

EFFECTIVE DATE: August 7, 2018	SECTION:	POLICY:
APPROVED BY: Council	SUBJECT: Restricting Access on Public Road Allowance	
REVISED DATE:	PAGE NO. 1 OF 9	

PURPOSE AND INTENT

The purpose of this policy is to ensure appropriate usage and maintenance of gates within a Municipal District of Taber road allowance. The M.D. recognizes that there are circumstances that require the installation of a gate and will permit installation provided public access is not adversely impacted.

DEFINITIONS

Road allowance – all provincial road allowances within the boundaries of the M.D. of Taber including but not limited to bridges, developed and undeveloped roadways.

Gates – any structure which restricts or limits access on a municipal road allowance.

Application for a Gate – a formal application to be reviewed by Council that details the location and details of the gate.

Road license agreement – an agreement between the M.D. and an owner/applicant for the use of the road allowance for a specific purpose approved through Council.

POLICY

Landowners, companies or associations that make an application to the MD to have a Gate installed within a municipal road allowance shall be responsible for the installation, repair and maintenance of any approved installation upon entering a Road License/Allowance Agreement. Council will review the applications from time to time in regularly scheduled council meetings and issue an approval or denial of Gates by owner/applicant.

LEGISLATION

Per the Traffic Safety Act - General powers of the municipality Section 13:

- (o) authorizing the municipality to issue a license or permit that is terminable on 30 days' notice in writing for the temporary occupation or use of a road allowance or highway or a portion of a road allowance or highway when it is not required for public use;
- (p) restricting the use of specific traffic lanes to vehicles carrying a prescribed number of passengers;
- (q) restricting the use of specific traffic lanes to specific vehicles or classes of vehicles;

Per the Traffic Safety Act Restriction of powers Section 16:

Unless specifically permitted by this Act or any other Act, a council of a municipality does not have any power to make a bylaw that does one or more of the following:

- (a) imposes any tax, fee, license or permit respecting the use of highways by pedestrians or vehicles;
- (b) excludes pedestrians or vehicles generally from using highways;
- (c) prohibits the use of highways by pedestrians or vehicles;

Per the Municipal Government Act Control of Roads Section 18 the M.D. is designated as to the stewardship of the road allowance and as such:

- 1) Subject to this or any other Act, a municipality has the direction, control and management of all roads within the municipality.
- 2) Subject to this or any other Act, a municipal district also has the direction, control and management of roads and road diversions surveyed for the purpose of opening a road allowance as a diversion from the road allowance on the south or west boundary of the district although the roads or road diversions are outside the boundaries of the municipal district.
- 3) Nothing in this section gives a municipality the direction, control and management of mines and minerals.

Per Municipal Government Act Road Closures Section 21

- 1) No road in a municipality that is subject to the direction, control and management of the municipality may be closed except by bylaw.
- 2) A bylaw closing a road must be advertised.
- 3) A bylaw closing a road made by the council of a municipality that is not a city has no effect unless it is approved by the Minister of Transportation before the bylaw receives second reading.
- 4) Before passing a bylaw closing a road, a person who claims to be affected prejudicially by the bylaw or that person's agent must be given an opportunity to be heard by the council.

And as such the municipality will consider this as a licensed agreement between the M.D. and the owner/applicant of the ancillary item, not a forfeit of control over the road allowance.

Safety Plans

Applicable standards for construction and best practices within road allowance will be required for all Gates.

The M.D. of Taber will have discretionary rights to the removal of a Gate if it is deemed a safety hazard or unnecessary at applicants cost.

The expectation is that the applicant will keep the Gate maintained and in good repair, and if deemed by Municipal staff, that necessary repairs be done in a reasonable time.

The owner/applicant shall be liable for all damages sustained by any individual from a Gate or adjacent attachments and will be required annually for proof of liability insurance in the amount of \$5,000,000.00.

