

Steuben County
Restoration, Preservation and Repair Road Use Agreement
(allow for smaller bond if upgrade road prior to use)

This Agreement effective the ____ day of _____, 2011 is made and entered into by and between **Steuben County**, acting through its duly constituted Department of Public Works (**County**), located at 3 E. Pulteney Square, Bath, New York 14810; and

(_____) (**Developer**), a corporation, organized and existing under the laws of, or duly authorized to conduct business in the State of _____, having its principal place of business at _____.

Whereas, the parties hereto desire to provide for the use and repair of County Roads when subjected to damage or degradation by frequent or repetitive traversing of heavy vehicles employed in respect of transporting heavy construction equipment and hauling construction materials.

Now Therefore, in consideration of the premises and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Terms and Conditions: Shall be as set forth in Exhibit A and Exhibit B, attached.

Term of Agreement: This Agreement shall be for a term commencing on the effective date hereof and ending when the project in respect of which it is entered into is complete, unless sooner terminated or extended as provided in Exhibit A of the Agreement.

In Witness Whereof, the parties hereto have executed this agreement as of the latest date written below.

Steuben County

By: _____
Name:
Title:

By: _____
Name: Vincent Spagnoletti
Title: Commissioner of Public Works

Date: _____

Date: _____

Approved as to Form:

County Attorney

Date: _____

Exhibit "A"

Steuben County General Terms and Conditions

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the County, whether a contractor, licenser, licensee, lesser, lessee or any other party):

1. **EXECUTORY CLAUSE.** This contract shall be deemed executory only to the extent of money available to the County of Steuben for the performance of the terms hereof. In accordance with Section 41 of the State Finance Law, the County shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **NON-ASSIGNABILITY CLAUSE.** This contract may not be assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the County of Steuben.
3. **INSURANCE.** The Contractor shall carry at his expense, from insurers licensed in the State of New York, at least the insurance coverage and limits as set forth in Appendix A "Steuben County Standard Insurance Requirements."
4. **INDEMNITY.** The Contractor shall at all times without limitation indemnify the County from all claims, damages or judgments or for the defense or payment thereof, based on any claim, action or cause of action whatsoever, including any action for libel, slander, or personal injury, or any affiliated claims, by reason of any act or failure to properly act on the part of the Contractor and in particular, as may arise from the performance under this contract.
5. **APPROVAL OF SUBCONSULTANTS.** Any additional subconsultants to the Contractor shall be subject to the approval of the County.
6. **COMPLIANCE WITH RULES, REGULATIONS, AND LAWS.** It is mutually agreed that all rules, regulations and laws pertaining hereto shall be deemed to be part of this contract, and anything contained herein that may be in whole or in part inconsistent therewith shall be deemed to be hereby amended and modified to comply with such legislation, rules, regulations and laws, for and during such time the same shall be in effect, but at no other time. If any provision contained herein is found now or during the life of this Contract to be null and void, in whole or in part as a matter of law, then said clause or part hereof shall be deemed to be severed and deleted from this Contract leaving all other clauses or parts thereof in full force and effect. It is further agreed that there shall be no gap in the coverage or applicability of said remaining clauses or parts thereof. Contractor agrees to comply with the Federal Commercial Drivers License Drug and Alcohol Testing Program requirements set forth in 49 CFR Parts 40 and 382. In acceptance of this Agreement, Contractor covenants and certifies that it will comply in all respects with all Federal, State, County or

other Municipal Law which pertains hereto regarding work on municipal contracts, matters of employment, New York State prevailing wages, length of hours, workers' compensation and human rights.

7. **CONFLICT OF INTEREST.** Contractor hereby stipulates and certifies that there is no member of the Steuben County Legislature or other Steuben County Officer or employee forbidden by law to be interested in the contract directly or indirectly, who will benefit there from or who is a party thereto.
8. **LICENSES.** Contractor hereby agrees that it will obtain, at its own expense, all licenses or permits necessary for this work, if any are necessary prior to the commencement of said work.
9. **INDEPENDENT CONTRACTOR STATUS.** Contractor covenants and agrees that it will conduct itself consistent with its status, said status being that of an independent contractor and that itself, its employees or agents will neither hold themselves out as, nor claim to be an officer or employee of the County of Steuben, for such purposes as, but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security or Retirement membership or credit.
10. **AUDIT.** Contractor shall take such action, if applicable and as necessary and appropriate, to comply with Federal Circular A-128 or Circular A-133 relative to Single Audit of Federal Financial Assistance. In any event, Contractor shall provide the County with appropriate documentation should the County wish to conduct an audit relative to the expenditure of the funds for road repairs pursuant to this agreement.
11. **DISPUTE RESOLUTION.**

11.1 Controversies and Claims. Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be resolved according to the provisions of this Article. This provision shall apply to all Claims or disputes arising out of or related to the Contract, including by way of illustration, but not limited to an order by the County claimed to change the Contract, Claims for extension of time, Claims for differing sited conditions, and Claims resulting in suspension of work.

