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Department PUBLIC WORKS	Policy No. PW (12)	Page 1 of 10
Policy Title TEXAS GATES		

Council Resolution No. C/223/04	Date: April 8, 2004	Cross Reference	Effective April 8, 2004
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Policy

Lacombe County recognizes that there are circumstances where the use of Texas Gates may be considered provided public access is not adversely impacted.

Regulation

1. The installation and use of a Texas Gate within a right of way requires the prior approval of Council.
2. The installation of a Texas Gate will only be considered on dead end roads and where the main use of the road is for access to farm land only.
3. Texas Gates will not be considered on a road that serves a residence.
4. A Texas Gate shall be constructed in accordance with the following specifications:
 - a. Minimum clear width of twenty (20) feet by six (6) feet
 - b. Constructed with bars of pipe or railroad steel and a base of steel or treated timber
 - c. Bars shall not allow an open space of more than four and one half (4.5") inches
 - d. Travel distance of the Texas Gate shall be no less than five feet (5')
 - e. Designed for a minimum gross vehicle weight of 110,000 pounds.
5. Plans and specifications for the Texas Gate must be submitted and approved by the Lacombe County prior to installation.
6. A by-pass roadway with a gate, that is suitable to Lacombe County, shall be provided adjacent to the Texas Gate.
7. A "Texas Gate Ahead" sign shall be erected 125 feet preceding the Texas Gate. A "Livestock at Large" sign shall be erected 50 feet after the gate. Reflectorized markers shall be installed on each end of the Texas Gate and from both traffic directions. Such signs and markers will be provided to the applicant at cost. The applicant is responsible for the erection and maintenance of the sign.
8. Written approval from all property owners who use the road as access to their property must be obtained by the applicant and submitted with the application.

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9. The owner shall keep the Texas Gate and warning signs in a proper state of repair. If in the opinion of the County the gate and/or signs are not properly maintained, the County may take whatever action considered necessary to either repair or close and remove the Texas Gate, all at the expense of the owner.
10. The applicant shall be responsible for the entire construction and installation costs of the said "Texas Gate", and shall carry liability insurance in the amount of Two Million (\$2,000,000.00) Dollars, that will save harmless and indemnified at all time Lacombe County, against all claims for damages or other claims which may arise attributable to the existence and use of the "Texas Gate" on the municipal road.
11. The applicant will remove the Texas Gate at their expense if the County determines that safety, maintenance, or public convenience is compromised or if the applicant does not adhere to all stipulations of the approval.
12. The applicant must enter into an agreement with Lacombe County to govern the installation, maintenance, continued use and removal of the Texas Gate.

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AN AGREEMENT made on the _____ day of _____ ,

BETWEEN:

of

(hereinafter called the "Company")

OF THE FIRST PART

- and -

LACOMBE COUNTY

of

RR 3

Lacombe, AB T4L 2N3

(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Municipality has the control and management of the public highways and roads (hereinafter referred to as "the road allowances") within the Municipality pursuant to Section 18 of the Municipal Government Act, being Chapter M-26 of the Revised Statutes of Alberta, 2000, and amendments thereto;

AND WHEREAS, the Municipality may consider the installation of a Texas Gate pursuant to policy D (12).

AND WHEREAS, the Company is desirous of obtaining the Municipality's permission to enter upon a road allowance for the purpose of making thereon such excavation as will permit the Company to install a Texas Gate across the said road allowance (the said excavating and installing of the Texas Gate road allowance to be hereafter referred to as "the crossing") all upon the terms and conditions as are hereinafter set forth;

NOW THEREFORE in consideration of the promises and the mutual covenants herein contained, the Municipality and the Company each agree with the other as follows:

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DEFINITIONS

1. In this License
 - a) "Alignment" means a location specified or approved by the Municipality for the location of Equipment in Rights-of-Way;
 - b) "Emergency Work" means the installation, maintenance, repair or replacement of Equipment in Rights-of-Way where health, safety or the provision of essential services is endangered;
 - c) "Equipment" means any Texas Gate, support structures, or associated gates or fences;
 - d) "in", with reference to the placement of Equipment in Rights-of-Way only, means "in, on, over, under, along or across";
 - e) "County Commissioner" means the Chief Administrative Officer of the Municipality or his/her delegate;
 - f) "Municipality" means Lacombe County;
 - g) "person" includes one or more individuals, partnerships, bodies corporate, unincorporated organizations, governments, government agencies, trustees, executors, administrators or other legal representatives, other than the Municipality or its legal representatives;
 - h) "Rights-of-Way" means the highways, roads, road allowances, streets, lanes, road diversions, bridges, public utility lots, public space, public water or other public places within the jurisdiction of the Municipality, excluding
 - i. reserve property;
 - ii. tax recovery property;
 - iii. easements, leases and licenses;
 - iv. fee simple titled property;
 - i) "Work" means the installation, maintenance, repair, replacement, extension or operation of any Equipment in Rights-of-Way, excluding Emergency Work.

