

HIGHWAY USAGE PERMIT

HUP 2024-001

THIS PERMIT issued in triplicate copies this 9th day of Sep., 2024
(the "Effective Date")

FROM: Gateway Operations Limited,
a body corporate (the "Operator");

TO: NB ATV Federation
a company duly incorporated under the laws of New
Brunswick (the "Applicant").

RECITALS

- A. Under the *Highway Act*, c. H-5, R.S.N.B. 1973, the Minister of Transportation and Infrastructure (the "*Minister*") has the administration and control of highways in the Province of New Brunswick;
- B. The administration and control of the Route 1 Facility (the "*Highway*") has been given to the New Brunswick Highway Corporation ("*NBHC*") by the Minister with the approval of the Lieutenant-Governor in Council;
- C. The Route 1 Gateway Project Company Ltd. Project Co. Ltd. ("*R1G Project Company*") (the "*Subsidiary*") is a delegate of NBHC;
- D. The Operator is a sub-delegate of NBHC and may, as such, issue highway usage permits (as that term is defined in the New Brunswick Highway Corporation Act) with the Approval of the Subsidiary in connection with the Highway;
- E. The Applicant has requested authorization to cross the Route 1 highway at Exit 112 using the existing underpass (the "*Work*"), the location of which is more particularly described in the project outline annexed to this Highway Usage Permit as Schedules "A" and "A-1" (the "*Approved Site*");
- F. The Operator has, with the Approval of the Subsidiary, agreed to issue to the Applicant a Highway Usage Permit (the "*HUP*") on the terms and conditions set out below.

1. GRANT OF PERMIT

- 1.1. From the Effective Date, the Operator authorizes the Applicant, subject to the terms and conditions contained in this HUP, to enter upon, use, cross, and carry out the Work in and along the Approved Site on a non-exclusive basis.

2. FEES

- 2.1. The Applicant will pay to the Operator upon execution the **one-time fee** prescribed under Section 11 of the *Highway Usage Regulation* (N.B. 2009-156) under the Act, as amended from time to time. The relevant fee currently set out in Regulation 2009-156 is as follows:
- (a) On issuance of a highway usage permit, the holder of the permit shall pay a fee of \$2,000 to the Corporation for each location the proposed work crosses over, on or under the ground level of a highway.
- 2.2. The Applicant will pay to the Operator on April 1 of each year during the term of this HUP, the applicable annual fee prescribed by the *Highway Usage Regulation* (N.B. 2009-156) under the Act, as amended from time to time (the "*Annual Fee*").
There is no relevant annual fee currently set out in Regulation 2009-156 for a highway crossing.
- 2.3. Fees must be paid by certified cheque to the New Brunswick Highway Corporation ("NBHC"). Cheques will be sent to the Operator at the following address:

**Gateway Operations Limited
Attention: OMR Manager
39 Phaeton Drive
P. O. Box 1036
Hampton NB E5N 8H1**

- 2.4. Failure to pay fees within thirty days from receipt of the invoice may result in the termination of the HUP at the sole discretion of the Operator.

3. WORK

- 3.1. The Applicant, its contractors, agents and employees may, during the term of this HUP, at the Applicant's sole expense, perform the Work on the Approved Site in accordance with the terms and conditions herein set forth.
- 3.2. The Applicant shall carry out the Work in accordance with all applicable federal, provincial and municipal laws, regulations, bylaws orders, directives, permits and licences, as amended from time to time ("*Applicable Law*").
- 3.3. The Applicant shall submit all plans and specifications for Work that involves the repair, construction, alteration, rehabilitation, removal or replacement of the Work (the "*Construction Work*") detailing location, timing, duration and method of installation, to the Operator prior to the commencement of any Construction Work. The Applicant will not carry out any Construction Work without written approval from the Operator. Design and implementation of the Construction Work is the sole responsibility of the Applicant. The Operator, by approving the plans and

specifications for any Construction Work will not become liable, and specifically denies any liability, for the Construction Work.

