

VULCAN COUNTY POLICY NO. 32-1013	Licensing of Municipal Undeveloped Road Allowances
Effective: November 6, 2019	
Cross Reference: CC 2019-11-06-09	Page 1 of 8
Review Date:	



Licensing of Municipal Undeveloped Road Allowances

PURPOSE

Under the Municipal Government Act (“MGA”), the title to all roads in a municipality is vested in the Crown in the right of Alberta. In turn, Vulcan County has the jurisdiction to direct, control, and manage all roads in the municipality. This means that the use of any county road or road allowance, for any purpose, is under the jurisdiction of the county, whether a physical road has been built in the road allowance or not.

The purpose of this policy is to establish guidelines to process requests for the licensing of undeveloped road allowances. Legislative authority is in section 18(1) of the MGA.

DEFINITIONS

“Adjacent Land” means land that is next to or adjoining to the Undeveloped Road Allowance.

“CAO” means the Chief Administrative Officer of Vulcan County.

“Licensee” means a person to whom a license is granted or issued.

“Undeveloped Road Allowance” means any land dedicated as a road right of way that has not been fully developed or has not yet been required for vehicular traffic. The right of way may or may not be shown as a road on a plan of survey that has been filed or registered in a land titles office.

PROCEDURE

1. The CAO may, after his or her review of an application in an approved form, a review of all objections to the proposed license, and receipt of payment of the required fee set out in the “Fee’s for Service Bylaw”, issue to a person a license for the purpose of authorizing the non-exclusive access and use of an Undeveloped Road Allowance. The issuing of a license is solely at the discretion of the CAO.
2. Applications for agricultural uses of an Undeveloped Road Allowance will only be considered where the proposed use is not in conflict with the uses of Adjacent Land.
3. Applications for industrial or commercial use of an Undeveloped Road Allowance will only be considered where the proposed use is not in conflict with existing uses of the Undeveloped Road Allowances and not in conflict with the uses of Adjacent Land.

Effective: November 6, 2019

Cross Reference: CC 2019-11-06-09

Page **2** of **8**

Review Date:

4. The application fee will only be refunded if the application is denied.
5. If the CAO accepts the application, notices will be sent out to landowners adjacent to the Undeveloped Road Allowance to ensure they have no objection to the proposed license.
6. Any person can provide a written reason for or against the proposed license within fourteen (14) days of the date the notification was sent.
7. Upon consideration of any written responses, the CAO will make a determination on whether or not to issue the proposed license at his or her own discretion.
8. In issuing a license, the CAO may impose such terms and conditions determined to be necessary or beneficial in his or her sole discretion, including but not limited to: the term of the license up to a maximum of ten (10) years, insurance requirements, signage requirements, whether obstructions such as fences and gates are permissible, and the limitations on the Licensee's access or use.
9. Any license granted will be for non-exclusive access and the Licensee may not prevent the public from accessing or travelling along the Undeveloped Road Allowance. A Licensee does not have the right to bar entry to anyone wishing to travel the Undeveloped Road Allowance or use the road as access.
10. No work, development, improvement, or change to the condition of the Undeveloped Road Allowance is permitted without the prior written authorization of the CAO. The Undeveloped Road Allowance may only be used for purposes listed in the Licensee's license, and for no other use. The Licensee may not use the Undeveloped Road Allowance in any other manner without the prior written consent of the CAO, which consent may be unreasonably withheld.
11. Termination
 - a. If the Licensee breaches any term of the license and such default is not cured within thirty (30) days following the receipt by the Licensee of a written demand from the CAO specifying the nature of the default in question, then the CAO may, at his or her sole discretion, and by notice in writing to the Licensee, immediately terminate the Licensee's license.
 - b. The CAO may terminate the Licensee's license for any reason, including convenience, with thirty (30) days written notice to the Licensee.

VULCAN COUNTY POLICY NO. 32-1013	Licensing of Municipal Undeveloped Road Allowances
Effective: November 6, 2019	
Cross Reference: CC 2019-11-06-09	Page 3 of 8
Review Date:	

- c. The license may be terminated with thirty (30) days written notice to the Licensee, at the request of the County or the Minister of Transportation as per section 13(1)(o) of the Alberta Traffic Safety Act.

