DRAFT 5/2016

TOWN OF ENFIELD ROAD USE AGREEMENT
BLACK OAK WIND FARM

DRAFT 5/2016

This Road Preservation Use and Repair Agreement (the "Agreement") is made this ___ day of _____, 2015, by and between

Black Oak Wind Partners, LLC, a limited liability company organized and existing under the laws of the State of New York, with offices at 863 Hayts Road, Ithaca, New York 14850 (the "Developer"), and the

Town of Enfield, an incorporated municipal subdivision of the State of New York, with offices at 168 Enfield Main Road, Ithaca, New York 14850 (the "Town").

Whereas, the parties hereto desire to provide for the use and repair of roads and public highways in the Town of Enfield when subjected to damage or degradation by frequent or repetitive traversing of heavy vehicles employed in respect to transporting heavy construction equipment and hauling construction materials for the Black Oak Wind Farm project (the "Project"), which Project will be constructed in phases and may last for years; and

Whereas, the Developer may also have to use state or county roadways and public highways, which may be the subject of separate or additional regulations or road use agreements, but in all cases this Agreement shall apply to all roads of a local nature owned or maintained by the Town and any intersections of such town roads or Town-owed roads with any other roads, ways, alleys, streets, or rights-of-way, whether public or private; and

Whereas, the Developer may also need to make pre-construction roadway improvements to accommodate large or heavy vehicles, and the Town wants to ensure that it has a means to promote and protect public safety by regulating such construction and traffic affected during construction, even after the term of this Agreement has expired.

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:

1. **Terms and Conditions:** The parties agree to each and all of the terms and conditions of this Agreement, including as set forth in Appendices A and B and the defined terms therein.

2. **Term of Agreement:** This Agreement shall be for a term commencing on the effective date hereof and ending when the Project is completed. The Project shall be deemed completed when the last wind tower is constructed, or when the Developer abandons the Project (or the balance of the Project) in writing and surrenders all approvals and permits.

3. **Purpose of Agreement:** The purpose of this Agreement is to maintain the safety and general welfare of residents of the Town of Enfield, commerce in the county, and the travelling public generally, by regulating the Project due to its potential to adversely affect road conditions and public right-of-ways. Well maintained roads are important to the economic well-being of the Town and neighboring residents, and commercial endeavors such as wind mining can be both destructive of roadways even while also being beneficial. Thus, this Agreement is not intended to regulate such business of wind farming, but is intended to protect the public right-of-ways from damage. The

parties thus agree, due to the potential for adverse impacts and effects, that this Agreement is necessary and needed to protect the Town and its environment from the impacts of the Project.

4. **Enforcement:** The Town delegates to _____ hereinafter, "the Designee," the oversight of assuring that Project traffic and commercial activities do not have an adverse impact on roads. This individual will work directly with the company representative named in Appendix A.

5. **Definitions for Roadway Structural Classification System:** A roadway structural class refers to a roadway's general estimated capability, now and throughout Project development, to sustain Project vehicle loadings and loads, without impairing public safety or the suitability of such roadways to serve as a safe means of travel, including as used to establish a system of rules under this Agreement concerning the use, improvement, repair, and restoration of roadways based upon such roadway structural class.

Structural Class 1 - A road where 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 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 anticipated to be capable of supporting heavy construction equipment (total estimated 18-kip Equivalent Single Axles Loads) throughout the duration of the Project without needing major structural improvements prior to Project commencement. However, heavy construction traffic loading may damage or 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 an increased extent of one or more of the following distresses; alligator cracking, edge cracking, longitudinal and transverse cracking, spalling, potholes and patches, rutting (especially in the wheel paths), and overall ride roughness.

which class are we?

Structural Class 2 - A road where 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 3 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 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, spalling, potholes and patches, rutting (especially in the wheel paths), and overall ride roughness.

Structural Class 3 - A road where the road structure has not been upgraded. The base layer or layers 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, spalling, 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 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, spalling, potholes and patches, rutting (especially in the wheel paths), and increased ride roughness.