- 3.4. The Applicant will deliver to the Operator a final “as built” plan of the Construction Work within three months of completing the Construction Work.
- 3.5. The Applicant will comply with the *Occupational Health and Safety Act*, Chapter O-0.2, R.S.N.B. 1973, in carrying out the Work.
- 3.6. The Applicant will:
 - (a) take every reasonable precaution to ensure the health and safety of its contractors, agents and employees and the health and safety of any other person having access to the place of employment where any of the Work is taking place; and
 - (b) ensure that its contractors, agents and employees comply with the *Occupational Health and Safety Act* (New Brunswick) (“*OSHA*”), the regulations under the OSHA and any order made in accordance with the OSHA or the regulations.
- 3.7. Within 7 days of a request from the Operator, the Applicant will provide to the Operator a letter outlining the steps taken by the Applicant to comply with the provisions of sections 3.5 and 3.6 of this HUP.
- 3.8. No material or equipment shall be deposited or stored on the Approved Site or the Highway without the prior written approval of the Operator.
- 3.9. All brush and debris resulting from the Work shall be removed from the Approved Site and the Highway by the Applicant at its sole expense.
- 3.10. The Work will be restricted to the hours between 30 minutes after sunrise and 30 minutes before sunset. No Work will be carried out during times of reduced visibility, inclement weather or in circumstances where the Work would interfere with the delivery of winter maintenance services on the highway carried out by the Operator.
- 3.11. Except in the case of emergency repairs, the Applicant will notify the Operator not less than 5 business days before carrying out any Construction Work. No Construction Work will be carried out without written consent from the Operator.
- 3.12. The Applicant shall ensure that its contractors, agents and employees comply with the terms of this HUP.
- 3.13. The Applicant is prohibited from disturbing the asphalt surface of the highway.

4. STANDARD OF WORK

- 4.1. The Work will be performed by the Applicant at its sole expense with the degree of knowledge, skill, diligence, prudence and foresight that would reasonably be expected from a skilled and experienced contractor engaged in the same type of undertaking under the same or similar circumstances as are contemplated in this HUP (“*Good Industry Practice*”). If, in the Operator’s opinion, the Work is not being carried out in accordance with Good Industry Practice, Applicable Law and the plans and specifications submitted pursuant to Section 3.3 and approved by the Operator, the Applicant will promptly rectify any deficiencies in the Work to the reasonable satisfaction of the Operator (“*Rectify*”, “*Rectification*”). If the Applicant fails to Rectify, the Operator may suspend performance of the Work by giving written notice to the Applicant, effective as of the time and date specified in the notice. Any action taken by the Operator under this Section 4.1 will not give rise to any claim by the Applicant against the Operator and any such claim is barred. Failure by the Operator to give instructions regarding the Work will not relieve the Applicant of any responsibilities and liabilities under this HUP or otherwise.
- 4.2. Despite section 4.1, where the Operator is of the opinion that the Construction poses a hazard to the safety of any person using the Highway, the Operator may request that the Applicant take any action that is necessary, in the opinion of the Operator, to remove the hazard and upon receipt of the request, the Applicant will promptly remove the hazard at its sole expense. If the Applicant fails to take such action, the Operator may act as necessary to alleviate the hazard. If the Operator is required to take action under this paragraph, the Applicant shall, upon demand, reimburse the Operator for all expenses reasonably incurred in connection with such action. Any action taken by the Operator under this section will not give rise to any claim by the Applicant against the Operator and any such claim is barred. Failure by the Operator to take any action authorized under this section does not relieve the Applicant of any responsibilities and liabilities under this HUP or otherwise.
- 4.3. The Applicant shall use every reasonable effort to ensure, where practical, that:
- (a) all Work is performed in a manner that causes no damage to the Approved Site or the Highway;
 - (b) through traffic flow is maintained on the Highway during all Work according to the Department of Transportation and Infrastructure Work Area Traffic Control Manual, as amended from time to time, the receipt of which the Applicant acknowledges;
 - (c) the Work does not interfere with or obstruct the Highway or traffic thereon except, with the written approval of the Operator, as may be reasonably necessary or required during actual periods of Construction; and
 - (d) the Work does not alter or interfere with the drainage pattern of the Highway or any property that is adjacent to the Highway.

