



Kentucky Transportation Cabinet
Division of Maintenance
COOPERATIVE AGREEMENT

TC 71-227
08/2008
Page 1 of 5

THIS AGREEMENT, entered into this ____ day of ____, 20____, between the Department of Highways, Transportation Cabinet, Commonwealth of Kentucky and ____ with an address of ____, hereinafter referred to as "Company".

WHEREAS, the Company desires to transport coal on state-maintained highways in vehicles weighing in excess of the weight limits established by the Secretary of Transportation pursuant to KRS 189.222 on certain specified routes; and

WHEREAS, pursuant to the provisions of KRS 177.979 the Department of Highways is authorized to enter into cooperative agreements providing for an equitable apportionment of the incremental costs to the Commonwealth of Kentucky resulting from such overweight transportation; and

WHEREAS, the Department of Highways has certified that all road segments and bridges covered by this agreement as listed in the *Certified Transportation Plan* (TC 71-9 form) attached hereto are a part of the state-maintained system of highways; and

WHEREAS, the Company would like to transport coal at extended weights on segments of state-maintained roads listed in the *Certified Transportation Plan* (TC 71-9 form).

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and the provisions of KRS 177.979, the parties hereby agree as follows:

- (1) Except as provided, below, the Company shall indemnify and hold harmless the Commonwealth of Kentucky, Transportation Cabinet, its officers, agents, and employees from all suits, actions, or claims for injuries or damages sustained as a result of the Company's hauling of coal as provided in this agreement in vehicles whose gross vehicle weight exceeds the weight limits established pursuant to KRS 189.222.
- (2) All obligations incurred under this agreement are subject to any law or administrative regulation now existing.
- (3) In carrying out any of the provisions of this agreement or in exercising any power or authority granted to them by or within the scope of this agreement, no personal or individual liability shall be threatened or imposed upon the Secretary of Transportation, the Commissioner of Highways, the State Highway Engineer, or their authorized representatives in their personal individual capacities. In all such matters, these officials are acting solely as agents and representatives of the Commonwealth.
- (4) This agreement may be amended at any time upon the written mutual agreement of both parties. Further, this agreement may be terminated by the Transportation Cabinet, Department of Highways upon 30 days written notice to the Company. This agreement may be terminated by the Company upon written notice to the Transportation Cabinet, Department of Highways. However, such termination by the Transportation Cabinet, Department of Highways or the Company shall not relieve the Company of any contractual obligations incurred prior to said cancellation.
- (5) The Company shall furnish sufficient labor, materials, and equipment or funds to restore the road segments and bridges listed in the *Certified Transportation Plan* (TC 71-9 form)



Kentucky Transportation Cabinet
Division of Maintenance
COOPERATIVE AGREEMENT

TC 71-227
08/2008
Page 2 of 5

to a condition mutually agreed to by both parties as being equal to that which existed prior to the commencement of the hauling of coal pursuant to this agreement and to fulfill all obligations incurred by the Company under this agreement prior to the effective date of such termination.

- (6) It is understood by both parties that it is the intention of the Company to terminate this cooperative agreement after 50,000 tons of coal have been transported under this agreement. After the Company has fulfilled the following conditions, the road segments shall be eligible for immediate inclusion in the Extended Weight Coal and Coal By-Products Haul Road System:
- (a) Furnished sufficient labor, materials, and equipment or money to restore the road segments listed in the *Certified Transportation Plan* (TC 71-9 form) to a condition mutually agreed to by both parties as being equal to that which existed prior to the commencement of the hauling of coal pursuant to this agreement;
 - (b) Transported at least 50,000 tons of coal over the road segments;
 - (c) Reported the coal transportation to the Transportation Cabinet on the forms required by KRS 177.977 and 603 KAR 5:115; and
 - (d) Satisfied any other obligations incurred by the Company under this agreement.

The Transportation Cabinet shall execute an Official Order to include the road segments in the Extended Weight Coal and Coal By-Products Haul Road System.