Structural Class 4 – A road where the road structure has not been upgraded. The base layer or layers 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, spalling, 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 and construction equipment would be materially compromised. Such a road is however, with surface improvements and limited road base and sub-base improvements, capable of supporting the Project.

Structural Class 5 – A road where the road structure has not been upgraded. The base layer or layers 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, spalling, 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. Such a road is only capable of supporting the Project with a complete depth-of-repair and improvement, from rebuilding and replacement of the surface to a rebuilding and replacement the road base and sub-base.

6. **Designation of Haul Routes:** The Developer shall submit requested routes (hereto referred to as "Designated Haul Routes"; see also Appendix A) for hauling equipment and materials to and from the Project to the Town for approval. A list and map of the Designated Haul Routes are identified in Appendix A. The Haul Routes shall be designated prior to the commencement of construction activities. A Pre-Construction Survey of any Haul Route shall promptly begin after the signing of this Agreement. Each road upon any such proposed Designated Haul route will be classified by the Town as Structural Class 1, 2, 3, 4, or 5, with certain requirements stipulated for their use as required or as set forth below to help ensure the safe use of roadways.

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

2. Class 3 Roads - These roads can be used by the Developer for the Project without any repairs or improvements to the pavement structure prior to the commencement of Project construction. However, geometric improvements (turning radii, etc.) and bridge or culvert improvements will still be required, at the Developer's expense, as needed, and a plan for continued roadway and safety monitoring is needed, together with a roadway repair plan for the expected deterioration of the roadway during Project development.

3. Class 4 and 5 Roads – The Developer may not use such roads without approved upgrades or improvements designed to promote the suitability of the roads as safe travel passageways, as based upon the Pre-Construction Survey and any roadway upgrades or improvements identified in such final approved survey, including geometric improvement and bridge and culvert improvements.

4. All Road Classes – Despite any roadway classification or requirements, the Developer is using the roads at its own risk and the Developer acknowledges that roadway damages may result from such use. The Developer shall monitor all road conditions along any approved Haul Route, or any road used, and report to the Town of any evidence of damage or deterioration to the roadway or its shoulders, culverts, bridges, or ditches, including alligator cracking, edge cracking, longitudinal and transverse cracking, spalling, potholes and patches, rutting (especially in the wheel paths), and overall ride roughness. The Town will also monitor the use of roads during the Project. If the road becomes dangerous to the traveling public the Town shall close the road to all construction traffic. In the case of closure, the Developer shall be required, at its own expense, to complete reconstruction of the road base and asphalt concrete pavements, to include shoulders and necessary improvements of ditches, culverts, and other drainage related facilities, before construction traffic is allowed to continue. The Town 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 according to the full specifications provided by the Town.

5. All Road Classes and Emergencies – As elsewhere provided by this Agreement and law, in the event of an emergency the Town may close any one or more roads, whether within the approved Designated Haul Route or otherwise.

7. **Use of Designated Haul Route Roads; Pre-Construction Road Survey:**

A. Developer shall engage and pay for the services of a NYS licensed civil engineering firm approved by the Town 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 materials and equipment, as well as all non-overweight loads carrying aggregate, concrete, and any other building supplies and materials over the Designated Haul Routes and roads from any and all suppliers, vendors, contractors, etc. 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 AASHTO Pavement Design Guide, over the duration of the Project. This shall be done for each Designated Haul Route that the Developer will use for the Project and prior to any construction commencing.

B. Developer will only use roads upon the Designated Haul Route, as copy of which shall be added to this Agreement at detailed in Appendix B.

C. As soon as practicable after the execution of this Agreement, but in any event prior to the commencement of construction, Developer shall select a third party NYS licensed civil engineering firm, to be approved by the Town, to conduct the surveys and assessments and to propose a classification for each road in the proposed Haul Route, plus any roads anticipated to serve on a one time basis or roads which could be added to any Designated Haul Route. A representative from the engineering firm shall meet with the Town prior to data collection to review how the data will be collected and reported. The Town shall either agree and approve or disapprove the data collection process and the report formats.