11.2 Dispute Resolution Board (DRB). Prior to commencing any suit or action, Contractor shall submit a written "Notice of Dispute" (NOD) advising the County of the issues in dispute and the demands of the Contractor within ten (10) working days of the event giving rise to the dispute. Together with the NOD, the Contractor shall submit an as built chart, 'Critical Path Method' scheme or other diagram or chart depicting in graphic form how the operations were or are presumed to be adversely affected. Thereafter, the County shall submit the NOD to a Dispute Resolution Board (DRB) consisting of three members appointed by the County Administrator. The DRB shall review the NOD within ten (10) business days.

11.3 Progress during Resolution Proceedings. Contractor shall carry on the work and adhere to the progress schedule during all disputes or disagreements with the County. No work shall be delayed or postponed pending resolution of any disputes or disagreements,

except as the County and Contractor may otherwise agree in writing. Contractor shall make no claim for damages for delay in the performance of this contract occasioned by any act or omission to act of the County or any of its representatives, and agrees that any such claim shall be fully compensated for by extension of time to complete performance of the work as provided herein.

11.4 Action at Law or Equity. In the event dispute resolution is not concluded in ninety (90) days, then either party shall be free to initiate an action at law or in equity solely in the Supreme Court of New York, in and for Steuben County, with all parties maintaining any and all rights, claims and defenses as may be provided by law. Pending final decision of the Court, the Contractor shall proceed diligently with the performance of Contractor's obligations under the Contract according to the directions of the County's authorized representative.

12. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract documents forming this contract, the terms of this Exhibit "A" shall control.

Road Use Agreement

**ARTICLE I
DESIGNATION OF HAUL ROUTES**

The Developer(s) shall submit routes (hereto referred to as **Designated Haul Routes**) for **hauling equipment and materials to and from the project**. These routes will be further designated by the County as Structural Class 1, 2, or 3 (as defined in ARTICLE II) with certain requirements stipulated for their use as set forth in sections 1.1, 1.2, and ARTICLE'S II and III below. **A list and map of the Designated Haul Routes are identified in Appendix B. Appendix B shall be submitted by the Developer (s), to the County, prior to final signing of the Road Use Agreement.**

Section 1.1 Class 2 and 3 Roads – These roads can be used by the Developer(s) of the project **only after the repairs or improvements to the pavement and or base structure have been completed**. However, geometric improvements (turning radii etc) and bridge or culvert improvements will still be required as needed. **All costs associated with these repairs or improvements will be borne by the Developer.**

Section 1.2 – Time Requirement for Designation of Haul Routes. The Haul Routes shall be designated **no later than three months prior** to the commencement of construction activities and prior to the final signing and execution of the Road Use Agreement. The Pre-Construction Survey will begin after the signing of the Road Use Agreement

**ARTICLE II
DEFINITION OF ROAD STRUCTURAL CLASSES**

Section 2.1 Structural Class 1 - The road structure has been upgraded to an adequate and **high quality base of uniform thickness and material type. The driving surface is an asphalt concrete pavement with enough pavement thickness to be able to proceed with the development without any upgrades.** However, heavy construction traffic loading will expend some of the useful life of the road pavement structure and shorten the life expectancy of the road, even though visible damage at the end of the project may not be severe. Visible damage could include increased extent of one or more of the following distresses; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths), and overall ride roughness. **The typical repair method of this type of road would either be a hot mix overlay or a cold in place recycle with a hot mix overlay depending on the extent of wheel rutting, cracking and roughness. This shall be followed up with the appropriate shoulder backup as well as the pulling and resetting of all guiderail and anchors along improved sections of County Road per Steuben County specifications if necessary.**

Section 2.2 Structural Class 2 - The road structure has been upgraded to an adequate and **high quality base of uniform thickness and material type. The driving surface is either an asphalt**

concrete pavement or bituminous surface treatment. **The pavement or chip seal is not of sufficient thickness to withstand the heavy construction traffic loading associated with the development. The road would require additional pavement thickness to be placed before the project could commence.** The typical preservation method for this class of road would be additional overlays of hot mix asphalt, of varying types and thicknesses depending on the thickness of the existing pavement. **A total of up to six and one half (6 ½”) inches of total hot mix asphalt would be required to be placed before the project could commence as well as the appropriate shoulder backup and the pulling and resetting of all guiderail and anchors along improved sections of County Road per Steuben County specifications.**

Section 2.3 Structural Class 3 – The road structure has not been upgraded. The base layer/s is/are less than desired thickness and the asphalt **pavement is not thick enough to withstand the heavy construction traffic associated with the project. This class of road will require a complete restoration before the project can commence.** The typical restoration of this class of road will be the grinding of the existing pavement structure along with any good base material in the underlying layers. Additional add material of **crushed Type 4 gravel** will be placed so that on the second pass with the road reclaimer, the total depth of liquid asphalt injection to stabilize the base material will be a total of **ten (10) inches** in depth. The liquid asphalt shall be injected at a rate of **three (3) gallons per square yard**. Appropriate equipment to achieve proper restoration shall include, but not limited to, padfoot rollers / double drum rollers / water trucks / graders /dozer with jersey spreader / road reclaimers and asphalt distributor trucks. After this process three layers of hot mix asphalt shall be placed. A layer of **three (3) inches of compacted Type 1 Base, a two (2) inch compacted lift of Type 3 Binder and a one and one half (1 ½) inch compacted lift of Type 6F top followed up with the appropriate shoulder backup as well as the pulling and resetting of all guiderail and anchors along improved sections of County Road per sections of County Road per Steuben County specifications.**