SCOPE OF MUNICIPAL CONSENT

2. The Municipality does hereby in consideration of the sum of One (\$1.00) Dollar paid to the Municipality by the Company, the receipt of which sum is hereby acknowledged, and in consideration of the covenants and conditions hereinafter set forth, grant and transfer unto the Company the non-exclusive rights, privilege and license to construct a crossing under such road allowances and at such locations as is, from time to time, described in plans delivered to the

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Municipality by the Company and approved by the Municipality pursuant to the provisions contained in paragraph 3 hereof.

The Municipality further grants and transfers unto the Company the non-exclusive right, privilege and license for any existing crossings owned by the Company at the date of execution of this agreement and any such existing crossings are deemed to be approved by the Municipality pursuant to the provisions contained in section 4 hereof.

3. The said right, privilege and license is hereby granted by the Municipality to the Company for the purposes of placing, repairing, maintaining, inspecting and removing of the Company's Texas Gate within the crossing.

AUTHORIZATION OF WORK

4. The Company shall not excavate, break up or otherwise breach the surface of any Rights-of-Way or engage in any other work therein for the purpose of constructing, operating, maintaining or removing any of its Equipment in, on, over, under, along or across any Rights-of-Way (each of these activities hereinafter collectively called "Work") without first:
 - a) Providing plans to the most senior municipal official responsible for overseeing such Work or his designate ("County Commissioner"), setting out a proposal for an Alignment for the Company's Equipment and such other information required by the County Commissioner in a form acceptable to the County Commissioner; and
 - b) Obtaining the written authorization of the County Commissioner to an Alignment.
5. The Company shall provide all required information and obtain all required municipal construction and/or permits normally required by the Municipality in the circumstances prior to commencing any Work.
6. In the event of an emergency involving the Company's Equipment, the Company may perform such Work as is strictly necessary to end the emergency without the prior consent of the Municipality, provided that the Company notifies the Municipality of the occurrence of the Work without delay.

CONDITIONS

7. All Work conducted by or on behalf of the Company is subject to the following conditions:
 - a) the Work shall conform to all applicable federal, provincial and municipal statutes, laws and by-laws or other applicable rules and regulations, including, but not limited to, the terms of any authorizations granted by the County Commissioner, permits issued by the Municipality and the provisions of this Agreement;
 - b) the Work shall be conducted and completed to the satisfaction of the Municipality;

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- c) the Work shall be performed in a manner that safeguards and protects all other support structures, transmission lines, equipment, facilities and improvements of any kind ("Improvements") present in the Rights-of-Way;
- d) after completion of any Work, the Company shall leave the Rights-of-Way in substantially the same condition in which it was before such Work was undertaken by the Company, free from nuisance and to the satisfaction of the Municipality and the Company shall maintain the crossing to the continued satisfaction of the Municipality. If the Company fails to repair and restore any Rights-of-Way to the satisfaction of Lacombe County within two (2) days of being notified by the Municipality, the Municipality may effect such repairs and charge all costs related thereto to the Company;
- e) all waste material shall be removed and all disturbed area shall be leveled, trimmed and seeded to grass;
- f) the Company agrees to provide a minimum of twenty-four (24) hours notice to the Municipality of its intention to commence construction, replacement, repair, maintenance or removal of a Texas Gate;
- g) if the Municipality requires that any Work be stopped, the Company shall cease such Work upon delivery of a written notice to the Company to that effect by the County Commissioner; and
- h) the Company shall be responsible for all Work, including the cost of such Work.

FURTHER RESTRICTIONS

- 8. Texas Gate shall be constructed in accordance with the following specifications:
 - a) Minimum clear width of twenty (20) feet
 - b) Travel distance of the gate must be no less than five (5) feet
 - c) Constructed with bars of pipe or railroad steel and a base of steel or treated timber
 - d) Bars shall not allow an open space of more than four and one half (4.5") inches
 - e) Designed for a minimum gross vehicle weight of 110,000 pounds.
- 9. Plans and specifications for the Texas Gate must be submitted and approved by the Municipality prior to installation.
- 10. A by-pass roadway and gate, that is suitable to the Municipality, shall be provided adjacent to the Texas Gate.
- 11. A "Texas Gate Ahead" sign shall be erected 125 feet preceding the Texas Gate. A "Livestock at Large" sign shall be erected 50 feet after the gate. Reflectorized markers shall be installed on each end of the Texas Gate and from both traffic directions. The applicant is responsible for the erection and maintenance of the sign.

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12. Written approval from all property owners who use the road as access to their property must be obtained by the applicant and submitted with the application.
13. The owner shall keep the Texas Gate and warning signs in a proper state of repair. If in the opinion of the County the gate and/or signs are not properly maintained, the County may take whatever action considered necessary to either repair or close and remove the Texas Gate, all at the expense of the owner.
14. The applicant will remove the Texas Gate at their expense if the Municipality determines that safety, maintenance, or public convenience is compromised or if the applicant does not adhere to all stipulations of the approval.

SIGNAGE

15. The Company shall take all reasonable precautions during construction of a crossing by providing flagmen, signs, barricades, lights, etc. as required to protect road users against personal injury and property damage.