Guidelines

1. The installation and use of a Gate within in a road allowance requires the approval of Council through application. At the discretion of council upon application the distance of the dead road to be restricted will be specified for review. Gates must be sufficiently wide to accommodate agricultural equipment. A design drawing demonstrating the construction design and materials to be utilized in the gate must accompany the application.
2. The owner/applicant must enter into Gate Agreement and then submit plans and specification for the gate and then receive approval by the M.D. of Taber prior to installation or construction. The following will be the guidelines provided to applicants requesting installation:
 - Gates shall be a minimum of 24 feet wide
 - Gates shall have warning signs which shall be placed a minimum of 100 feet from each side of the item location, required signage to be specified by the M.D. at sole cost to owner/applicant
 - Once constructed the M.D. shall approve the installation of the gate and signage and will notify the applicant.
 - The M.D. shall from time to time review the gate and signage and may require the applicant to remove, replace or improve the gate and/or signage.
3. Reflective sign marker (WA-115 black on yellow) shall be installed on each end of the Ancillary item from any both approaching traffic directions. Such signage shall be erected by the M.D. at sole cost to the owner/applicant for initial installation and subsequent maintenance installations required by the M.D. The owner/applicant will be responsible for maintenance of the signage in subsequent replacements or maintenance after initial installation.
4. If the owner/applicant requesting to install the gate is not the landowner of the properties adjacent to the roadway beyond the ancillary item, then written approval from all property owners, lease holders or livestock associations who use the roadway must be obtained by the applicant and submitted with the application.
5. If the owner/applicant has not been identified prior to this agreement the current property owners, leaseholders or livestock association will need to enter into an agreement with M.D.
6. The owner/applicant shall keep the Gate and warning markers in a proper state of repair. If in the opinion of the M.D. the gate and/or signs are not properly maintained, the M.D. may take whatever action considered necessary to either repair and close or remove the Gate, all at the expense of the owner/applicant.
7. The owner/applicant shall be responsible for the entire construction, installation and maintenance cost of the said Gate, and shall save harmless and indemnified at all time the M.D. of Taber, against all claims for damages or other claims which may arise attributable to the existence and use of the Gate on the municipal roadway.
8. The owner/applicant will remove the Gate at their expense if the M.D. determines that safety, maintenance, or public convenience is compromised or if the owner/applicant does not adhere to all stipulations of the approval. The M.D. will give thirty (30) days written notice of its intention to terminate agreement.

9. The owner/applicant must enter into Ancillary Item Agreement (attached) with the M.D. of Taber to govern the installation, maintenance, continued use and removal of the Ancillary item
10. The owner/applicant shall be responsible to ensure that drainage is not impeded by placement of the Gate.

Assignment

The Ancillary Item Agreement may not be assigned or transferred by the owner/applicant in whole or in part without prior written consent from the M.D.



APPLICATION FOR PLACEMENT OF AN ANCILLARY ITEM

PLEASE NOTE – There is a \$100.00 fee required to be submitted with the completed application.

APPLICANT: Company _____
Mailing Address _____
City _____ Province _____ Postal Code _____
Contact Person _____
Phone _____ Fax _____
Email _____
Member of a one-call system Yes No (e.g. Alberta First Call)

OWNER: Company _____
Mailing Address _____
City _____ Province _____ Postal Code _____
Contact Person _____
Phone _____ Fax _____
Email _____

ANCILLARY ITEM DESCRIPTION: Type _____

Construction Materials to be used _____

A design drawing of the gate must be included with the application.

CONSTRUCTION LOCATION (legal locations):

Starting Point _____ Ending Point _____

Roadway(s) Affected: _____

PROPOSED FACILITY PARALLELS MUNICIPAL ROADWAY _____ FROM – TO:

____ ¼ SEC ____ TWP ____ RGE ____ W4M TO ____ ¼ SEC ____ TWP ____ RGE ____ W4M

____ ¼ SEC ____ TWP ____ RGE ____ W4M TO ____ ¼ SEC ____ TWP ____ RGE ____ W4M

PROPOSED FACILITY CROSSES MUNICIPAL ROADWAY _____ FROM – TO:

____ ¼ SEC ____ TWP ____ RGE ____ W4M TO ____ ¼ SEC ____ TWP ____ RGE ____ W4M

____ ¼ SEC ____ TWP ____ RGE ____ W4M TO ____ ¼ SEC ____ TWP ____ RGE ____ W4M

COMMENTS:

I, _____, hereby certify that the information given on this form is full and complete and is, to the best of my knowledge, a true statement of facts relating to this application for placement of an ancillary item.

(Signed) _____

(Date) _____

Ancillary item Agreement

This Agreement, made this _____ day of _____, 20_____.

Between:

**MUNICIPAL DISTRICT OF TABER
4900B- 50th Street
Taber, Alberta T1G 1T2**

of the first part

And

**OWNER/OPERATOR
a landowner at LEGAL and LEGAL**

of second part

ROAD LICENCE AGREEMENT

WHEREAS the Municipal District of Taber, hereinafter referred to as the Municipality, has the control and management of the roads (hereinafter referred to as road allowances) within the Municipality, pursuant to Division 2, Roads 18(1) (2) (3) of the Municipal Government Act.