D. The Town shall retain exclusive rights to designate the Road Structural Class for the Designated Haul Routes. The Developer agrees to abide by this decision. The Town shall make this decision based on the survey results, the road surface condition, roadway structural condition, seasonal and other variations in roadway conditions, known seasonal variations in roadway strength or condition, and the volume and type of traffic using the road.

E. Once a proposed Designated Haul Route is preliminarily identified, the Town shall provide preliminary input or objections to such route based upon reasonable factors, such as the condition of each proposed road to be traversed, the condition of any bridge or culvert to be crossed, the population potentially impacted by the route, and the Town's needs for traffic through routes and emergency access to all parts of the Town. Thereafter the Developer and the Town shall discuss and resolve any such objections, and if they cannot reasonably do so, then the final decision regarding the suitability of any Proposed Haul Route shall rest with the Town.

F. A full report of the assessments described below shall be a part of such pre-condition survey and report, and paid for and provided to the Town by the Developer prior to the commencement of construction.

1. Video Survey of Roads - A videotape the Designated Haul Roads, and of non-project roads that could be used, shall be provided in a DVD format. Such video shall be of high quality and fairly and accurately depict the roadway, its characteristics and conditions, and the geometry of its site lines and horizontal and vertical curves. Additional video surveys shall be conducted: (i) if, in the reasonable judgment of the Town any DVD is not of a clear and professional quality or does not fairly and fully depict the specified roads; or (ii) as otherwise mutually agreed by the parties. All additional video survey costs shall be paid by Developer.

2. Distress Survey - A survey to measure and record the extent and severity of surface distresses for each road upon a Designated Haul Route. The survey shall include the severity and extent of alligator cracking, longitudinal cracking, transverse cracking, edge cracking/deterioration, spalling, potholes and patches.

3. Rutting and cross slope assessment - The wheel rut depth in both outer and inner wheel paths shall be measured with a straight edge, and a crowned roadway shall measure rut depth from the centerline crown to the center of the lane for the inner wheel path, and from the center of the lane to the road edge for the outer wheel path. 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.

4. Road Roughness – A survey shall measure, record, and report the International Roughness Index (IRI) using a profilometer for each Designated Haul Route roadway. A full report of the roughness assessment shall be provided to the Town at no cost to the Town prior to the commencement of construction.

5. Core Sample - A core or crosscut sample may be required, at the Town's discretion, to determine necessary repairs. In the sole discretion of the Town, the Developer may also test by seismic means, radiographic testing, or other recognized accurate methodology instead of core sampling.

G. Inspection of Culverts and Bridges - Prior to the commencement of construction the Developer shall select a qualified engineering company, subject to approval by the Town, to inspect the culverts and bridges on the Designated Haul Routes. 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 or upgrades prior to their use Project. This report shall also present the recommended improvements or upgrades to the structures and shall be submitted to the Town for review. The Town will prepare a final list of improvement and upgrade Projects that must be done prior to commencement of construction. The Town 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.

H. Limitations of Road Use – Road usage is limited as follows:

1. Restrictions - All Town and other roads not selected as Designated Haul Routes are strictly forbidden for use by the Developer throughout the duration of the Project without specific approval through an amendment to the Designated Haul Route(s) or a one-time use permission received in advance from the Town. The Town shall determine whether Appendix B shall be amended, and an application for an amended Designated Haul Route shall make the above-references surveys and studies required for such new road sections, intersections, and all bridges, culverts, and other highway appurtenances along such new roads or roadway segments.

2. One-Time Use –

a. A one-time use road is a road that is not upon a Designated Haul Route but which the Developer determines in necessary to use on a one-time basis due to accidents, limited delivery conflicts, or other causes.

b. Before any such use is allowed the Developer shall notify the Town, describe in detail such use and the reasons therefor. The Town shall make a determination as to whether to allow the one-time use without the road being added to Appendix B as a Designated Haul Route roadway.

c. If the Developer proposed recurring use of a one-time use road, or determines that the road may be used multiple times, it shall be added to Appendix B as a Designated Haul Route as this subsection is applicable only to one-time use exceptions to Haul Route planning and evaluations.

d. The Town may approve such one-time use with conditions, such as a requirement that any damage to or loss of life of such roadway be immediately repaired, or that the Town receive immediate compensation for the value of such damage or loss.