Section 2.4 Road Upgrade - ALL UPGRADES OF CLASS 2 AND 3 ROADS WILL BE DONE BEFORE THE DEVELOPER’S PROJECT CAN COMMENCE. The Developer shall submit a contractor of his choice, with the County’s approval, to do the road restoration and or preservation repairs. All costs associated with these repairs will be borne 100% by the Developer(s)

ARTICLE III USE OF DESIGNATED HAUL ROUTES

Section 3.1 Use of Designated Roads In connection with the development, construction, operation and maintenance of the Project, the County hereby acknowledges and agrees that (DEVELOPER), its contractors and subcontractors and each of their respective agents, employees, representatives, and permitted assigns (collectively, the “Developer (s)”) shall use the roads and highways located in the County identified on Appendix B hereto (the “Designated Haul Routes”). **These Designated Routes shall be used by all tandem axle or tri-axle trucks, equipment and assembled cranes both to and from the work site. Any other vehicles (cars, pickups and single axle dump trucks)**

associated with the Developer(s) Project are not limited to the Designated Haul Routes and thus may use any other alternate Steuben County Roads. The commissioner reserves the right to exclude certain County roads from the Designated Haul Routes if the loads hauled by the Developer do not significantly change that road's traffic loading. Appendix B identifies the Designated Haul Routes that will be used for: (1) transportation and delivery of equipment and components and other materials and equipment to be used in connection with the Project;(2) movement of any assembled cranes, the route for which is set forth on Appendix B; and (3) transportation and delivery of local sources of materials, including concrete and gravel.

Section 3.2 Modifications to Designated Haul Routes. The Parties acknowledge and agree that certain modifications and improvements to the Designated Haul Routes and related appurtenant structures are necessary to accommodate the use of Designated Haul Routes by the Developer(s) contemplated hereby, including the widening of certain roads and modifications and improvements necessary to accommodate the heavy equipment and materials to be transported on the Designated Haul Routes. The modifications and improvements that shall be made by the Developer are described in detail on Appendix B hereto. The County and the Developer agree that such improvements and modifications shall be made in accordance with the specifications set forth on Appendix B. Notwithstanding anything herein to the contrary, upon the reasonable request of the Developer the County is authorized from time to time to grant consent to deviations from the specifications set forth on Appendix B. Appendix B shall be submitted to the County by the Developer(s) prior to commencement of construction.

Section 3.3 Limitations of Road Use. The acknowledgement of use by Developer set forth in Section 3.1 shall be contained in special use permits issued by the County simultaneously herewith and which are subject to the following conditions:

(a) **Restrictions.** All other county roads not selected as Designated Haul Routes (reference Article I) are strictly forbidden for use by the Developer throughout the duration of the Project. **In the event that the Developer would like to amend and add any road to the list of Designated Haul Routes during the project the County shall be informed and Appendix B shall be amended.** All Articles of this agreement shall then be immediately applicable and satisfied prior to the added road being used.

(b) **'One Time Use' of a road that is not a Designated Haul Route** - In the event the Developer determines it is necessary for the Project to use a County road not identified on Appendix B as a Designated Haul Road, then the Developer shall notify the appropriate County Designee, describing in detail such use and the reasons therefore. **If the use is to be 'one time' the County Designee shall make the determination to allow the road use without the road being added to Appendix B as a Designated Haul Route.** If the Developer(s) determines that the road may be used multiple times it shall be added to Appendix B as described in section 3.2 (a) of this Article as a Designated Haul Route.

(c) **Extreme Weather Conditions** - **Once construction begins on the Project the County Designee shall be entitled, at any time, to notify the Developer(s) that use of a/the Designated Haul Road/s may result in excessive damage to a/the Designated Haul Road/s due to weather conditions that may pose a serious safety risk to the traveling public.** The Developer(s) shall work with such County Designee to develop a plan to mitigate or prevent the safety liabilities of such weather conditions. If the Parties are able to

develop a plan to mitigate or prevent such safety liabilities, then the Developer(s) may continue to use such roads provided such mitigation is implemented. If the Parties are unable to develop such a plan, the Developer(s) may propose an alternate route to the Project site for approval by the County (such approval not to be unreasonably withheld).

