Road Preservation, Use and Repair Agreement

This Agreement (**Agreement**) effective the _____ day of _____, 20__ is made and entered into by and between the Town of Truxton, acting through its duly constituted Highway Department (**Municipality**), and _____ (**Developer**), a person, a corporation or entity, organized and existing under the laws of, or duly authorized to conduct business in the State of New York, having its principal place of business at _____.

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

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 set forth in Sections One to Eleven and Appendices A, B, and C.

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 and any applicable warranty period.

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

Developer

By: _____
Name:_____
Title: _____

Date: _____

Approved as to From:

_____

Municipality

By: TOWN OF TRUXTON
Name:_____
Title:_____

Date: _____

Date: _____

Road Preservation Use and Repair Agreement

An Agreement Relating to the Use and Repair of Roads in the Town of Truxton

Section 1: PURPOSE

The purpose of this agreement is to maintain the safety and general welfare of the Town of Truxton residents and to preserve the municipal roads by regulating commercial, industrial, and construction activities that have the potential to adversely affect road conditions and public right-of-ways. Well maintained roads are important to the economic well being of the Town of Truxton hereinafter, "the Municipality." This agreement is to protect the public roadways, bridges, and culverts from damage. The Town Board of the Town of Truxton hereby enacts the following Road Preservation Use and Repair Agreement pursuant to the provisions of the Municipal Home Rule Law.

Section 2: ENFORCEMENT

The Municipality delegates to the Town of Truxton Highway Superintendent hereinafter, "the Designee," the oversight of assuring construction/commercial or industrial activities do not have an adverse impact on roads.
This individual will work directly with the company representative named on Appendix A.

Section 3: DEFINITIONS

a. Structural Class:

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 either an asphalt concrete pavement or bituminous surface treatment in good to excellent condition. The Granular Base and/or the Asphalt Pavement/Bituminous Surface Treatment are less than 10 years old and have 20 to 30 years remaining life. The complete road structure is capable of supporting heavy construction equipment and hauling heavy commercial or industrial components (total estimated 18-KIP Equivalent Single Axles Loads) throughout the duration of the anticipated project, without needing major structural improvements prior to the project. 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 but is not limited to 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.

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 in fair to good condition. The Granular Base

and/or the Asphalt Pavement/Bituminous Surface Treatment are 10-20 years old, and have 10 to 20 years remaining life. The road is adequate to sustain construction traffic and hauling heavy commercial or industrial components for the project. However, damage to the asphalt pavement/bituminous surface or base will be likely during the project thereby causing a significant decrease in serviceability for the traveling public, rough travel for construction equipment, and potential safety issues and increased difficulties in performing winter maintenance. Visible damage could include but is not limited to 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.

3. **Structural Class 3** – The road structure has not been upgraded. The base layer/s is/are of inconsistent structure, poor to marginal quality and less than desired thickness. The asphalt pavement is in fair to good condition with one or more of the following surface distresses present; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths). Ride roughness may range from fair to excellent. The combined layers of the pavement structure continue to provide an acceptable level of service for the traffic using the road. The road is judged to be generally adequate to service the construction traffic and hauling heavy commercial or industrial components, and the traveling public throughout the duration of the proposed project. However, by the end of the project damage to the pavement structural system will likely be visible, and will take the form of 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 increased ride roughness.

4. **Structural Class 4** – The road structure has not been upgraded. The base layer/s is/are of inconsistent structure, poor to marginal quality and less than desired thickness. The asphalt pavement is in poor to fair condition with a rough deteriorated driving surface. The road is not capable of sustaining the magnitude and the duration of loading commensurate with a designated haul route (total estimated 18-KIP Equivalent Single Axles Loads) for an extended project. Use of the road without prior reconstruction may result in significant distresses such as severe alligator cracking, potholes, rutting, and very rough ride-ability within the duration of the project. The accelerated deterioration would create excessive demand for pavement repairs (i.e. pothole patching, rut filling etc.). The effectiveness of winter snow and ice maintenance would be greatly diminished (i.e. snow plows would not be able to operate efficiently and safely, snow and ice would be left in deep wheel path ruts after plowing etc.). Consequently the safe passage of the traveling public as well as construction equipment would be seriously compromised.