3. Extreme Weather Conditions and Seasonal Road Variations –

a. Once construction begins on the Project the Town is entitled, at any time for reasonable cause, to notify the Developer that use of any portion of any Designated Haul Route is prohibited due to extreme weather or an unusual seasonal variation in roadway conditions, such as may make any road subject to excessive wear and tear or damage, or as may pose a safety risk to the traveling public.

b. The Developer shall thereafter work with the Town to develop a plan to mitigate or prevent excess damage and safety liabilities concerning all Designated Haul Routes as a result of any such recognized weather conditions or seasonal road variations.

c. If the parties are able to develop a plan then the Developer may continue to use such roads provided such mitigation is implemented and thereafter proves effective.

d. If the parties are unable to develop a plan, the Developer may propose an alternate route to the Project site for approval by the Town. The Town shall not unreasonably refuse to approve such alternate route, but the Town may require evaluation of such alternate route as a Designated Haul Route as circumstances may reasonably warrant, including full or partial surveying and examinations of such alternate route to assure roadway maintenance, safety, and repair.

I. Designated Haul routes may be required to be marked as such by signage in such areas, and separated by such distances, as the Town may reasonably select. The cost of signage and its installation shall be a Developer expense.

8. **Post Use Pavement Survey:** The Developer shall engage and pay for the services of a NYS licensed civil engineering firm, approved by the Town, to do the post use survey. The Post Use Pavement Survey tasks listed below shall be completed within a 3-month window following the completion of any phase of the Project or the whole of the Project. Such survey shall consist of the following studies and surveys, per the parameters described above (in §7(F)): (i) Photo & Video Survey of Roads; (ii) Distress Survey; (iii) Rut Depth and Cross Slope measurements; (iv) Road Roughness; and (v) Core Sampling.

9. **Determination of Final, Interim, Periodical, and Emergency Repairs:** For purposes of this Agreement and the clauses set forth below: (i) Full Pavement Rehabilitation shall mean major rehabilitation of the asphalt pavement only, such as a thick asphalt overlay or a Cold-in-Place recycle with a hot mix overlay; (ii) Full Depth Reconstruction shall mean asphalt pavement repair or

replacement and gravel base material repair or replacement; and (iii) in all cases the Town retains the right to make the final decision regarding the extent and type of road repairs.

A. Final Repairs: The Town 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 Town shall determine the needed repairs. The Town shall prepare a report of the needed repairs that includes the treatment for each road segment and the total estimated cost of the repair. The report shall be submitted to the Developer within the first three month period after the applicable completion date (assuming the Developer submits the Post Use Pavement survey data to the Town within forty-five days). If the Town determines repairs are necessary, such repairs shall be completed by (or at the expense of) the Developer per the parameters set forth below.

1. For Class 1, 2 and 3 Roads - 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 Town. In addition, if asphalt pavement damage is significant a thick asphalt concrete overlay (greater than 2 inches) or a Cold-in-Place recycle with 1½" 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, etc. The Town shall determine the repair type (to include shoulders, drainage, and lateral and subjacent support, 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 provided and paid for by the Developer using contractors and means reasonably acceptable to the Town. Alternately, and in the discretion of the Town, the Developer may pay the whole cost of repair to the Town and the Town retains the right to make, or not make, some or all of the needed repairs, and to determine the time and extent of any repairs.

2. For Class 4 and 5 Roads - 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). If the road was rebuilt by Developer prior to or during the Project, then such Class 4 or 5 road shall, for purposes of post-completion evaluation and repair or reconstruction, be treated as a Class 3 road.

B. One-Time Use Roads - 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 Town and Developer shall meet to review the damage in relation to the initial survey data, or most recent subsequent survey information, 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 Town 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 Town 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

period then, unless the parties mutually agree otherwise, the Town may make such repairs and shall invoice the Developer for the costs incurred by the Town in connection with the repair. The Developer shall pay such invoiced amounts within 10 days following receipt of the invoice.