- 4.4. Despite section 4.1, if, in the opinion of the Operator, the Work disturbs the asphalt surface of the Highway or otherwise damages the Highway, including the area within the Highway right-of-way, the Operator may, at the Applicants sole expense, in addition to and without prejudice to any other available rights and remedies, repair the damage, (including the removal and replacement of any improvements and structures installed under this HUP) as the Operator considers appropriate, acting reasonably. The Applicant will pay to the Operator, on demand, all expenses, direct or indirect, incurred by the Operator in carrying out repairs under this section 4.4, with interest at the Average Prime rate plus 3% per annum, calculated daily not in advance from the date the expense is incurred to and including the date of payment. Any action taken by the Operator under this section 4.4 will not give rise to any claim by the Applicant against the Operator and any such claim is barred.
- 4.5. If, in the opinion of the Operator, in its sole and absolute discretion, it is not expedient to exercise the Operator's rights under Section 4.4, the Operator may require the Applicant to pay an amount equal to the costs which, in the reasonable estimation of the Operator, would be incurred by the Operator to repair the highway and the right-of-way to the Operator's satisfaction. The Operator's determination of this amount shall be final and binding for all purposes of the HUP. Any action taken by the Operator under this section 4.5 will not give rise to any claim by the Applicant against the Operator, regardless of the reasonableness of the Operator's opinion, and any such claim is barred.
- 4.6. If contamination of any type, including, without limitation, soil contamination, contamination of surface water and groundwater, air pollution, and the presence or release of noxious, poisonous or hazardous substances or materials ("*Contamination*") should be encountered by the Applicant on, in, under or around the property administered by the Operator:
- (a) all work will cease immediately in that area, and
 - (b) the Applicant will immediately advise the Operator of the contamination.
- 4.7. The Operator, Her Majesty the Queen in Right of the Province of New Brunswick, NBHC and the Subsidiary shall not be responsible for any losses suffered by the Applicant resulting from any contamination or its discovery.

5. REPAIRS TO THE APPROVED SITE

- 5.1. Upon completion of any Work, the Applicant shall, at its expense and so far as is practical, restore, repair and landscape the Approved Site to at least the condition existing before the Work occurred, and to the satisfaction of the Operator.
- 5.2. The Applicant will, in accordance with Applicable Law, Good Industry Practice and to the satisfaction of the Operator, acting reasonably, for the entire period during which the Work or any part of the Work remains on the Approved Site, repair or remediate any damage to or contamination of the Approved Site, the Highway and any property adjacent to the Highway that is caused by or results from the Work or

the presence of the Work or any other use of the Approved Site or the Highway by the Applicant under this HUP, including without limitation any damage caused by subsidence, erosion or slope washout. Traffic control, if necessary, will be the responsibility of the Applicant.

6. LIABILITY AND INDEMNITY

- 6.1. The Operator, Her Majesty the Queen in Right of the Province of New Brunswick (the "**Province**"), NBHC or the Subsidiary shall not be responsible for any damage to the Work except damage resulting from the gross negligence or wilful wrongdoing of the Operator, the Province, NBHC or the Subsidiary and their respective officers, contractors, agents and employees.
- 6.2. The Applicant will be liable to the Operator, the Province, NBHC, the Subsidiary, and each of their respective shareholders, directors, officers, legislators, contractors, agents and employees (the "**Province Parties**"), for any and all losses, costs, damages, expenses, charges, fines, penalties and other liabilities (including legal fees on a solicitor and client basis) ("**Losses**") which may be suffered, sustained, paid or incurred by a Province Party arising out of or in connection with the Work or the use, existence or operation of the Installation, or any breach of this HUP or negligence, misconduct or non-compliance with Applicable Law on the part of the Applicant or its contractors, agents or employees in the performance or non-performance of this Agreement; and
- 6.3. The Applicant will indemnify, defend and save harmless the Province Parties from and against any and all Losses and all actions, causes of action, proceedings, claims, suits and demands which may be claimed, made or brought by any third party against a Province Party, or which any of them may suffer, sustain, pay or incur, arising out of or in connection with the Work or the use, existence or operation of the Work, or any breach of this HUP or negligence, willful misconduct or non-compliance with Applicable Law on the part of the Applicant or its contractors, agents or employees in the performance or non-performance of this HUP.
- 6.4. The Province Parties will not be responsible for any damages suffered by the Applicant as a result of the Work or the use, existence or operation of the Work.