- 12. Vulcan County licenses the use of Undeveloped Road Allowances as per the rates established in the “Fees for Service Bylaw” for Agricultural Use and Commercial/Industrial Use.

- 13. If any conflict arises between the Licensee and the adjacent landowners of the Undeveloped Road Allowances at any time, and if attempts by the parties to negotiate a solution are unsuccessful within a reasonable period of time, as determined by the CAO, the CAO may cancel the license upon serving thirty (30) days’ notice of its intention to do so on the Licensee.

- 14. Licenses may be transferred to a family member, or another industrial or commercial user as an administrative change, as long as the following requirements are met: prior written consent is given by Vulcan County and the applicant has title to Adjacent Lands. If prior written consent is not given, or the applicant does not have title to the Adjacent Lands, the family member or other industrial or commercial user will have to follow all steps of the process as a new applicant. Vulcan County may withhold consent for any reason.

- 15. Upon approval by the CAO, a Licensee using an Undeveloped Road Allowance for agricultural uses must provide liability insurance of no less than \$3,000,000 during the term of the license and erect signage as approved by the CAO.

- 16. Upon approval by the CAO, a Licensee using an Undeveloped Road Allowances for industrial or commercial use must provide liability insurance of no less than \$5,000,000 during the term of the license.

- 17. All use of the Undeveloped Road Allowance is at the risk of the Licensee and Vulcan County shall bear no liability for damages, costs, or expenses arising as a result of the use of the Undeveloped Road Allowance.

- 18. The Licensee will indemnify and saves harmless Vulcan County from and against any and all losses, liabilities, damages, costs and expense of any kind whatsoever including, without limitation:
 - a. the costs of defending, counter-claiming or claiming over against third parties in respect of any action or matter including legal fees, costs and disbursements on a solicitor and his own client basis and at all court levels;

Effective: November 6, 2019

Cross Reference: CC 2019-11-06-09

Review Date:

Page **4** of **8**

- b. any cost, liability or damage arising out of any escape, seepage, leakage, spillage, discharge, emission or release, of hazardous substances;
- c. any cost, liability or damage arising out of a settlement of any action; and
- d. the costs of repair, clean-up, or restoration paid by Vulcan County,

which at any time or from time to time may be paid, incurred or asserted against Vulcan County. This indemnification shall survive the expiration of the Licensee's license, the termination of the Licensee's license for whatever cause, and any renewal of the Licensee's license.

19. Removal of private infrastructure at the request of Vulcan County for road upgrades shall be undertaken by the Licensee at their cost.
20. The CAO may at any time, including prior to or after the termination of the license, or at the expiry of the license, by written notice to the Licensee, require the removal at the expense of the Licensee, of any or all of chattels, alterations, modifications, or fixtures in the Undeveloped Road Allowance. Further, the CAO may require the restoration of the Undeveloped Road Allowance to the same condition that they were in before the license was granted, such work to be done by or at the direction of the CAO and at the sole cost of the Licensee. If the Licensee fails to remove such items or to restore the Undeveloped Road Allowance within thirty (30) days of the written notice from the CAO, then Vulcan County may remove such items or restore the Undeveloped Road Allowance at the cost of the Licensee.
21. Any application for use of undeveloped road allowance in excess of one (1) mile will require Council approval.

RENEWAL PROCEDURES

1. Subsequent terms up to ten (10) year terms will be automatically renewed.
2. Fees for renewal periods will be invoiced on a lump sum basis at the beginning of the applicable term.
3. Annual license rates applied to renewal periods will be those in effect at the time of renewal.

VULCAN COUNTY POLICY NO. 32-1013	Licensing of Municipal Undeveloped Road Allowances
Effective: November 6, 2019	
Cross Reference: CC 2019-11-06-09	Page 5 of 8
Review Date:	

4. Fees charged for renewal periods that remain unpaid ninety (90) days after issuance of the invoice will be transferred to the property tax account for the benefitting property and recovered in the same manner.