5. **Structural Class 5** – The road structure has not been upgraded. The base layer/s is/are of inconsistent structure, poor to marginal quality and less than desired thickness. The road is not capable of sustaining the magnitude and the duration of loading commensurate with a designated haul route (total estimated 18-KIP Equivalent Single Axles Loads) for an extended project. Use of the road without prior reconstruction may result in significant distresses such as potholes, rutting, and very rough ride-ability within the duration of the project. The accelerated deterioration would create excessive demand for repairs (i.e. pothole patching, rut filling etc.). The effectiveness of winter snow and ice maintenance would be greatly diminished (i.e. snow plows would not be able to operate efficiently and safely, snow and ice would be left in deep

wheel path ruts after plowing etc.). Consequently the safe passage of the traveling public as well as construction equipment would be seriously compromised.

a. **High Frequency, High Impact Traffic**: Traffic to and from a single project site that generates more than ten truck trips per day for more than four consecutive days, involving trucks that exceed 20 tons (truck and load combined) that could impact the Municipality's roads.

b. **Road Preservation Use and Repair Worksheet** (**Appendix A**): Worksheet is to be completed by project developer, summarizing the project, project location, start and completion dates, expected max gross weight used for the project, designated haul routes (**Appendix B**), and any other information that the Designee deems necessary.

c. **Designated Haul Routes (Appendix B)**: Roads used for; (1) transportation and delivery of equipment and components and other materials and equipment to be used in connection with the Project; (2) truck transportation leaving the Project site following delivery of equipment and materials, movement of rigs and (3) transportation and delivery of local sources of materials, including concrete, gravel and asphalt.

d. **Developer**: The person, corporation or entity responsible for generating the truck traffic including any subcontractor used by said person or corporation.

e. **Project.** Any construction related activity including follow truck traffic that generates high-frequency, high-impact truck traffic on Town roads whether or not the project is located in the Town of Truxton. Projects include, but are not limited to construction, mining and drilling activities.

f. **Commencement of Construction**: Construction shall begin upon issuance of access/driveway permits by the **municipality** (pre-construction surveys must be completed and approved before the issuance of access/driveway permits).

g. **Exclusion.** Any municipality or school district, its contractors and sub-contractors, within the Town of Truxton shall be excluded from this Local Law. Agricultural operations as defined by New York State Agricultural District Law and the movement of agricultural products are also excluded.

Section 4: GENERAL PROVISIONS
DESIGNATION OF HAUL ROUTES

The Developer shall submit requested routes (hereto referred to as Designated Haul Routes) for hauling equipment and materials to and from the project to the Municipality for approval. These routes will be further designated, by the Municipality as Structural Class 1, 2, 3, 4, or 5 (as defined in Section 3) with certain requirements stipulated for their use as set forth in Sections 4.1, 4.2 and Section 5 below. **A list and map of the Designated Haul Routes shall be identified in Appendix B.** The Haul Routes shall be designated **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.

4.1 <u>Class 1, 2, and 3 Roads</u> – These roads can be used by the Developer for the designated Project without any repairs or improvements to the pavement structure prior to construction. However, geometric improvements (turning radii etc) and bridge or culvert improvements may still be required, at the Developer's expense, as needed.

4.2 <u>Class 4 and 5 Roads</u> – The Developer may proceed to use the road at their own risk. However, the Municipality shall monitor the use of the road during the Project construction. If the road becomes dangerous to the traveling public, the Municipality shall close the road to all construction traffic. In the case of closure, the Developer shall be required, at their own expense, to complete reconstruction of the road base and asphalt concrete pavement to include shoulders and necessary improvements of ditches, culverts and other drainage related facilities before construction traffic is allowed to continue. The Municipality shall determine the full cross section design and material specifications for this reconstruction. The Developer shall hire a qualified contractor of its choice to construct the pavement system (base and asphalt pavement layers for Class 4, if applicable) according to the full specifications provided by the municipality.