7. INSURANCE

- 7.1. The Applicant, at its own expense, shall purchase and maintain in full force while this HUP is in effect a policy of general liability insurance (the "**Policy**") acceptable to the Operator, NBHC and the Subsidiary acting reasonably.
- 7.2. The Policy shall provide coverage for property damage to the Approved Site and the Highway, including loss of use, and shall protect the Province Parties from all claims arising out of liability for property damage, personal injury (including death) arising out of the Work or the occupancy or operation of the Work, or the performance of any obligation or exercise of any right by the Applicant or its contractors, agents or employees in connection with this HUP.

- 7.3. The Policy shall provide for, at a minimum:
- a) a \$5.0 million limit of liability per occurrence;
 - b) Sudden & Accidental Pollution coverage for all insured perils;
 - c) broad form occurrence property damage (including coverage for loss of use without property damage);
 - d) cross liability and separation of interest with respect to each Insured;
 - e) the Province Parties to be included as Insureds or Additional Insureds;
 - f) that breach of any of the terms and conditions of the Policy, or any negligence or wilful act or omission or false representation by any other Insured or any other person, will not invalidate the insurance with respect to the Province Parties.
- 7.4. The Policy will be issued by financially sound insurers licensed to carry on business in Canada or in one or more of the provinces or territories in Canada. Insurers will not cancel or materially change the Policy until sixty (60) days prior written notice has been given to the Operator and NBHC.
- 7.5. If closely held insurance facilities (e.g. captive, reciprocal or any other form of alternate risk financing) are used instead of conventional insurance to provide any insurance required by this HUP, the Applicant will provide ninety (90) days prior written notice to the Operator and the Subsidiary of the program structure and participants with sufficient information to permit the Operator and the Subsidiary to determine what, if any, supplementary insurance requirements may be needed (e.g. "cut-through" endorsement to captive reinsurers) to ensure continued, adequate protection for the Operator, the Crown, NBHC, the Subsidiary, their permitted successors and assigns, and their respective shareholders, directors, officers, legislators, contractors, agents and employees required to be included as Insureds.
- 7.6. A certified true copy of the Policy, or other documentation in form and content acceptable to the Operator and the Subsidiary, will be delivered to the Operator and the Subsidiary prior to any Work commencing. Certificates of insurance, or other documentation in form and content acceptable to the Operator and the Subsidiary, evidencing any renewal of these insurance policies or any replacement insurances, will be delivered to the Operator and the Subsidiary not later than 15 days prior to the expiration of existing Policy. Certified true copies of all renewal or replacement policies shall be delivered not later than 10 Business Days after a written request from the Operator or the Subsidiary.
- 7.7. If any contractor or subcontractor hired by the Applicant, or conducting any operations or Work in connection with this HUP on behalf of the Applicant, is not insured under the general liability insurance required to be purchased and maintained by the Applicant, the contractor or subcontractor shall purchase and maintain in full force during the term of its operations general liability insurance, in form and content acceptable to the Operator and the Subsidiary, that meets all the coverage and administrative requirements set out in this Section 7.

8. HIGHWAY REALIGNMENT

- 8.1. In the event that the Highway is realigned, upon notice from the Operator and/or NBHC, the Applicant will without delay, at its sole expense, (i) remove the Work or any structure, appurtenances, attachments, apparatus, devices and equipment associated with the Work located on the portion of the Highway that is abandoned due to the realignment (the “*Abandoned Section*”); and (ii) remedy and rehabilitate the portion of the Abandoned Section affected by the removal of the Work to the satisfaction of the Operator and NBHC.

9. TERMINATION

- 9.1. This HUP shall terminate:

- (a) On the 30th day of June 2040; or
- (b) at the option of the Operator, with the Approval of the Subsidiary, upon a 30 business day written notice to the Applicant:
 - (i) if the Approved Site is used for any purpose other than that described in Section 1.1;
 - (ii) if the Applicant breaches any of its obligations under this HUP and fails to remedy or to diligently take steps to remedy the breach after receiving written notice of the breach from the Operator; or
- (c) immediately without further act or notice in the event the Applicant shall not have commenced the Construction on the Approved Site within 120 business days from the Effective Date; and

- 9.2. The Province Parties will not be liable to pay any amount for costs or damages incurred by the Applicant as a result of the termination of this HUP.