VULCAN COUNTY POLICY NO. 32-1013	Licensing of Municipal Undeveloped Road Allowances
Effective: November 6, 2019	
Cross Reference: CC 2019-11-06-09	Page 6 of 8
Review Date:	

Schedule "A"

Application for Licensed Use of an Undeveloped Road Allowance

A COMPLETED APPLICATION FOR LICENSED USE OF AN UNDEVELOPED ROAD ALLOWANCE MUST INCLUDE THE FOLLOWING:

(Use the checklist to ensure you have the following completed)

- Site plan, including the area of undeveloped road allowance proposed for licensed use
- Location of private infrastructure that will impact the road allowance
- Reasons for the request for license
- Signature of the applicant

CONTACT INFORMATION

APPLICANT(S): _____

PHONE NUMBER(S) HOME: () _____ **CELL:** () _____

MAILING ADDRESS: _____

TOWN/CITY: _____ **PROV:** _____

POSTAL CODE: _____

EMAIL ADDRESS: _____

1. PURPOSE OF PROPOSED ROAD ALLOWANCE LICENSING:

2. LEGAL LAND DESCRIPTION OF UNDEVELOPED ROAD ALLOWANCE LICENSING REQUEST: BETWEEN: (FILL IN AS MANY AS ARE APPLICABLE)

NE NW SE SW ¼ SECTION TOWNSHIP RANGE W4M AND

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Effective: November 6, 2019

Cross Reference: CC 2019-11-06-09

Review Date:

Page **7** of **8**

3. TOTAL LENGTH OF ROAD ALLOWANCE TO BE LICENSED
MILES _____ KM _____

4. ZONING (LAND ADJACENT TO ROAD ALLOWANCE): _____

5. OWNERSHIP OF LAND ADJACENT TO ROAD ALLOWANCE:

6. REASONS FOR LICENSING REQUEST:

SIGNATURE

DATE

VULCAN COUNTY POLICY NO. 32-1013	Licensing of Municipal Undeveloped Road Allowances
Effective: November 6, 2019	
Cross Reference: CC 2019-11-06-09	Page 8 of 8
Review Date:	

Schedule "B"
License Agreement

THIS AGREEMENT made the _____ day of _____,
20_____.

BETWEEN:

Vulcan County

(“Vulcan County”)

- and -

(the “Licensee”)

LICENSE AGREEMENT

WHEREAS Vulcan County has the jurisdiction to direct, control, and manage all roads in the municipality;

AND WHEREAS the Licensee is desirous of using the lands described in Schedule “A” (the “Undeveloped Road Allowance”).

THIS AGREEMENT WITNESSETH that in consideration of the fees, mutual covenants and agreements herein contained, the Licensee agrees to be bound by the terms and conditions of this Agreement, including the limitations on the grant of license, on the following terms and conditions:

1. The term of this Agreement will be the period of ten (10) years commencing on the _____ day of _____, 20____ and expiring on the _____ day of _____, 20____ (the “Term”). The Term will automatically renew for periods of ten (10) years until this Agreement in terminated in accordance with the provisions below.
2. For each year during the Term, the Licensee will pay to Vulcan County the aggregate sum of \$_____ plus GST per annum as a fee. The annual fee amount shall be payable on or before the 31st Day of January in each year of the Term.

The Licensee covenants with Vulcan County to pay the fees without any deductions whatsoever.

Fees for renewal periods will be invoiced on a lump sum basis at the beginning of the applicable term. Annual license rates applied to renewal periods will be those in effect at the time of renewal. Vulcan County licenses the use of the Undeveloped Road Allowance as per the rates established in the "Fees for Service Bylaw" for Agricultural Use and Commercial/Industrial Use, as may be amended from time to time.

Fees charged for renewal periods that remain unpaid ninety (90) days after issuance of the invoice will be transferred to the property tax account for the benefitting property and recovered in the same manner.

- 3. The Licensee will pay all costs, charges, and expenses in respect of the Undeveloped Road Allowance during the Term and any renewal thereof, including, but not limited to, any business licenses or permits required due to the business to be conducted from the Undeveloped Road Allowance.
- 4. The Licensee agrees to all additional special terms and conditions as described in Schedule "B".
- 5. The Licensee shall occupy and use the Undeveloped Road Allowance for the purpose of

_____. The Undeveloped Road Allowance may only be used for the foregoing purpose, and for no other use. The Licensee may not use the Undeveloped Road Allowance in any other manner without the prior written consent of Vulcan County, which consent may be unreasonably withheld.