Section 5: USE OF DESIGNATED HAUL ROADS AND PRE-CONSTRUCTION ROAD SURVEY

5.1 <u>Construction Traffic Estimation</u>- The Developer shall engage and pay for the services of a NYS licensed Civil Engineering firm approved by the Municipality, to estimate all of the construction traffic that will use each Designated Haul Route. The type, weight, number of axles, and load on each axle, of each construction vehicle shall be defined and the number of trips for each shall be estimated. This shall be done for overweight vehicles hauling in construction equipment as well as all non-overweight loads carrying aggregate, concrete and any other building supplies and materials and commercial or industrial components, over the designated haul roads from any and all suppliers, vendors, contractors etc. involved in the project. Then, the sum total estimated construction traffic shall be converted to a total number of Equivalent 18-Kip Single Axle Loads (ESAL's), according to the NYSDOT Pavement Design Manual, over the duration of the project. This shall be done for each Designated Haul Route that the Developer will use for the project. The Road Use Agreement will be executed only after this data is submitted and the Haul Routes are designated. **All Designated Haul Routes will be posted at each end of the road with final locations to be determined by the Municipality and paid for as detailed in Appendix B.**

5.2 As soon as practicable after the execution of the Road Use Agreement, but in any event prior to the commencement of the Project construction the Developer shall select a third party NYS licensed Civil Engineering firm, approved by the Municipality to conduct the surveys and assessments explained in section 5.4 below. Roads and highways within the boundaries of the Municipality 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 Municipalities Highway Superintendent or their designee prior to data collection to review how the data will be collected and reported. The Municipality shall either agree and approve or disapprove the data collection process and the report formats. **The Pre-Construction survey shall be done before the final execution of the Road Use Agreement.**

5.3 <u>Structural Class Designation</u>- The Municipality shall retain exclusive rights to designate the Road Structural Class for the Designated Haul Routes. The Developer agrees to abide by this decision. The Municipality shall make this decision based on the road surface condition, structural condition, and the traffic using the road. Pre-construction road survey requirements are enumerated in Section 5.4 (a)-(d) below.

5.4 <u>Pre-Construction Survey</u>- A full report of the assessments in (a) – (d) below shall be provided to the Municipality by the Developer and paid for by the Developer, prior to the commencement of construction.

(a) <u>Video Survey of Roads</u>. Videotape the Designated Haul Roads and Non-Project Roads that could be used as explained above. Videos will be provided in a DVD format. The full costs of the Video Survey will be borne by the Developer. Additional video surveys shall only be conducted in the event the Parties mutually agree and the additional survey costs are borne by the Developer.

(b) <u>Distress Survey</u>. – Measure and record the extent and severity of surface distresses for each designated haul road. The survey shall include the severity and extent of alligator cracking, longitudinal cracking, transverse cracking, edge cracking/deterioration, potholes and patches.

(c) <u>Rutting and cross slope assessment.</u> – Wheel rut depth in both outer and inner wheel paths shall be measured with a straight edge. If the lane is crowned in the middle the rut depth can be measured for each wheel path by laying the straight edge from the centerline of the road to center of the lane and from the center of the lane to edge of the road for the inner wheel path and outer wheel path, respectively. Cross slope shall also be measured, using the full lane width straightedge and a "smart level" in percent mode. Again, if there is a crown in the middle of the lane the cross slope shall be measured independently, and recorded as such, for the inner and outer wheel paths. The rut depth and cross slope measurements will be made at a uniform spacing at 15 locations per mile.

(d) **<u>Road Roughness</u>** – Measure, record, and report the International Roughness Index (IRI) using a profilometer for each designated haul road. A full report of the Roughness assessment shall be provided to the Municipality at no cost to the Municipality prior to the commencement of construction.

(e) <u>Core Sample</u>- A core or crosscut sample may be required, at the Municipality's discretion, to determine necessary repairs.