C. Culverts and Bridges – All damage occurring due to Developer's work upon the Project shall be mitigated, either through repair or replacement, by the Developer at its expense to the satisfaction of Town. Improvements and upgrades to bridges and culverts may be required prior to commencement of the Project as discussed above. 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 Town. If such bridge or culvert was improved or upgraded prior to Project commencement, then the said bridge or culvert shall be, at a minimum, restored to its pre-Project condition and state of repair, including a consideration of its remaining useful life. 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 Town.

D. Emergency and Periodical Repair - The Developer shall perform any emergency repairs and periodical, necessary repairs to the Designated Haul Route and its roads, pavement, drainage structures, culverts, bridges, and any other highway related appurtenance that is damaged by the Project or Project traffic and loads, whenever so determined by the Town.

1. The Town will inform the Developer of any required periodic repairs and the same shall be completed regularly and periodically as based upon a schedule agreed to by the parties.

2. The Town will also give prompt notice of any emergency repairs and such repair shall be accomplished as soon as is possible and within 3 days, time being of the essence. If more time is required due to the nature of the repair the Developer shall inform the Town of the status of the repair on a daily basis and the Town may extend the 3-day deadline for emergency repairs.

3. Close communication will be required between the Town and Developer, but despite such communication or any diligence in any periodic or emergency repair, the Town may, for any safety reasons, close any part or portion of any road, including upon any Designated Haul Route.

4. All costs of interim and emergency repairs shall be paid by the Developer.

E. Safety and Traffic Planning - The Developer shall prepare and submit a Protection of Traveling Public and Pedestrian Safety Plan (the "Safety Plan") to the Town 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 will ensure the safety of the traveling public and pedestrians along all Designated Haul Routes. Special consideration in the Safety 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 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.

F. Removal of Improvements – If required by the Town, the Developer may be required to undertake and safely complete the removal of any improvements or installations previously made or

constructed. Nothing herein requires the Town to permanently accept any improvements made and, unless expressly accepted by the Town or duly proffered and dedicated, the Town may require such restoration of removal. For example, the Town may require that roadway lanes be returned to their prior width and geometry so as to avoid future maintenance expenses, repair obligations, or even just to maintain the rural nature of a roadway, etc. All Undertakings shall be written so as to also require the removal of previously constructed or installed improvements, when requested or required by the Town.

10. **Insurance Requirements:**

A. The Developer shall obtain and maintain at all times during the Project the following minimum insurance coverages and limits, and the Developer shall produce Certificates of Insurance showing the following:

1. 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. Such limits shall be provided through a form no less broad than a standard ISO CG 00 01. Such insurance shall include products and completed operations coverage with a limit of no less than $1,000,000 per occurrence. The Town shall be listed as additional named insured on such policy.

2. Workers Compensation and New York State Disability Benefits Insurance showing required minimum NYS-required coverages, and coverage shall be shown upon Forms C- 105.2, U-20.3, GSI-105.2 or SI-12, which are the only forms that will be accepted as proof of Workers' Compensation Insurance or Disability Insurance (ACCORD 25 forms are not acceptable). The only exception to this requirement is the unincorporated sole proprietorship or partnership, where there are no employees, and in such a case a Form CE-200 (Certificate of Attestation) shall be submitted.

3. Automobile Liability, including Owned, Hired, and Non-Owned, with coverage underwritten with a minimum of $2,000,000 combined single limit per vehicle. The Town shall be listed as additional named insured on such policy.

4. Excess/Umbrella Liability shall be provided with a minimum coverage of $5,000,000 each occurrence. The Town shall be listed as additional named insured on such policy.

5. Professional liability/Errors and Omissions, if applicable as to Developer, and if not then as to any engineering or professional consultant hired by Developer, the Developer shall require that such engineer or other professional consultant provide, coverage with a minimum limit of $2,000,000 per claim and a $2,000,000 annual aggregate. If coverage is written on a claims-made basis, any retroactive date shall be no later than the effective date of this Agreement, and continuous coverage shall be maintained or an extended discovery period will be exercised for a period of six years beginning from the time that obligations under this Agreement are completed. Coverage shall include defense costs and shall apply to liability arising from Developer's, acts, errors, and omissions. The Town shall be listed as additional named insured on such policy.