WHEREAS **OWNER/OPERATOR**, hereinafter referred to as the Operator, is desirous of obtaining the Municipality's permission to enter upon certain road allowances for the purpose of improving said road allowances to meet their requirements and to INSTALL ANCILLARY ITEMS all upon the terms and conditions as are hereinafter set forth.

NOW THEREFORE, witnesseth, that in consideration of the mutual covenants, terms and conditions hereinafter set forth, the parties hereto each agree with the other as follows:

The Municipality does hereby in consideration of the sum of one (1) dollar, paid to the Municipality by the operator, the receipt of which is acknowledged, and in consideration of the covenants and conditions hereinafter set forth, grant unto the company the rights, privilege and license to improve the road allowance, as herein described as being the road allowances.

The said and privilege is hereby granted to the operator for the purpose of utilizing the said road allowances to meet their own requirements.

The road allowance to be maintained to specifications set by the Municipal District of Taber and agreed upon by the operator, in the format attached:

- a) No permanent infrastructure will be permitted to be installed on the M.D. of Taber road allowance;
- b) Maintenance of the road adjacent to lands between LEGAL and LEGAL W4M will be the responsibility of operator;
- c) Unrestricted public access must be permitted through the road allowance;
- d) A road may be constructed by the M.D. of Taber on the road allowance without notice and without compensation to the company by the M.D. of Taber or any person at any time.
- e) The MD will not be liable for any crop damages associated within or outside of road allowance;
- f) No trespassing signs will not be allowed to be erected on municipal road allowance;
- g) The operator shall be responsible for the contacting Alberta First Call to determine the location of any buried utilities within the Crossing Area.

Adjacent landowners affected by this construction are to be notified by the Operator and prior to construction of ancillary items issue letters of consent to the Municipality.

Nothing contained in this Agreement shall be deemed to limit or in any manner prohibit the Municipality from fully using and enjoying any portion of the said road allowances for future road construction and maintenance.

RELOCATION

1. Upon receipt of sixty (60) days advance written notice from the Municipality, or such other time as is mutually agreed to by the parties, the Operator shall, at its own expense, relocate, including but not limited to the removal of, the Ancillary item or perform any other Work in connection within the Municipal Road Allowance Area 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 Ancillary item that may be required in the circumstances as the Municipality shall determine and the Operator shall reimburse the Municipality for all related expenses thereby incurred.

2. If the Operator fails to complete the relocation of the Ancillary item, or fails to repair the Municipal Road Allowance Area or to perform any other Work required to be done by the Operator pursuant to this Agreement in a timely and expeditious manner to the satisfaction of the Municipality, the Municipality may, but is not obligated to, at its sole option, complete such relocation or other Work. In such event, the Operator shall pay the cost of such relocation Work to the Municipality, together with an administrative charge of fifteen percent (15%) of such cost.

OCCUPATIONAL HEALTH AND SAFETY AND TRAFFIC

3. The Operator 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 installing 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 Operator, 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 Operator on that portion of the Ancillary item 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

4. The Operator agrees to assume all environmental liability relating to its occupancy and use of the Municipal Road Allowance Area, including but not limited to any liability for clean-up of any hazardous substance in, on, under, along or around Crossing Area which result from:

- (a) The operations of the Operator in, on, under, along or around the Municipal Road Allowance Area; or
- (b) Any products or goods brought in, on, under, along or around the Municipal Road Allowance Area by the Operator, or by any other Person with the express or implied consent of the Operator.

LIABILITY AND INDEMNIFICATION

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

6. The Operator shall indemnify and save harmless the Municipality from and against all losses, costs, charges, liabilities, damages and expenses (including legal fees on a solicitor-client full indemnity basis 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 presence of the Ancillary item within the right-of way or by the misconduct or negligence of the Operator, its officers, servants, agents, employees or contractors, licensees and invitees.

7. 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, the Ancillary item, or other property, Municipal Road Allowance Area or Rights-of-Way governed hereby.

8. In the case of an emergency, no prior written notice shall be required to be given to the Municipality for the Operator to enter the Municipal Road Allowance Area to attend to the emergency, but the Municipality shall in all instances be advised forthwith of such emergency.

SUCCESSORS AND ASSIGNS

9. This Agreement shall ensure to the benefit of and be binding upon the parties, their respective heirs, executors, and administrators.