ARTICLE IV PRE-USE SURVEY OF ROADS & BRIDGES

Section 4.1 As soon as practicable after the execution of this Agreement, but in any event, prior to the commencement of the Developer's project, the Developer(s) shall select a third party NYS licensed Civil Engineering firm appearing on the current approved NYS LDSA lists, to conduct the survey explained in section 4.3 and 4.4 below. Roads and highways within the boundaries of the County anticipated to be used as Designated Haul Routes plus any roads anticipated to serve on a one time basis or roads which could be added as Designated Haul Routes will be assessed as described below. A representative from the Engineering Firm shall meet with the County Designee and the County Bridge Engineer prior to data collection to review how the data will be collected and reported. The County shall agree and approve the data collection process and the report formats. **The Pre-use survey shall be done after the signing of the Road Use Agreement, during the three month period before construction begins. Roads will be posted to heavy traffic if the road use agreement is not executed on time, no exceptions.**

Section 4.2 Structural Class Designation - The County shall retain exclusive rights to designate the Road Structural Class for the Designated Haul Routes. The Developer(s) agrees to abide by this decision. The County shall make this decision based on the road surface condition, work history, structural condition, and the traffic using the road. Pre-construction road survey requirements are enumerated in section 4.3 (a) below.

Section 4.3 Pre-Use Survey – A full report of the assessment in (a) below **shall be provided to the county at no cost to the county** prior to the commencement of construction.

(a) **Video Survey of Roads**. Videotape the Designated Haul Roads and Non-Project Roads that could be used as explained above. The full costs of the Video Survey will be borne by the Developer(s). Additional surveys shall only be conducted in the event the Parties mutually agree and the additional survey costs are borne by the Developer(s).

Section 4.4 Inspection of Culverts and Bridges Within one month after the execution of this agreement, and prior to the commencement of construction, the **Developer(s) shall select a NYS licensed engineering company appearing on the current approved NYS LDSA lists, to inspect the culverts and bridges on the Designated Haul Routes.** The inspection shall be done within that same month following execution of the agreement. Culverts and bridges on any other roads

anticipated to serve on a ‘one- time’ basis or roads which could be added as Designated Haul Routes shall also be included. The third party engineer shall take photographs of the culvert and bridges. The full costs of the inspections will be borne by the Developer(s). Based on the inspections the selected engineering firm shall provide a report discussing the status of culverts and bridges that shall require improvements/upgrades prior to their use in the Project. This report shall also present the recommended improvements/upgrades to the structures and shall be submitted to the County for review. The County will prepare a final list of improvement/upgrade projects that must be done prior to commencement of the Project. The County reserves the right to require an evaluation of any bridge that will be crossed by an overweight special hauling vehicle. The evaluation shall be done by the qualified NYS licensed engineering firm. **The full cost of the evaluation(s) will be borne by the Developer(s).**

ARTICLE V POST USE ROAD SURVEY PROJECT COMPLETION DATE

Section 5.1 Post Use Pavement Survey Tasks – This survey shall be completed within the first two months after said project is completed. The Developer(s) shall engage and pay for the services of a NYS licensed engineering firm appearing on the current approved NYS LDSA lists, to do the post use survey. The Post Use Pavement Survey tasks listed below shall be completed within a two (2) month window following the Project Completion Date, _____.

(a) **Photo & Video Survey of Roads** – Repeat as described in section 4.3 (a) above.

Section 5.2 Structural Evaluation of Roads – After analysis of the Post Use Pavement Survey the County shall determine if any additional repair needs to be made from the survey data.

ARTICLE VI DETERMINATION OF FINAL ROAD REPAIRS PAYMENT FOR COST OF REPAIRS

The County shall examine the post use survey data and compare it to the pre-construction survey data. Based on the data and field inspection, the County shall determine the needed repairs **by the end of the first three (3) months following the completion of the project. The County shall prepare a report of the needed repairs that includes the treatment for each road segment.** The

report shall be submitted to the Developer(s) within the first three month period after the Project Completion Date (assuming the Developer(s) submits the Post Use Pavement survey data to the County within the first two months after the completion date as per Article V, section 5.1). Damages shall be repaired in accordance with section 6.1 of this Article VI.

Section 6.1 - Class 1, 2, and 3 Roads - Upon completion of the project, **a thin asphalt concrete overlay (less than 2 inches) or a microsurfacing may be required** to reseal cracks, restore road smoothness and correct ride-ability deficiencies that may have been induced. The thickness, materials, and method of construction for this overlay or microsurfacing shall be specified by the County. One hundred percent (**100%**) of the costs of the labor, materials, equipment, design and construction inspection services, shall be paid **by the Developer(s)**. The Developer(s) shall hire a qualified contractor of its choice, to be approved **by** the County, to construct the road repair.

Section 6.2 One -Time Use Roads In accordance with Article III section 3.3 (b) roads may be used on a one time basis if requested in writing. **The Developer(s) will repair any damage caused by the project to the One-time use roads, and return such roads to the condition such roads were in prior to such damage (as near as is reasonably practicable having due regard for normal wear and tear).** Prior to commencement of such repair, the County and Developer(s) shall meet to review the damage in relation to the Initial Survey or most recent subsequent survey, as applicable. The Developer(s) shall repair (or cause to be repaired) such damage and restore the road to the standard agreed upon, unless the Developer(s) can demonstrate to the reasonable satisfaction of the County Designees that the damage was not caused by the Developer(s). Any repair and restoration shall be promptly performed at such times as the Developer(s) and the County determine, having due regard for safety, the presence of emergency conditions and the costs of such repairs. In the event that the Developer(s) fails to repair such roads within the agreed period, then, unless the Parties mutually agree otherwise, the County may make such repairs and shall invoice the Developer(s) for the costs incurred by the County in connection with the repair. The Developer(s) shall pay such invoiced amounts within ten (10) days following receipt of the invoice.