- 9.3. In the event the Applicant elects to terminate this HUP, it will so advise the Operator in writing which notice will terminate this HUP. Annual fees payable in the year of termination will be pro-rated to the date of termination.

- 9.4. Upon termination of this HUP pursuant to Sections 9.1 or 9.3, the Applicant will promptly fulfill its outstanding obligations under this HUP.

- 9.5. Despite any provision of the HUP, the Subsidiary or NBHC may, in their sole and absolute discretion, cancel, terminate or reinstate this HUP in accordance with such conditions as the Subsidiary and/or NBHC directs.

10. NATURE OF HUP

- 10.1. The Applicant's right to enter the Approved Site for the purpose of operating, repairing and maintaining the Work and related assets pursuant to this HUP is as a licensee only. This HUP does not grant or convey to the Applicant any title to or proprietary interest in the Approved Site or the Highway.
- 10.2. The Operator does not represent or warrant to the Applicant that the Approved Site is located as shown on any plans, including the plans prepared by the Applicant or that NBHC owns or controls all or any portion of the right-of-way shown. The location of the Approved Site is determined by the Applicant at its sole risk and the Work is undertaken solely at the risk of the Applicant. If the Applicant wishes to confirm or determine the title or ownership of the Approved Site, it will examine title and ownership at its own expense and the Operator and/or NBHC will not be required to produce any abstract of title, title deeds or any other evidence of title other than those in possession of the Operator and/or NBHC.
- 10.3. This HUP is non-exclusive. The Operator reserves the right to grant permission to other persons to use the Approved Site except that the Operator will not permit any person to use the Approved Site in any way that would interfere with the Applicant's use.
- 10.4. This HUP is subject to any other agreement, permission or right previously entered into or granted by the Province, NBHC, the Subsidiary or the Operator to any other persons or corporations to use the Approved Site. The Applicant will not damage or in any way interfere with any other person's use and enjoyment of the Approved Site. The Applicant will reimburse any person for any damages to their plant or equipment located on the Approved Site arising from any act or omission of the Applicant in carrying out of the Work or operating, using, and maintaining the Work on the Approved Site.
- 10.5. This HUP in no way affects or binds any other minister, department, agency, or Crown Corporation of the Province of New Brunswick or shareholder or affiliate of the Operator.

11. GENERAL PROVISIONS

- 11.1. **Notices.** Any demand, notice or other communication ("*Notice*") to be given in connection with this HUP will be in writing and will be given by personal delivery, commercial courier service, registered mail (postage prepaid) or by electronic transmission and addressed to the applicable recipient as follows:

to the Operator at:

Gateway Operations Limited
39 Phaeton Drive
P. O. Box 1036
Hampton, NB E5N 8H1
Facsimile (506) 832-3408

to the Subsidiary at:

**New Brunswick Highway Corporation
PO Box 6000
Fredericton, NB E3B 5H1
Attention: President
Facsimile: (506) 457-7332**

and to the Applicant at:

**NB ATV Federation
1925 Hanwell Rd. Unit C
Hanwell, NB E3C 1M4
Attention: Vance Johnson, Trail Coordinator
Telephone: (506) 472-5130
Facsimile: (506) 472-5140**

For the purpose of this Section 11.1 a Notice will be considered validly given at the following times:

Delivery Method	Time of Notice
- by personal delivery or commercial courier service	day of actual delivery
- by registered mail	the 5 th Business Day following the deposit in the mail, except that in the event of an actual or threatened disruption of regular postal service, notice will not be effective if given by mail.
- By electronic transmission	on the day of transmission

If the time of delivery is not a Business Day or if the Notice is received after ordinary office hours at the place of receipt, the Notice will be considered received on the next Business Day. Either Party may change its address for Notice by giving Notice to the other Party.

- 11.2. Waiver.** The Operator, the Subsidiary or NBHC (the "*Waiving Party*") may, at its option, waive in whole or in part any obligation of the Applicant or any right the Waiving Party may have under this HUP ("*Waiver*"). A Waiver applies only to the specific matter it addresses, extends only to the Applicant and will not prejudice the right of the Waiving Party to exercise its rights or require the subsequent performance by the Applicant of any obligation under this HUP, including the waived obligation, on subsequent occasions.
- 11.3. Survival.** Despite any other provision of this Agreement, Section 6 and all other provisions which by their nature would continue beyond the termination or expiry of this HUP will survive and remain in force until the Parties agree to their termination.