5.5 <u>Inspection of Culverts and Bridges</u>- Within one month after the execution of this agreement, and prior to the commencement of the Project construction, the Developer shall select a qualified engineering company, subject to approval by the Municipality, 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. 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 Project. This report shall also present the recommended improvements/upgrades to the structures and shall be submitted to the Municipality for review. The Municipality will prepare a final list of improvement/upgrade projects that must be done prior to commencement of construction. The Municipality 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 a qualified NYS licensed engineering firm.

5.6 Limitations of Road Use

(a) **Restrictions.** All other Municipal roads not selected as Designated Haul Routes 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 Municipality shall be informed, and will determine whether or not Appendix B shall be amended. All Sections 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 Municipal road not identified on **Appendix B** as a Designated Haul Road, then the Developer shall notify the appropriate Municipality's Designee, describing in detail such use and the reasons therefore. If the use is to be 'one time,' the Municipal Designee shall make the determination to allow the road use without the road being added to Appendix B as a Designated Haul Route unless the use is a superload. If the Developer determines that the road may be used multiple times it shall be added to Appendix B as described in Section 4 of this Article as a Designated Haul Route.

(c) Extreme Weather Conditions - Once construction begins on the Project the Municipal Designee shall be entitled, at any time, to notify the Developer 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 shall work with the Municipality's Designee to develop a plan to mitigate or prevent safety liabilities concerning all designated haul routes as a result of such weather conditions. If the Parties are able to develop a plan to mitigate or prevent such safety liabilities, then the Developer may continue to use such roads provided such mitigation is implemented. If the Parties are unable to develop such a plan, the Developer may propose an alternate route to the Project site for approval by the Municipality (such approval not to be unreasonably withheld).

Section 6: POST USE PAVEMENT SURVEY

6.1 <u>Post Use Pavement Survey Tasks</u> - The Developer shall engage and pay for the services of a NYS licensed Civil Engineering firm, approved by the Municipality, to do the post use survey. The Post Use Pavement Survey tasks listed below shall be completed and submitted within 90 days following the project completion date.

- **(a) Photo & Video Survey of Roads –** Repeat as described in section 5.4 (a) above.
- **(b) Distress Survey** – Repeat as described in Section 5.4 (b) above.
- **(c) Rut Depth and Cross Slope measurements –** Repeat as described in Section 5.4 (c) above.
- **(d) Road Roughness** – Repeat as described in Section 5.4 (d) above.
- **(e) Core Sample**- May be required per Municipality's discretion.

Section 7: DETERMINATION OF FINAL REPAIRS

The Municipality shall examine the post use survey data and compare it to the pre-construction survey data. Based on the data, field inspection, and structural evaluation (if necessary) the Municipality shall determine the needed repairs. If the Municipality determines repairs are necessary, such repairs as set forth in paragraphs 7.1 to 7.6. The Municipality shall prepare a report of the needed repairs that includes the treatment for each road segment. The report shall be submitted to the Developer within the 90 days after the receipt of the post-use survey. **Upon receipt of the report from the Municipality, the Developer must complete, at his own expense, all required engineering, permits, and road repairs as stated in the report within one calendar year.**

7.1 - <u>Class 1 Roads</u> - Upon completion of the project, a thin asphalt concrete overlay (less than 2 inches) **or** a microsurfacing shall be done to replace the structural capacity 'loss' of the pavement and 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 Municipality. If asphalt pavement damage is significant a thick asphalt concrete overlay (greater than 2 inches) or a Cold-in-Place recycle with 1 ½" hot mix top may be required. However, if the post construction survey indicates significant deep structural damage to the pavement and base has occurred, the repair could include full pavement rehabilitation (recycling or replacement of asphalt) or full depth reconstruction (asphalt pavement and base layer reconstruction). Structural Damage to the base will be assessed by the increase in depth and width of wheel ruts and the extent of alligator cracking, potholes and patches. The Municipality shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services, shall be paid by the Developer to repair the damaged road(s) to the satisfaction of the Municipality. *The Municipality retains the right to make the final decision regarding the extent and type of road repairs.*