- 6. The Licensee covenants with Vulcan County that the Licensee will not, at any time, use, exercise or carry on or permit to be used, exercised or carried on, in or upon the Undeveloped Road Allowance, or any part thereof, any hazardous, noxious or noisome or offensive thing, act, art, trade, business, occupation or calling, and that no act, matter or thing whatsoever shall at any time be done in or upon the Undeveloped Road Allowance or any part thereof which shall cause any annoyance, nuisance, grievance, damage or disturbance of the occupiers or owners of the adjoining lands and properties.
- 7. The license granted to the Licensee is for non-exclusive access and use of the Undeveloped Road Allowance. The Licensee may not prevent the public or any third party from accessing or travelling along the Undeveloped Road

Allowance. The Licensee does not have the right to bar entry to anyone wishing to travel the Undeveloped Road Allowance or use the road as access.

8. All use of the Undeveloped Road Allowance is at the risk of the Licensee. Vulcan County will bear no liability for damages, costs, or expenses arising as a result of the occupation or use of the Undeveloped Road Allowance.
9. The Licensee covenants with Vulcan County that Vulcan County or its agents may enter upon the Undeveloped Road Allowance and view the state of repair thereof and may serve upon the Licensee a notice in writing of any defect requiring repair requiring the Licensee, within a reasonable time, to repair the defect at the Licensee's cost.
10. No work, development, improvement, or change to the condition of the Undeveloped Road Allowance is permitted without the prior written authorization of Vulcan County.
11. The Licensee covenants with Vulcan County that the Licensee will, at all times maintain, keep, and at the expiration of the term hereby granted, yield up the Undeveloped Road Allowance in a good and tenantable state of repair, reasonable wear and tear only excepted.
12. Vulcan County may at any time, including prior to or after the termination of the license, or at the expiry of the license, by written notice to the Licensee, require the removal at the expense of the Licensee, of any or all of chattels, alterations, modifications, or fixtures in the Undeveloped Road Allowance. Further, Vulcan County may require the restoration of the Undeveloped Road Allowance to the same condition that they were in before the license was granted, such work to be done by or at the direction of Vulcan County and at the sole cost of the Licensee. If the Licensee fails to remove such items or to restore the Undeveloped Road Allowance within thirty (30) days of the written notice from Vulcan County, then Vulcan County may remove such items or restore the Undeveloped Road Allowance at the cost of the Licensee. Removal of private infrastructure at the request of Vulcan County for road upgrades shall be undertaken by the Licensee at their cost.
13. If any conflict arises between the Licensee and the adjacent landowners of the Undeveloped Road Allowances at any time, and if attempts by the parties to negotiate a solution are unsuccessful within a reasonable period of time, as determined by Vulcan County, Vulcan County may terminate the

license upon serving thirty (30) days' notice of its intention to do so on the Licensee.

14. Transfers

- a. The Licensee covenants with Vulcan County that it will not, during the term hereby granted, transfer or assign the license granted in this Agreement, nor sublet the Undeveloped Road Allowance or any part thereof, or otherwise by any act or deed permit the Undeveloped Road Allowance or any part thereof to be transferred, assigned, or sublet without the prior written consent of Vulcan County. If the Licensee is a corporation or similar entity, any change in the ownership of the Licensee will be deemed to be an assignment for which the prior written consent of Vulcan County is required.
- b. Licenses may be transferred to a family member, or another industrial or commercial user as an administrative change, as long as the following requirements are met: prior written consent is given by Vulcan County and the applicant has title to land that is next to or adjoining to the Undeveloped Road Allowance. If prior written consent is not given, or the applicant does not have title to the land that is next to or adjoining to the Undeveloped Road Allowance, the family member or other industrial or commercial user will have to follow all steps of the process as a new applicant. Vulcan County may withhold consent for any reason.