- (7) It is agreed and understood that if there is a change in any of the conditions under which this agreement was executed, the Secretary of the Transportation Cabinet may suspend, alter, amend, or modify the terms and conditions of this agreement or may alter the classification of any road or bridge listed in the *Certified Transportation Plan* (TC 71-9 form) if deemed such action is necessary to promote the safety and convenience of the traveling public. In emergencies, the immediate posting or closing of a road or bridge may be affected without notice to the Company. Should such suspension, alteration, amendment, or modification result in a substantial change in the character of the Company's operations or its contractual performance as required, the parties herein may terminate this agreement or execute a supplemental agreement to provide an equitable adjustment in the terms of this agreement in accordance with paragraph 4.
- (8) The Company shall not load or cause to be loaded or operate or cause to be operated any vehicle in excess of the gross weights specified in this agreement on the road segments specified in the *Certified Transportation Plan* (TC 71-9 form).
- (9) This agreement shall not be construed as changing the trucking weight classification of the roads listed in the *Certified Transportation Plan* (TC 71-9 form) and it does not indicate a willingness by the Transportation Cabinet to allow overweight hauling except by permit or agreement.
- (10) No cartage or commodity other than coal may be transported under the terms of this agreement in vehicles whose dimensions, gross weight, gross axle weight, or tire weight exceed the limits prescribed by the Secretary of Transportation pursuant to KRS 189.222.
- (11) The Department of Highways may furnish any necessary supervision and inspection on any road construction project undertaken by the Company under this agreement. The



Kentucky Transportation Cabinet
 Division of Maintenance
COOPERATIVE AGREEMENT

Company shall furnish all labor, materials, equipment, tools, and supplies or funds deemed necessary by the Department to adequately perform maintenance and traffic operations on the road(s) and bridge(s) listed in the *Certified Transportation Plan* (TC 71-9 form) that are designated for maintenance.

- (12) The Company agrees that upon notification from the Department of Highways, it shall timely provide for the design, construction, reconstruction or maintenance over and above normal routine maintenance pursuant to KRS 177.979 for the road segments covered by this agreement.
- (13) The maximum gross weights (including vehicle and load that may be transported pursuant to this plan shall not exceed the maximum weights listed below:

Weight	Truck Type*
_____ Lbs.	IV
_____ Lbs.	V

* Truck types are identified in 603 KAR 5:230.

- (14) Prior to receiving authorization to begin transporting coal pursuant to this cooperative agreement, the Company shall file with the Transportation Cabinet, Department of Highways a corporate bond, cash bond, or securities in the amount of \$ _____. The Company shall be the principal obligor and the Transportation Cabinet, Department of Highways shall be the obligee. The bond shall be conditioned upon the Company's compliance with the terms of this cooperative agreement and shall remain in full force and effect until released by the Transportation Cabinet, Department of Highways.
- (15) The Company acknowledges its sole responsibility for damage to a county road or city street that it utilized as part of the Company's transportation route.
- (16) The Company shall keep accurate records of coal tonnage transported pursuant to this agreement. Said records shall be available for audit by the Transportation Cabinet upon reasonable notice.
- (17) If any term or provision, or any part of any term or provision of this agreement is held to be unenforceable, it shall be severed as narrowly as possible, and the remaining terms and provisions shall be enforced in accordance with the tenor of this agreement.
- (18) The Company and the Cabinet agree that this agreement is made and entered into in the Commonwealth of Kentucky and shall in all respects be interpreted, enforced, and governed under the laws of said Commonwealth. The Company and the Cabinet agree that the venue of any action to enforce and/or interpret the provisions of said agreement shall be Franklin Circuit Court.
- (19) This agreement is non-transferable and shall not be assigned without the written consent of the Transportation Cabinet, Department of Highways.



Kentucky Transportation Cabinet
Division of Maintenance
COOPERATIVE AGREEMENT

TC 71-227
08/2008
Page 4 of 5

Cooperative Coal Haul Agreement with _____ in
_____ County.

APPROVAL RECOMMENDED BY:

Chief District Engineer Highway District No.

APPROVAL AND RECOMMENDED BY:

State Highway Engineer

APPROVED AS TO FORM AND LEGALITY:

Executive Director, Office of Legal Services

EXECUTED ON BEHALF OF: Transportation Cabinet

BY: _____
Secretary of Transportation



Kentucky Transportation Cabinet
Division of Maintenance
COOPERATIVE AGREEMENT

EXECUTED ON BEHALF OF: _____
Company Name

BY: _____
Authorized Representative

I hereby affirm that I am the appropriate official with COMPANY to execute this agreement and full authority to do so. In addition, I affirm that the COMPANY has voluntarily entered into this cooperative agreement.

STATE OF KENTUCKY

COUNTY OF _____

Signed and sworn before me this _____ day of _____, 20_____.

Notary Public

My Commission expires: _____