Section 6.3 Culverts and Bridges – Improvements/Upgrades to bridges and culverts may be required prior to commencement of the project. Damage as a result of the Construction Project to a culvert or bridge structure that was not improved or upgraded must be repaired following the project, or sooner if deemed necessary by the County. All modifications or repairs to culverts or bridges shall be designed in accordance with accepted AASHTO and NYSDOT standards by a Professional Engineer licensed to practice in New York State and employed by a Civil Engineering firm appearing on the approved NYS LDSA lists. All damage by the contractor shall be mitigated, either through repair or replacement, by the contractor at his expense to the satisfaction of Steuben County.

Section 6.4 Payment for road repair and inspections done by County forces - All material, labor, inspection and equipment costs for any repair shall be paid by the Developer(s).

- a) To the extent that any repairs arising out of the operations under this Agreement are handled “in house” by the County, the labor costs will be the burdened rate of pay actually paid to the persons who perform the work, the reference to “burden” referring specifically to benefits associated with County employment. The documentation for those costs will come directly from the County’s payroll services office of the County Treasurer. For any County equipment used for such repair work, the County has a program to determine the “equipment rates” associated with each piece of County equipment, which rates will be the basis for calculating the amount Developer(s) will be required to pay in respect of County Equipment used to accomplish any repairs. Those rates are calculated upon placing such equipment in service and published for internal use by the Public Works Department and the County Treasurer. The latest list of said rates is attached hereto and by this reference incorporated herein. It is understood and acknowledged that the equipment rate list is updated when new equipment is placed in service or equipment removed, and revised lists will be made available to the Developer(s) upon request. Any materials used in these repairs purchased through the County “procurement process”, will be based upon the particular contract consideration and ultimately upon the actual cost to the County, that is the County will pass those contract and ultimately actual costs along to the Developer(s) without any “add-ons”.
- b) The Developer(s) shall pay for any contracted inspection services performed by the County, as well as any cost incurred by the County to hire an Administrator to facilitate the implementation and monitor the adherence to, the Road Use Agreement(s).

ARTICLE VII OTHER CONDITIONS

Section 7.1 Protection of Traveling Public and Pedestrian Safety Plan

The Developer(s) shall prepare and submit a Protection of Traveling Public and Pedestrian Safety Plan to the County prior to performing any work as part of this Agreement. The Safety Plan shall identify the Developer’s designated Safety Officer with 24 hour contact information and address how the Developer(s) will ensure the safety of the traveling public and pedestrians along all designated haul routes. Special consideration in the Plan shall be given to high volume routes including seasonally high volume routes near visitor attractions, bicycle and pedestrian routes, routes through Villages and Hamlets, and routes near schools and colleges. The Developer(s) shall identify means to monitor and control the speeds of their construction vehicles at all times and the scheduling of their routes to avoid peak hour traffic in the morning and afternoon on the way to and from home, work and school.

Section 7.2 List of Materials and Construction Techniques Ten (10) days prior to the commencement of any modification or improvement pursuant to this Article VII, the Developer(s)

shall deliver to the County a list of all materials to be used and construction techniques to be employed in connection therewith, subject to the approval of the County (not to be unreasonably withheld).

Section 7.3 Subsequent Modifications or Improvements. If modifications or improvements are necessary to the Designated Haul Routes and related appurtenant structures that were not contemplated when this Agreement was executed, the parties agree to negotiate in good faith and mutually agree to such modification or improvement, together with the materials to be used, the construction techniques to be employed, and the specifications applicable to such work.

Section 7.4 Compliance with Law The Developer(s) agrees that all modifications and improvements shall comply with all applicable laws, subject to the obligation of the County set forth in Article XI.

Section 7.5 Appendix C - Utility Operations. The Parties acknowledge that the Developer(s) may desire to route certain wires, cables, conduits and/or pipelines (and their associated equipment) related to the Project above or below ground at a location adjacent to, under or across certain Designated Roads, as identified in Appendix C. However, it should not be inferred by the Developer(s) that any utility operations would be allowed/ disallowed in every application involving Steuben County right-of-way. Steuben County must review each proposed utility system after the appropriate project documentation has been submitted. Reasons for rejecting utility systems in whole or in part may be based on, but not limited to: existing utility congestion, highway maintenance distress, projected road reconstruction and structural proximity.

All road crossings must conform to the county “no open cut policy”. A change to this policy is at the discretion of the Commissioner or Designee. The Parties further agree that the Developer(s) shall be responsible for obtaining all private land rights as are necessary to permit the Developer(s) to complete any type of installation approved by the County and make the modifications and improvements to the Designated Haul Routes contemplated by this Agreement, including obtaining all necessary land rights from private landowners adjacent to the Designated Haul Routes. The Developer(s) shall submit Appendix C to the County prior to the commencement of construction.