B. Each of the above-required forms and policies of insurance shall also: (i) require the Town to be notified in writing at least 30 days prior to cancellation of or any material change in the policy; (ii) be primary to insurance maintained by the Town, and the Town's insurance shall be non-

contributory to such insurance; (iii) endorsed to waive rights of recovery by subrogation against the Town; (iv) in the case of policies or provisions relating to products, completed operations and professional liability, coverage shall survive termination or expiration of this Agreement; (v) Developer shall furnish certificates of insurance at least 30 days prior to the expiration of a policy, or such certificates as evidence additional or renewal policies; (vi) all Identified Insurance shall be written on an occurrence basis except for Developer's professional liability insurance, which may be written on a claims-made basis; (vii) any deductibles or self-insured retentions shall be the sole responsibility of Developer, and coverage shall apply for the benefit of the Town and all additional parties insured as if no deductible or self-insured retention applied; (viii) to the fullest extent allowed by law, Developer hereby waives all rights of recovery in favor of the Additional Insureds and the Indemnitees; (ix) Developer shall bear the risk of loss with respect to any owned, leased, rented or borrowed vehicles, equipment, data, tools or other personal property, as well as all risk of loss with respect to any of its expenses or loss of income; and (x) the insurance required herein shall be written for not less than minimum amounts or greater if required by law, except that if Developer procures any policy limits greater than the amounts required herein, then the higher limits shall apply as though stated and required herein.

C. Each of the above-required forms of insurance shall also: (i) name the Town as additional insured, on a primary and non-contributing basis, for claims arising in whole or in part from the Developer's or Developer parties' operations and completed operations, whether or not the Town is itself actually or allegedly negligent and whether or not any such claim involves bodily injury to the employee of any other insured or additional insured under said policy; (iii) provide for the severability of interest and state that the Town is entitled to recover for acts and omissions of Developer or Developer's parties even though the Town is named as an additional insured.

D. In limitation of the foregoing obligations to the extent they require actual indemnity (and not merely payment), each such indemnification requirement shall be construed only to the maximum extent permitted by law, and any statutory or other rule that may prohibit the Town and its officers, agents, and employees from being indemnified due to their own fault or negligence shall not vitiate such coverages or any indemnity obligations, except to the limited extent required to make these obligations fully enforceable, and the parties agree that such reformation is consistent with the intent of the parties to as fully indemnify and cover the Town and its officers, agents, and employees as is possible or permissible under law.

11. **Permits:** The Developer shall obtain all necessary governmental permits and approvals that are necessary for Developer to make the modifications and improvements to the Designated Haul Roads and other roadways, infrastructure, and intersections as contemplated by and in this Agreement, such as but not limited to Town Highway Work Permits, Driveway Access Permits, Overweight and Special Hauling Permits, NYS DEC permits for water crossings, wetlands, etc., and Army Corps of Engineer permits for water crossings etc.

12. **Developer's Workmanship and Materials Warranties:** The following warranty and workmanship requirements apply to all roadway and related repairs, modifications, and improvements that the Developer (its contractors or subcontractors) shall make prior to, during, or after completion of the Project (or any of its phases). 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 12 months after such completion date.

A. Developer warrants, represents, promises, and guarantees that all repairs, upgrades, improvements and other work in and about roadways and related infrastructure shall be designed in accordance with sound engineering practices, in accord with NYS Department of Transportation (NYSDOT) and Town standards and specifications, and that the Developer shall require, in writing, all of its contractors and subcontractors to abide by these requirements.

B. Developer warrants, represents, promises, and guarantees that all materials and equipment used for any repairs, upgrades, improvements and other work in and about roadways and related infrastructure shall be suitable for such work or repair, and that all materials and equipment will be stored and used in a safe manner, including as to the operation of any tools, machinery, or vehicles, and including any equipment used in relation to elevation-related hazards.

C. Developer warrants, represents, promises, and guarantees that all repairs, upgrades, improvements and other work in and about roadways and related infrastructure shall be carried out in accordance with sound construction practices, with due regard for all safety and worker protection standards, and in a good and workmanlike manner.