15. Insurance

- a. The Licensee will obtain its own insurance coverage in such amounts and for such liabilities as Vulcan County may determine in its sole discretion from time to time. The Licensee will provide Vulcan County with a copy of its insurance on request.
- b. A Licensee using the Undeveloped Road Allowance for agricultural uses must provide liability insurance of no less than \$3,000,000 during the term of the license and erect signage as approved by Vulcan County. The Licensee will provide Vulcan County with a copy of its insurance on request.
- c. A Licensee using the Undeveloped Road Allowances for industrial or commercial use must provide liability insurance of no less than

\$5,000,000 during the term of the license. The Licensee will provide Vulcan County with a copy of its insurance on request.

16. The Licensee will indemnify and saves harmless Vulcan County from and against any and all losses, liabilities, damages, costs and expense of any kind whatsoever including, without limitation:

- a. the costs of defending, counter-claiming or claiming over against third parties in respect of any action or matter including legal fees, costs and disbursements on a solicitor and his own client basis and at all court levels;
- b. any cost, liability or damage arising out of any escape, seepage, leakage, spillage, discharge, emission or release, of hazardous substances;
- c. any cost, liability or damage arising out of a settlement of any action; and
- d. the costs of repair, clean-up, or restoration paid by Vulcan County,

which at any time or from time to time may be paid, incurred or asserted against Vulcan County. This indemnification shall survive the expiration of the Licensee's license, the termination of the Licensee's license for whatever cause, and any renewal of the Licensee's license. Vulcan County will not be responsible in any manner for any injury to any person nor for any loss or damage to any property belonging to the Licensee or to the Licensee's employees, agents, invitees or licensees while such person or property is in or about the Undeveloped Road Allowance.

17. Termination

- a. If the Licensee breaches any term of this Agreement and such default is not cured within thirty (30) days following the receipt by the Licensee of a written demand from Vulcan County specifying the nature of the default in question, then Vulcan County may, at its sole discretion, and by notice in writing to the Licensee, immediately terminate the Licensee's license.
- b. Vulcan County may terminate the Licensee's license for any reason, including convenience, with thirty (30) days written notice to the Licensee.

c. The license may be terminated with thirty (30) days written notice to the Licensee, at the request of the County or the Minister of Transportation as per section 13(1)(o) of the Alberta *Traffic Safety Act*.

18. Any and all schedules and recitals hereto shall be deemed to be a part of, and are hereby specifically incorporated into, this Agreement.

19. All notices, requests, demands or other communications required or permitted to be given pursuant to this Agreement must be in writing and delivered by personal service, pre-paid registered mail, email or facsimile, addressed as applicable as follows:

if to Vulcan County:

Chief Administrative Officer
Vulcan County
P.O. Box 180
Vulcan, Alberta
T0L 2B0

if to Licensee:

Any notice will be deemed to have been given and received:

- a. if personally delivered, on the day of personal service to the recipient party;
- b. if by pre-paid registered mail, the first business day after the expiration of five (5) days from the date of posting; or
- c. if sent by email or facsimile transmission, on the first business day in the recipient province following the date of transmission.

20. Any provision of this Agreement which is invalid or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective only to the extent of such invalidity or unenforceability and will be severed from the balance of this Agreement without invalidating or affecting the remaining provisions of

this Agreement in that or any other jurisdiction, which remaining provisions will continue in full force and effect.

- 21. Termination of this Agreement or the license, for any reason, will not prejudice or affect the accrued rights or claims of Vulcan County.
- 22. No provision of this Agreement may be waived except in writing signed by the party providing the wavier. The failure of any party to exercise any right, power or option given to it in this Agreement, or to insist upon the strict compliance with any of its terms or conditions, will not constitute a waiver of such provision of this Agreement or with respect to any other or subsequent breaches.
- 23. This Agreement may be executed in two or more separate counterparts, each of which when so executed and delivered, including by electronic means, will be deemed for all purposes an original, but all such counterparts will constitute but one and the same instrument.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year first above written.

Vulcan County

Per:

_____ Name

_____ Signature

Licensee

Per:

_____ Name

_____ Signature

Witness

Schedule "A"**Undeveloped Road Allowance lands**

[NTD: Insert the description of the lands. If possible, Vulcan County can also look to insert a highlighted map or drawing for clarity.]

Schedule “B”**Special terms and conditions**

[NTD: Vulcan County can list any site specific terms and conditions that may be required for a particular license. For example, this is where items like signage can be addressed, whether fences or gates are permitted, and any limitations on the Licensee’s use.]