10. The Operator shall not assign or transfer this Agreement or the rights or privileges herein contained without first obtaining the written consent of the Municipality.

11. In the event of any assignment of the Agreement by the Operator, the Operator 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.

DEFAULT AND NOTICE

12. In the case of default by either of the parties hereto, in carrying out any of the terms, covenants and provisions of this Agreement, either party may give fifteen (15) days written notice of such default to the other. In the event that the party claimed to be in default does not commence to remedy such default within or at the end of the fifteen (15) day period, in addition to any and all other remedies the other party may:

- (a) take such reasonable steps that are appropriate and necessary to remedy such default, and the party in default shall be liable for and pay all reasonable costs and expenses incurred with respect to the remedying of such default; or
- (b) terminate this Agreement upon Ten (10) Days' notice; or
- (c) in the case of a default by the Operator, the Municipality may bar and prevent access to and use of the Right of Way and/or Municipal Road Allowance Area unless and until all defaults are rectified by the Operator.

13. Any condonement, excusing or overlooking by either party of any default, breach or non-observance by the other party at any time or times in respect of any covenant, provision, or condition herein contained shall not operate as a waiver of the party's rights hereunder in respect of any subsequent default, breach or non-observance nor as to defeat or affect in any way the rights of any party hereunder in respect of any subsequent default breach or non-observance by the other party. No covenant, term or condition of this Agreement or any breach thereof shall be deemed to have been waived by either party unless such waiver is completed in writing and signed by the party waiving as the case may be.

14. Every notice required by this Agreement to be in writing shall be delivered personally or sent by prepaid registered mail. In the case of personal delivery, such notice shall be deemed to be received on the date of delivery and in the case of service by mail, shall be deemed to have been given seven (7) days following the date upon which it was mailed. The addresses of the parties for the purposes of notice are respectively:

To the Municipality at:	Municipal District of Taber 4900B – 50 th Street Taber, Alberta T1G 1T2 Phone: (403) 223-3541 Fax: (403) 223-1799
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Attention: Director of Public Works

To the Owner at:

In the event that notice is served by mail at a time when there is an interruption of mail service affecting the delivery of such mail, the notice shall not be deemed to have been served until seven (7) days after the date that mail service is restored. Either party may change its address for service by serving a notice on the other party in the manner herein provided

INSURANCE

15. The Operator shall maintain insurance in sufficient amount and description as will protect the Municipality from claims for damages, personal injury including death and for claims from property damage which may arise under this Agreement, including but not limited to the maintenance or operation of the Ancillary item in the Municipal Road Allowance Area or any act or omission of the Operator's employees, agents, contractors, or licensees.

- (a) In addition to the foregoing, the Operator covenants and agrees that with respect to the insurance coverage described in this section:
 - (i) The limits of liability for personal injury, bodily injury and property damage combined shall be for not less than five million dollars (\$5,000,000.00) for each occurrence, or such other amount as the Municipality may require by written notice delivered to the Operator, from time-to-time;
 - (ii) The comprehensive general liability insurance shall extend to cover the contractual obligations of the Operator as stated within this Agreement, shall list the Municipality as an additional named and shall contain a cross-liability clause and no subrogation clause as against the Municipality; and
 - (iii) All policies shall provide that they cannot be cancelled, lapsed or materially changed without at least thirty (30) days' notice to the Municipality by registered mail.

COMPLETE AGREEMENT

16. This Agreement contains the entire agreement between the parties hereto and no understandings or agreements, verbal or otherwise, exist between the parties except as herein expressly set out.

LAW OF ALBERTA APPLICABLE

17. This Agreement shall be governed by the laws of the Province of Alberta and the rights and obligations of the parties hereto are subject to all present and future laws, rules, regulations and orders of any legislative body or duly constituted authority now or hereafter having jurisdiction over the parties or the subject matter of this Agreement.

The Company agrees to at all times hereinafter, indemnify and keep the Municipality indemnified against all action, claims and damages that may be lawfully brought or made against the Municipality by reason of anything done by the company, its agent or contractors, in the exercise of their rights and privileges and license herein granted to the company.

IN WITNESS HEREOF the parties hereto have affixed their corporate seals under the hands of their proper signing officers in that behalf to give effect to this Agreement the day and year first above written notwithstanding the actual date or dates of execution.

MUNICIPAL DISTRICT OF TABER

PER: _____

OWNER

PER: _____

PER: _____