RELOCATION

16. Upon receipt of sixty (60) days advance written notice from the County Commissioner, or such other time as is mutually agreed to by the parties, the Company shall, at its own expense, relocate Equipment within the Right-of-Way as may be required by the Municipality for municipal purposes. However, in cases of emergency, the Municipality may take any measures deemed necessary for public safety with respect to the Equipment that may be required in the circumstances as the Municipality shall determine and the Company shall reimburse the Municipality for all related expenses thereby incurred.
17. If the Company fails to complete the relocation of the Equipment, or fails to repair the Rights-of-Way or to perform any other Work required to be done by the Company pursuant to this Agreement in a timely and expeditious manner to the satisfaction of the County Commissioner, the Municipality may, but is not obligated to, at its sole option, complete such relocation or other Work. In such event, the Company shall pay the cost of such relocation Work to the Municipality, together with an administrative charge of fifteen percent (15%) of such cost.

UTILITY COORDINATION

18. Nothing contained in this Agreement shall be deemed to limit or in any manner prohibit the Municipality from fully using and enjoying any portions of the said road allowance where crossings have been installed in any lawful manner whatsoever and the right, privilege and license herein granted to the Company is strictly limited to the rights expressly granted herein to the said Company.

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OCCUPATIONAL HEALTH AND SAFETY AND TRAFFIC

19. The Company shall conform and shall be responsible for the conformance by its officers, employees, agents, contractors and invitees to all health and safety laws including any regulations requiring installation of safety devices or appliances, and any applicable traffic laws or regulations (collectively "Safety Rules"). The Municipality may, on twenty-four (24) hours written notice to the Company, or sooner if in the opinion of the Municipality the likelihood of harm to persons is imminent, suspend Work performed by or on behalf of the Company on that portion of the Equipment located in, on, under, along or across Rights-of-Way where there appears to be a lack of compliance with the Safety Rules or because conditions of danger exist that would likely result in injury to any person. Such suspension shall continue until the lack of compliance or danger is eliminated.

ENVIRONMENTAL RESPONSIBILITY

20. The Company agrees to assume all environmental liability relating to its occupancy and use of the Rights-of-Way, including but not limited to any liability to any liability for clean-up of any hazardous substance in, on, under, along, across and around Rights-of-Way which result from:

- a) The operations of the Company in, on, under, along, across or around the Rights-of-Way; or
- b) Any products or goods brought in, on, under, along, across or around the Rights-of-Way by the Company, or by any other person with the express or implied consent of the Company.

LIABILITY AND INDEMNIFICATION

21. The Municipality shall not, in connection with this Agreement, be liable for any damage to the Equipment or other property of the Company, or for the injury or death of any officer, employee, agent, contractor, licensee or invitee of the Company except where caused by the willful misconduct or gross negligence of the Municipality or its employees.

22. The Company hereby indemnifies the Municipality from and against all losses, liabilities, costs, damages, and expenses (including reasonable legal fees and disbursements) incurred by the Municipality in connection with this Agreement as a result of any claim, action, suit or proceeding based on a claim of injury to the person or property of any third party caused by the willful misconduct or negligence of the Company, its officers, employees, agents, contractors, licensees or invitees.

23. Subject to the provisions of sections 20, the Municipality hereby indemnifies the Company from and against all losses, liabilities, costs, damages, and expenses (including reasonable legal fees and disbursements) incurred by the Company in connection with this Agreement as a result of any claim, action, suit or proceeding based on a claim of injury to the person or property of any third party caused by the willful misconduct or gross negligence of the Municipality, its officers, employees, agents, contractors, licensees or invitees.

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24. Notwithstanding anything contained in this Agreement, the Municipality shall not be liable in any way for indirect or consequential losses or damages, or damages for pure economic loss, howsoever caused or contributed to, in connection with this Agreement or with any Equipment, other property or Rights-of-Way governed hereby.

SUCCESSORS AND ASSIGNS

25. No assignments of this Agreement or any right hereunder by the Company shall be valid without the written consent of the Municipality.
26. This Agreement shall enure to the benefit of and be binding upon the parties, their respective heirs, executors, and administrators.
27. In the event of any assignment of the Agreement by the Company, the Company shall remain jointly and severally liable under this Agreement in all respects with the assignee, and the Municipality may require the assignee to enter into its own agreement with the Municipality before the assignment becomes effective.

NOTICE

28. Whenever under the provisions of this Agreement any notices, demands or requests are required to be given by either party to the other, such notice, demand or request may be given by delivery by hand to, or by prepaid single registered mail sent to, the respective addresses hereinafter provided for, and if given by mail shall be deemed to have been served and given on the fifth business day following the day of mailing, the respective addresses of the parties being:

LACOMBE COUNTY
RR 3
LACOMBE, AB
T4L 2N3

and

provided however, that such addresses may be changed upon five (5) days notice; and provided further that if in the event that notice served by mail at a time when there is an interruption of mail service affecting the delivery of such mail, then notice shall not be deemed to have been served until one (1) week after the date that normal service is restored.