7.2 <u>Class 2 Roads</u> - Upon completion of the project, a thin asphalt concrete overlay (less than 2 inches) **or** a microsurfacing shall be done to replace the structural capacity 'loss' of the pavement and 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 Municipality. If asphalt pavement damage is significant a thick asphalt concrete overlay (greater than 2 inches) or a Cold-in-Place recycle with 1 ½" hot mix top may be required. However, if the post construction survey indicates significant deep structural damage to the pavement and base has occurred, the repair could include full pavement rehabilitation (recycling or replacement of asphalt) or full depth reconstruction (asphalt pavement and base layer reconstruction). Structural Damage to the base will be assessed by the increase in depth and width of wheel ruts and the extent of alligator cracking, potholes and patches. The Municipality shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services shall be paid by the Developer to repair the damaged road(s) to the satisfaction of the Municipality. *The Municipality retains the right to make the final decision regarding the extent and type of road repairs.*

7.3 <u>Class 3 Roads</u> - Upon completion of the project, a thin asphalt concrete overlay (less than 2 inches) **or** a microsurfacing shall be done to replace the structural capacity 'loss' of the pavement and 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 Municipality. If asphalt pavement damage is significant a thick asphalt concrete overlay (greater than 2 inches) or a Cold-in-Place recycle with 1 ½" hot mix top may be required. However, if the post construction survey indicates significant deep structural damage to the pavement and base has occurred, the repair could include full pavement rehabilitation (recycling or replacement of asphalt) or full depth reconstruction (asphalt pavement and base layer reconstruction). Structural Damage to the base will be assessed by the increase in depth and width of wheel ruts and the extent of alligator cracking, potholes and patches. The Municipality shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services shall be paid by the Developer to repair the damaged road(s) to the satisfaction of the Municipality. *The Municipality retains the right to make the final decision regarding the extent and type of road repairs.*

7.4 <u>Class 4 and 5 Roads</u> - If the road was not rebuilt by the Developer prior to or during the project then upon completion of the project the road will be repaired by one of the following methods; Full pavement rehabilitation (recycling or replacement of asphalt) or Full depth reconstruction (asphalt pavement and base layer reconstruction).One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services shall be paid by the Developer to repair the damaged road(s) to the satisfaction of the Municipality. *The Municipality retains the right to make the final decision regarding the extent and type of road repairs.*

(a) Full Pavement Rehabilitation –Major rehabilitation of the asphalt pavement only, such as a thick asphalt overlay or a Cold-in-Place recycle with a hot mix over lay.

(b) Full Depth Reconstruction - Asphalt pavement replacement and gravel base material replacement.

The Municipality retains the right to make the final decision regarding the extent and type of road repairs.

7.5 <u>One-Time Use Roads</u> - The Developer 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 Municipality and Developer shall meet to review the damage in relation to the Initial Survey or most recent subsequent survey, as applicable. The Developer shall repair (or cause to be repaired) such damage and restore the road to the standard agreed upon, unless the Developer can demonstrate to the reasonable satisfaction of the Municipal Designees that the damage was not caused by the Developer. Any repair and restoration shall be promptly performed at such times as the Developer and the Municipality determine, having due regard for safety and, the presence of emergency conditions. In the event that the Developer fails to repair such roads within the agreed upon period, then, unless the Parties mutually agree otherwise, the Municipality may make such repairs and shall invoice the Developer for the costs incurred by the Municipality in connection with the repair. The Developer shall pay such invoiced amounts within ten (10) days following receipt of the invoice.

7.6 <u>Culverts and Bridges</u> – Improvements/Upgrades to bridges and culverts may be required prior to commencement of the project. These improvements are discussed in Section 5.5. Damage as a result of the 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 Municipality. All modifications or repairs to culverts or bridges shall be designed by a Professional Engineer licensed to practice in New York State in accordance with accepted AASHTO and NYSDOT standards and approved by the Municipality. All damage due to Developer's work shall be mitigated, either through repair or replacement, by the Developer at its expense to the satisfaction of Municipality.

