _____ Date: _____