- 11.4. Entire Agreement.** This HUP is a complete and self-contained record of the agreement between the Parties. No promise, representation, commitment, agreement, negotiation or discussion by either Party in any form, express or implied, that occurred before the execution of this HUP is of any effect with respect to the subject matter of this HUP. The Parties acknowledge that in entering into this HUP they have not relied on any promise, representation, commitment, agreement, discussion or information, express or implied, that is not written in this HUP.
- 11.5. Assignment.** The Applicant may not assign this HUP or any part of it without the written consent of the Subsidiary.
- 11.6. Amendment.** NBHC or the Subsidiary may amend, transfer, suspend, renew or reinstate this HUP by giving written notice to the Applicant.
- 11.7. Severability.** If any term of this HUP (the "*Invalidated Term*") is found by a court of competent jurisdiction to be invalid or unenforceable for any reason, the Invalidated Term will not affect the remainder of this HUP. The Invalidated Term will be treated as being modified to the extent necessary to make it enforceable while preserving as much as possible the intent of the Parties expressed in this HUP.
- 11.8. Signed Originals.** Identical copies of this HUP may be signed separately by the Parties and combined to form fully executed originals. A signed HUP delivered by electronic means is as valid as if delivered physically and will be treated as an executed original of this HUP.
- 11.9. Time Requirements.** Compliance with provisions of this HUP that establish deadlines is vital to this HUP and mandatory.
- 11.10. Governing Law.** This HUP will be governed by the laws of New Brunswick and Canada. Each Party submits to the exclusive jurisdiction of the courts of New Brunswick for all matters arising from this HUP.
- 11.11. Further Assurances.** The Parties will promptly take any further steps and execute any other documents that as may be reasonably requested or necessary to give full effect to this HUP.
- 11.12. Binding Effect.** This HUP is for the benefit of and binds the Parties and their successors and permitted assignees.

12. INTERPRETATION

12.1. In this HUP:

- a) Terms used and not otherwise defined, which are defined in the Act will have the meaning ascribed to them in the Act;

- b) “Business Day” means any day which is not a Saturday or a Sunday, or a day observed as a holiday under the laws of the Province of New Brunswick;
- c) The division of the text into Sections and paragraphs and the insertion of headings are for the reader’s convenience only and will not affect the interpretation of any provision;
- d) Words expressed in the singular include the plural and vice versa. Words connoting gender include both genders. A derivative of a defined term will have a corresponding meaning unless the context requires otherwise;
- e) In the event of a conflict between a provision of the main text and an attached schedule, the main text will prevail;
- f) Citations of “*Sections*” are references to provisions of the main text, and may include articles, Sections, paragraphs or sub-paragraphs as indicated by the numbers or letters cited;
- g) Sums of money are expressed in Canadian currency.

SCHEDULE "A-1"
Approved Site Location



PID's: 55178305, 00000003,
55211643, 55211783.

CANADA
PROVINCE OF NEW BRUNSWICK

AFFIDAVIT OF EXECUTION

I, Vance Johnson, of the NB ATV Federation, MAKE OATH AND SAY:

1. THAT I am the Trail Coordinator for the NB ATV Federation, and am duly authorized to make this affidavit on behalf of the NB ATV Federation.
2. THAT I am aware of all circumstances connected with the foregoing Highway Usage Permit and have a personal knowledge of the facts herein deposed to.
3. THAT as President for the NB ATV Federation, I am authorized to execute documents in the name of and on behalf of the NB ATV Federation, regarding this HUP.
4. THAT the said signature was subscribed to the HUP for the purpose of execution on behalf of the NB ATV Federation, on the 31 day of August, 2024.

SWORN TO BEFORE ME at
City of Fredericton in the)
County of York in the)
Province of New Brunswick, this 31st)
day of August, 2024)

BEFORE ME:)

Tanya MacIntyre)
Commissioner of Oaths)

Vance Johnson)

TANYA MACINTYRE
COMMISSIONER OF OATHS
MY COMMISSION EXPIRES
DECEMBER 31, 2026