D. The Developer warrants, represents, promises, and guarantees that all repairs, modifications and improvements shall be free from defects in material and workmanship.

E. Developer warrants, represents, promises, and guarantees that Developer shall remedy any defects in the designs, repairs, modifications, and improvements performed hereunder including design correction, and physical repairs, modifications, and improvements, workmanship, materials and equipment provided by Developer and its contractors and subcontractors during the Applicable Warranty Period. A "defect" means any and all design, engineering, construction, manufacturing, installation, materials, equipment, repairs, modifications or improvements which do not conform to the terms of this Agreement, are of improper or inferior workmanship, or are not suitable for use under the applicable climatic and range of operating conditions in which used, installed, built, or so emplaced. The Town will solely and reasonably determine whether there are defects.

F. Developer warrants, represents, promises, and guarantees 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. The Town may require formal lien waivers from Developer and each of its contractors, subcontractors, suppliers, and materialmen, and Developer shall ensure that all of its written contracts and agreements contain lien waiver language sufficient to allow it to compel third parties to supply lien waivers. Developer shall, upon request, produce such waivers from each such contractor, subcontractor, supplier, and materialman.

13. **Warranty and Related Remedies:** During the Applicable Warranty Period the Town shall notify the Developer in writing of any defects in the repairs, modifications, or improvements. At no additional cost to the Town the Developer shall proceed promptly to take such action relating to its performance, or that of its contractors and subcontractors, as is necessary to cause the repairs, modifications, and improvements to comply with the warranties and obligations specified in this Agreement. The Developer shall be available either at the Project or by telephone for the performance of warranty repairs on a 24-7-365 basis.

14. **Bonding and Undertakings:** A bond, letter of credit, or cash escrow deposit (to be determined by Town), or other suitable fiscal guarantee or undertaking as approved by the Town (each, an "Undertaking") will be required for each Designated Haul Route and each roadway, intersection, or highway facility or appurtenance therein, in an amount to be determined subsequent to the approval of Designated Haul Routes but prior to commencement of construction for the Project.

A. An Undertaking shall be in an amount set by the Town as based upon the following guidelines: (i) Class 1 and 2 Roads - $150,000 per mile; (ii) Class 3 Roads - $140,000 per mile; (iii) Class 4 and 5 Roads - $80,000 per mile; and (iv) Bridges, Culverts and other infrastructure and appurtenances at costs estimated by the Town. These amounts are merely guidelines and the Town retains the right to change them as necessary. All Undertakings shall also be written so as to also provide coverages for the Developer's removal costs and obligations for any previously constructed or installed improvements, whenever so requested or required by the Town.

B. Undertakings shall only be released after all improvements, damages, and repairs have been completed to the satisfaction of the Town, but a 15% hold-back may be retained as continuing security, and as an Undertaking, until the expiry of the Applicable Warranty Period.

C. All Undertakings shall be reviewed by and acceptable to the Attorney for the Town, and no Undertaking shall be acceptable or in compliance with the requirements of this Agreement if the person or entity posting the Undertaking is a guarantor or surety to any underwriter of such bond or Undertaking, or if such person or entity provides for indemnity to any underwriter or issuer with respect to such bond or Undertaking.

D. Any Undertaking that is a letter of credit shall be an "Irrevocable Standby Letter of Credit" ("LOC") drawn upon a financial institution authorized to do business in New York State, agreeable to the Town and acceptable as to form by the Attorney for the Town. In the event the LOC contains a stated termination date, then Developer shall renew or obtain a new LOC in the agreed upon amount no later than 30 days prior to the stated termination date. In the event the Town draws on the LOC such that its value falls below 90% of its original face amount, then the Developer shall immediately renew the LOC to bring it back up to a 100% level, unless otherwise agreed by the Town in writing.

E. All Undertakings shall have a stated duration of at least one year, and the Town shall be named as an Obligee and benefitted party upon each instrument.