7.7 <u>Emergency and/or Periodical Repair-</u> The Developer will be expected to perform any emergency repairs and or periodical, necessary 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 Municipality determines must be repaired. The Municipality will inform the Developer of required emergency repairs and the repair shall be accomplished within a minimum of three days time. If more time is required the Developer shall inform the Municipality of the status of the repair on a daily basis. Close communication will be required between the Municipal Designee and the Project Manager of the Project. All costs of the repair shall be paid for by the Developer.

7.8 <u>Insurance Requirements-</u> The Municipality requires the following Certificates of Insurance showing the following:

a. Certificate of Insurance showing that the contractor is carrying General Liability Insurance with limits of $2,000,000 per occurrence, $2,000,000 general aggregate, and $2,000,000 products/completed operation aggregate limits. **The Town shall be listed as additional named insured on the liability policy.**

b. Workers Compensation and New York State Disability Benefits Insurance**. The Town must be listed as Certificate holder**. **The previously accepted ACCORD 25 forms will not be accepted as proof of Worker's Compensation or Disability Insurance.** Forms C-105.2, U-20.3, GSI-105.2 or SI-12 are the only forms that will be accepted as proof of

Workers' Compensation Insurance or Disability Insurance. The only exception to this requirement is the unincorporated sole proprietorship or partnership, where there are no employees. In such event Form CE-200 (Certificate of Attestation) must be submitted.

c. The Town Highway Superintendent shall be notified immediately if the insurance coverage is in any way modified or terminated while this agreement is in effect.

Section 8: PERMITS

The Developer shall obtain all necessary governmental permits and approvals that are necessary to permit the Developer to make the modifications and improvements to the Designated Roads contemplated herein. The Developer shall be responsible for obtaining all required permits and approvals including, but not limited to the following:

1. The Town of Truxton and Cortland County Highway applicable permits, now in affect or hereinafter enacted– For any and all work in the Municipal right-of-way (including utilities)
2. The Town of Truxton and Cortland County Highway applicable permits, now in affect or hereinafter enacted Highway Driveway Access Permits
3. The Town of Truxton and Cortland County Highway applicable permits, now in affect or hereinafter enacted Overweight and Special Hauling Permits
4. NYS DOT Overweight and Special Hauling Permits for Town Roads
5. NYS DEC permits for water crossings, wetlands, etc.
6. Army Corps of Engineer permits for water crossings etc.

The failure of a developer to enter into a Road Preservation Use and Repair Agreement with the Town, a model of which is attached to this Local Law, shall be in violation of this Local Law and the Developer is prohibited from using the Town roads in furtherance of the project, and in the event the Developer fails to cease said use, The Town may use all appropriate legal remedies to seek a cease and desist order

Section 9: WARRANTIES BY DEVELOPER

9.1 Workmanship and Material Warranties- The following warranty and workmanship requirements apply to all repairs, modifications, and improvements that the Developer (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 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 **NYS Department of Transportation (NYSDOT) standards and specifications**, and Developer's construction responsibility shall be carried out in accordance with sound construction practices. The Developer shall require from its construction contractors and subcontractors the same standards for engineering and construction practice. The Developer warrants that it shall perform and

complete all repairs, modifications and improvements hereunder in a good and workmanlike manner.

(b) The Developer warrants that all repairs, modifications and improvements hereunder shall be free from defects in material and workmanship. The Developer 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. The Municipality will determine whether there are defects, as explained.

9.2 Remedies- During the Applicable Warranty Period, the Municipality shall notify the Developer in writing of any defects in the repairs, modifications or improvements. At no additional cost to the Municipality, the Developer shall proceed promptly (within five (5) business days) to take such action relating to its performance or that of its subcontractors 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.