Section 7.6 Permits. The Developer(s) shall obtain all necessary governmental permits and approvals that are necessary to permit the Developer(s) to make the modifications and improvements to the Designated Roads contemplated herein, including obtaining all necessary private land rights that may be required in connection with Section 7.5. The County shall not be responsible for obtaining any such private land use rights. The Developer(s) shall be responsible for obtaining all required permits and approvals as follows:

1. County Highway Work Permits – For any and all work in the County right-of-way, including utilities.
2. County Highway Driveway Access Permits
3. Overweight and Special Hauling Permits for County Roads
4. NYS DEC permits for water crossings, wetlands, storm water phase 2 permits, etc.
5. Army Corps of Engineer permits for water crossings, wetlands, etc.

ARTICLE VIII INTERIM AND EMERGENCY REPAIRS

The County will perform periodic inspections of the specified haul route(s) designated by the Developer(s). **The County will determine if any repairs are required to maintain the safety of the traveling public. The County may deem necessary that the designated haul route(s) be restored to like new conditions before the project is complete.** The Developer(s) will be expected to perform any emergency repairs to the haul roads, including the pavement, drainage structures, or any other highway related appurtenance that is damaged by the project and which the County determines must be repaired. **The County will inform the Developer(s) of required emergency repairs and the repair shall be accomplished within a minimum of twelve (12) hours. If more time is required the Developer(s) shall inform the County of the status of the repair on a daily basis, but at no time shall the road become impassable or become dangerous to the traveling public.** Close communication will be required between the County Public Works Commissioner's Designee and the manager of the project. All costs of the repair shall be paid for by the Developer(s). At the discretion of the County, depending on road conditions dust control treatments may be required. The County will determine when dust control treatments are required for roads and shall direct the Developer(s) when to do them.

ARTICLE IX WARRANTIES BY DEVELOPER

Section 9.1 Workmanship and Material Warranties. The following warranty and workmanship requirements apply to all repairs, modifications, and improvements that the Developer(s) (its contractors or subcontractors) shall make prior to or during the course of the Construction project in order to accomplish the construction process. As used herein, "Applicable Warranty Period" means, with respect to any repair, modification, or improvement by the Developer(s) hereunder, the time period that begins on the date repairs, modifications or improvements to Designated Roads are complete and ending on the date that is twelve (12) months after such completion date.

(a) Developer's engineering responsibility, including the selection of material and equipment suitable for the repair of, and modifications and improvements to, the Designated Haul Routes and One Time Use Roads shall be carried out in accordance with generally accepted engineering practices, and Developer's construction responsibility shall be carried out in accordance with sound construction practices. The Developer(s) shall require from its construction contractors and subcontractors the same standards for engineering and construction practice. The Developer(s) warrants that it shall perform and complete all repairs, modifications and improvements hereunder in a good and workmanlike manner.

(b) The Developer(s) warrants that all repairs, modifications and improvements hereunder shall be free from defects in material and workmanship. The Developer(s) shall remedy any defects in the repairs, modifications and improvements performed hereunder including repairs,

modifications and improvements, workmanship, materials and equipment provided by subcontractors during the “Applicable Warranty Period”. A “defect” means any and all design, engineering, construction, manufacturing, installation, materials, equipment, repairs, modifications or improvements which (1) does not conform to the terms of this Agreement (2) is of improper or inferior workmanship, or (3) is not suitable for use under the applicable climatic and range of operating conditions.

Section 9.2 Remedies. During the Applicable Warranty Period, the County shall notify the Developer(s) in writing of any defects in the repairs, modifications or improvements. At no additional cost to the County, the Developer(s) shall proceed promptly to take such action relating to its performance hereunder as is necessary to cause the repairs, modifications and improvements to comply with the warranties specified in this Agreement. The Developer shall be available either at the project or by telephone for the performance of warranty repairs on a seven (7) day a week, twenty-four (24) hours per day basis.

Section 9.3 Final Waiver of Liens The Developer(s) warrants that all repairs, modifications, improvements and materials furnished in connection with the performance by Developer(s) Parties under this Agreement shall be free and clear of all liens.

ARTICLE X BONDING

Section 10.1 Bonding

A bond, standby letter of credit, or other form of security acceptable to the County, will be required. The bond posting dates must be for a period starting no later than the commencement of construction date and ending upon project completion as set forth in Article V. The security will be in accordance with the following schedule:

Class 1, 2, and 3 Roads will be bonded at \$ 15,000 / mile

Section 10.2 Multiple Users In the event that there are multiple users on any Designated Haul Routes;

- a) A list of all developers using the same Designated Haul Routes shall be distributed to each developer by the County.
- b) All interim and emergency repair costs (**ref. Article VIII**), as well as all final road repair costs (ref. Article VI), incurred after multiple Road Use Agreements are in place, shall be shared by the Developer(s). Any costs incurred before multiple Road Use Agreements are in place, shall be borne by the original Developer(s).

- c) Consideration will be given to not requiring a pre-use road and bridge survey (reference Article IV) by subsequent developers; after the first developer has completed its pre-use road and bridge survey.

ARTICLE XI DEFAULT AND REMEDIES

Section 11.1: In the event that the Developer(s) fails substantially to perform each and every obligation and undertaking to be performed by it hereunder, and such default shall not be cured within thirty (30) days after notice from the County, then the County shall have the right to terminate this Agreement by giving ten (10) days' notice.

Section 11.2: The County reserves the right at any time during the life of this Agreement to terminate the Agreement in its absolute discretion on thirty (30) days' notice in the event that,

- (a) The Developer(s) becomes insolvent; or
- (b) Any voluntary or involuntary petition in bankruptcy or for corporate reorganization or for any similar relief is filed by or against the Developer(s) and, in the case of an involuntary petition, such petition is not dismissed within thirty (30) days after such filing; or
- (c) A liquidation proceeding is commenced by or against the Developer(s), and, in the case of an involuntary proceeding, such proceeding is not dismissed within thirty (30) days after commencement thereof; or
- (d) All or substantially all of the business or assets of the Developer(s) are transferred to a third party (other than a parent or ASSOCIATED COMPANY of the Developer) by agreement, order of court, or otherwise, including, without limitation, by a merger or consolidation.

Section 11.3: Upon termination of this Agreement as hereinabove provided or by operation of law or otherwise, all rights and licenses granted and obligations assumed hereunder shall terminate forthwith, except;

1. The obligation to pay amounts accrued or to accrue as of the termination date as provided hereinabove; and
2. The provisions of Article IX hereof for any amounts accrued or to accrue as provided hereinabove; and
3. The provisions undertaken under Article X.

ARTICLE XII NOTIFICATION OF ALL ASSOCIATED MUNICIPALITIES

Section 12.1: The Developer(s) shall notify all other County, Town and Village Municipalities that will be impacted by the Developer(s) associated with the Designated Haul Routes according to this Road Use Agreement. The Developer(s) shall enter into a Road Use Agreement where required, with any other Municipality that will be impacted by this agreement.

Appendix A
Steuben County Standard Insurance Requirements
STEBEN COUNTY STANDARD INSURANCE REQUIREMENTS

Prior to commencement of work, delivery of services, acquisition of merchandise or equipment a Certificate of Insurance and a policy endorsement covering items A, B & C must be delivered to the County Department responsible for the agreement, and to the County Risk Manager. A Certificate of insurance may be used to show coverage only.

ITEMS:

A. Steuben County, 3 Pulteney Square. East, Bath, N.Y., 14810 shall be named as an additional insured (for the purposes of coverage but not the payment of premium).

B. ACKNOWLEDGEMENT: The insurance companies providing coverage acknowledge that the named insured is entering into a contract with Steuben County in which the named insured agrees to defend, hold harmless, and indemnify the County, its officials, employees and agents against all claims resulting from work performed, material handled and services rendered. The contractual liability coverage evidenced will cover the liability assumed under the County-Contractor agreement.

C. Prior to non-renewal, cancellation or a change of converge on this policy, at least thirty (30) days advance written notice shall be given to Steuben County Risk Manager at Steuben County Offices, 3 Pulteney Square East, Bath, N.Y. 14810

MINIMUM COVERAGES AND LIMITS ARE

Workers' Compensation Coverage will be required for anyone doing any kind of work for Steuben County. This includes self-employed individuals. The Steuben County Risk Manager may waive this requirement.

TYPE OF CONTRACT	COVERAGES REQUIRED	LIMITS REQUIRED
PROFESSIONAL SERVICES	PROFESSIONAL LIABILITY	MINIMUM \$1,000,000
	AUTO LIABILITY TO INCLUDE: OWNED, HIRED & NON OWNED	MINIMUM \$1,000,000
	WORKERS COMPENSATION	STATUTORY
	EMPLOYERS LIABILITY	STATUTORY
CONSTRUCTION & MAINTENANCE	DISABILITY BENEFITS	STATUTORY
	COMPREHENSIVE GENERAL LIABILITY TO INCLUDE: PREMISES & OPERATIONS ,PRODUCTS & COMPLETED OPERATIONS , INDEPENDENT CONTRACTOR, CONTRACTUAL, BROAD FORM PROPERTY DAMAGE,(XCU HAZARDS)	MINIMUM \$1,000,000
	AUTO LIABILITY TO INCLUDE: OWNED, HIRED, & NON OWNED	MINIMUM \$1,000,000
	WORKERS' COMPENSATION	STATUTORY
	EMPLOYERS LIABILITY	STATUTORY
ACQUISITION OF SUPPLIES OR EQUIPMENT	DISABILITY BENEFITS	STATUTORY
	COMPREHENSIVE GENERAL LIABILITY TO INCLUDE: PRODUCTS & COMPLETED OPERATIONS , CONTRACTUAL, BROAD FORM PROPERTY	MINIMUM \$1,000,000
	WORKERS' COMPENSATION	STATUTORY
	EMPLOYERS LIABILITY	STATUTORY
COUNTY PROPERTY USED BY OTHERS	DISABILITY BENEFITS	STATUTORY
	COMPREHENSIVE GENERAL LIABILITY TO INCLUDE: PREMISES & OPERATIONS ,PRODUCTS & COMPLETED OPERATIONS , INDEPENDENT CONTRACTOR, CONTRACTUAL, PERSONAL INJURY, LIQUOR LEGAL LIABILITY	MINIMUM \$1,000,000
	AUTO LIABILITY TO INCLUDE: OWNED, HIRED, & NON OWNED	MINIMUM \$1,000,000
	WORKERS' COMPENSATION	STATUTORY
	EMPLOYERS LIABILITY	STATUTORY
CONCESSIONAIRE SERVICES LIVERY SERVICES MUNICIPAL AGREEMENTS	DISABILITY BENEFITS	STATUTORY
	COMPREHENSIVE GENERAL LIABILITY TO INCLUDE: PREMISES & OPERATIONS ,PRODUCTS & COMPLETED OPERATIONS , INDEPENDENT CONTRACTOR, CONTRACTUAL, PERSONAL INJURY, LIQUOR	MINIMUM \$1,000,000
	AUTO LIABILITY TO INCLUDE: OWNED, HIRED, & NON OWNED	MINIMUM \$1,000,000
	WORKERS' COMPENSATION	STATUTORY
	EMPLOYERS LIABILITY	STATUTORY
	DISABILITY BENEFITS	STATUTORY