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

Section 10: WARRANTIES BY DEVELOPER

A bond, letter of credit, or cash escrow (to be determined by Municipality) will be required for each designated haul road in an amount to be determined subsequent to the designation of Haul routes but prior to signing of the final agreement. The Bonded amounts shall be in accordance with the following schedule:

1. Class I Roads - $150,000 per mile
2. Class II Roads - $150,000 per mile
3. Class III Roads - $140,000 per mile
4. Class IV Roads - $140,000 per mile
5. Class V Roads - $70,000 per mile

These amounts are merely guidelines and the Municipality retains the right to change them as necessary.

The final release of all bonds/letter of credit/cash escrow will be determined once all damage has been repaired to the satisfaction of the Municipality and after the applicable warranty period has passed.

Section 11: FEES

A non-refundable processing fee of one-thousand dollars ($1,000) payable to the Municipality must accompany each executed Appendix A.

The Municipality reserves the right to issue a stop-work order and consequent revocation of this agreement for violations of agreement.

APPENDIX A
ROAD PRESERVATION USE AND REPAIR WORKSHEET

Project Developer: _____
Address: _____
Phone: _____

Project Manager: _____
24-Hr Contact #: _____

Work Location: _____
Estimated Project Start Date: _____
Estimated Project Completion Date: _____
Maximum Gross Vehicle Weight: _____
Maximum Truck Trips/Day: _____

Required Documentation:

a. Construction Traffic Estimate
- **Date Received: _____**
- **Approved By: _____**

b. Pre-Construction Survey
- **Date Received: _____**
- **Approved By: _____**

c. Bond/Letter of Credit (Check one)

☐ **Bond Amount: _____**
Date Paid: _____

☐ **Letter of Credit: _____**
Date Paid: _____

d. ☐ **Appendix B Attached;** In connection with the development, construction, operation and maintenance of the Project, the Municipality hereby acknowledges and agrees that _____, its contractors and subcontractors and each of their respective agents,

employees, representatives, and permitted assigns (collectively, the "Developer") shall use the roads and highways located in the Municipality identified on Appendix B hereto (the "Designated Haul Routes"). The Designated Haul Routes may be used by Developer only in connection with the development, construction, operation, and maintenance of the Project, including the transportation of heavy equipment and materials to and from the Project.

e. This agreement must be renewed one year from the effective date of filing.

Agreement Approval and Effective Date: _____
Approved by: _____
Municipal Official
Approved by: _____
Authorized Project Representative

APPENDIX B
DESIGNATED HAUL ROUTES
(Attach map)

Approval Date: _____
Approved by: _____
Municipal Official

Approved by: _____

Authorized Project Representative

Note: All designated haul routes will be posted as such. All expenses associated with route posting will be paid by the Developer. The Unit Price for one sign is $175 (includes labor, all materials, stakeout and call to Dig Safely NY).

APPENDIX C
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 "Developer" herein refers to any party other than the Municipality, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE**. This contract shall be deemed executor only to the extent of money available to the Municipality for the performance of the terms hereof. In accordance with Section 41 of the State Finance Law, the Municipality shall have no liability under this contract to the Developer 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 Municipality.

3. **INSURANCE**. The Developer 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 Section 7.8.

4. **INDEMNITY**. The Developer shall at all times without limitation indemnify the Municipality 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 Developer and in particular, as may arise from the performance under this contract.

5. **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 voice, 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. *Developer agrees to comply with the Federal Commercial Drivers License Drug and Alcohol Testing Program requirements set forth in CFR 49 parts 40 and 382. In acceptance of this Agreement, Developer covenants and certifies that it will comply in all respects with all Federal, State, Town or other Municipal Law which pertains hereto regarding work on municipal contracts, matters of employment, length of hours, workers' compensation and human rights.*

6. **CONFLICT OF INTEREST**. Developer hereby stipulates and certifies that there is no member holding a municipal office or other municipal officer or employee forbidden by law to be interested in the contract directly or indirectly, who will benefit therefrom or who is a party thereto.

7. **INDEPENDENT CONTRACTOR STATUS**. Developer 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 Municipality, for such purposes as, but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security or Retirement membership or credit.

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