Bid specifications, particular contracts, leases or agreements may require increased limits and or additional coverages. If there are questions please contact the Steuben County Risk Manager 607-776-9631

Appendix B
Improvements and Modifications to Designated Haul Routes

Appendix C

Utility Operations

Steuben County
Department of Public Works

County Office Building
3 E. Pulteney Square
Bath, New York 14810

Vincent Spagnoletti
Commissioner

Phone: (607) 664-2460
Fax: (607) 664-2167

RENTAL RATES - COUNTY OWNED EQUIPMENT WITH OPERATOR					
EQUIPMENT CATEGORY #	DESCRIPTION	(1) EQUIPMENT COST MACH RENT CHARGE BACK RATES (\$/HOUR)	(2) OPERATOR RATE (\$/HOUR)	(3) 68% ADDITIVE (\$/HOUR)	(4) EQUIPMENT WITH OPERATOR (\$/HOUR)
21	Cars	\$8.00	-	-	-
23	Pickups	\$12.00	-	-	-
24	Miscellaneous Trucks	\$18.00	\$20.00	\$15.00	\$53.00
25	One Ton Dump Trucks	\$22.00	\$20.00	\$15.00	\$57.00
26	Maintenance Trucks	\$21.00	\$20.00	\$15.00	\$56.00
28	Ten Wheel Dump Trucks	\$39.00	\$20.00	\$15.00	\$74.00
29	Truck Tractors	\$37.00	\$20.00	\$15.00	\$72.00
31	Lowboys	\$13.00	-	-	-
33	Graders	\$55.00	\$20.00	\$15.00	\$90.00
34	Loaders	\$36.00	\$20.00	\$15.00	\$71.00
35	Chip Spreaders	\$73.00	\$20.00	\$15.00	\$108.00
36	Brush Chippers	\$34.00	-	-	-
37	Snow Blowers	\$273.00	\$20.00	\$15.00	\$308.00
39	Sweepers	\$26.00	\$20.00	\$15.00	\$61.00
42	Straddle Crane	\$42.00	\$20.00	\$15.00	\$77.00
44-1	Backhoes (Hydraulic Excavator)	\$50.00	\$20.00	\$15.00	\$85.00
44-2	Backhoes (Tractor)	\$38.00	\$20.00	\$15.00	\$73.00
45-1	Dozers (JD 450H)	\$9.00	\$20.00	\$15.00	\$44.00
45-2	Dozers (D5) & (D6)	\$21.00	\$20.00	\$15.00	\$56.00
46	Gradalls	\$36.00	\$20.00	\$15.00	\$71.00
47	Screen	\$34.00	\$20.00	\$15.00	\$69.00
47-1	Crusher	\$36.00	\$20.00	\$15.00	\$71.00
48	Rollers	\$14.00	\$20.00	\$15.00	\$49.00
49	Tractor Mowers	\$22.00	\$20.00	\$15.00	\$57.00
50	Small Riders & Lawn Mowers	\$8.00	\$20.00	\$15.00	\$43.00
51	Pumps (6")	\$38.00	-	-	-
53	Tampers	\$4.00	-	-	-
55	Compressors	\$4.00	-	-	-
56	Saws	\$4.00	-	-	-
57	Generators	\$4.00	-	-	-
58	Welders	\$4.00	-	-	-
65-1	Post Driver	\$22.00	\$20.00	\$15.00	\$57.00
65-2	Road Grinder (zipper machine)	\$104.00	\$20.00	\$15.00	\$139.00
65-3	Shoulder Widener	\$60.00	\$20.00	\$15.00	\$95.00
65-5	Fork Lift	\$15.00	\$20.00	\$15.00	\$50.00