F. If, for any reason whatsoever, the issuer of the Undertaking refuses to promptly honor any draft or application by the Town for funds, then the Developer shall cease all operations until such time as the Town indefeasibly receives funding, unless otherwise directed or agreed by the Town. Nothing in this subparagraph will prevent the Town from proceeding by way of civil action against any party to obtain compliance and abate any default, whether upon the Undertaking or otherwise, and whether by or against the bonding company(ies), underwriter(s), bank(s), insurer(s), or otherwise, including by or against the Developer.

G. In the event the Undertaking contains a stated termination date Developer shall renew or obtain a new Undertaking in the agreed upon amount no later than 30 days prior to the stated termination date. It is the intention of the parties that Undertakings for the stated amounts remain in effect throughout the term of this Agreement. In addition, should Developer convey any or all of its

interest in this Agreement, then the new owner will obtain Undertakings as to comply with this Agreement.

H. Undertakings are intended to guarantee reimbursement to the Town for all labor, material and equipment expenses the Town may incur in repairing any road or bridge damage arising from or related to Developer's Project, activities, roadway uses and damages, defaults, non-performance, or breaches of or under this Agreement.

I. The cancellation or termination of any Undertaking shall not release Developer from its obligation to meet all the requirements of this Agreement.

15. **Fees:** A non-refundable processing fee of $1,000, made payable to the Town, must accompany each executed Appendix A. The Town may amend any fee schedules or amounts, or add new fees for approvals and permits, by resolution of the Town Board.

16. **Violations or Breach:** The Town reserves the rights to issue stop-work orders and to cancel or suspend any permits whenever Developer violates or is in breach of this Agreement. Further, in the event of any breach or threatened breach by Developer (or any of its agents, contractors, subcontractors, affiliates, and the like) of any of the covenants, agreements, terms, or conditions contained in this Agreement, the Town shall be entitled to enjoin such breach or threatened breach, and shall have the right to invoke any right or remedy allowed at law, in equity, by statute, or otherwise. Any request for equitable relief by the Town shall not require that the Town post any bond or undertaking, nor prove that the Town has any adequate remedy at law, and Developer expressly agrees, in connection with any proceeding brought, to stipulate to the same. The Town may exercise any other right or remedy that may be available to it at law, equity, admiralty, or any other applicable law, code, rule, regulation, or the like. No remedy referred to in this Agreement is intended to be exclusive, but shall be cumulative with and in addition to any other remedy referred to herein or available to the Town. No express or implied waiver by the Town of any default shall constitute a waiver of any other default by Developer, or a waiver of any of the Town's rights. In the event of any breach or non-compliance by Developer that results in the incurring by the Town of any legal or counsel fees, the Developer shall promptly reimburse the Town, upon a net 15-day basis, for all such legal charges, costs, expenses, and attorneys' fees incurred by the Town to defend, enforce, or protect its rights and interests in and to this Agreement, Town roadways, and any repairs or work thereupon, including the enforcement of this Agreement, actions against any bond or Undertaking, or relating to the execution, delivery, administration, amendment, and enforcement of this Agreement, the collection of any amounts due under this Agreement, or in relation to any lawsuit or other legal proceeding to which this Agreement gives rise, including, but not limited to, actions in tort and contract. All legal expenses shall be reasonable in amount and purpose, and if an action is pending such sums, and the obligation to make payment thereupon, may be determined by the court or other tribunal of competent jurisdiction.

17. **Executory Clause:** This Agreement shall be deemed executory only to the extent of money available to the Town for the performance of the terms hereof. In accordance with State Finance Law § 41, the Town shall have no liability to the Developer, or to any third party, under this Agreement, beyond funds appropriated and available for this Agreement.

18. **Statute of Limitations; Claims against Town:** Any and all claims or causes of action, whether in law, equity, admiralty, or otherwise, accruing, arising, or assertable against the Town under or in

connection with this Agreement shall be commenced within one year from the date of occurrence of the event, act, or failure to act that gives rise to such claim or cause of action. Developer expressly acknowledges and agrees that such one-year contractual limitations period shall apply to all its matters and claims against the Town, irrespective of any statutory provision to the contrary.

19. **Time of Performance.** Time is of the essence with respect to the Developer's performance and discharge of each and any obligation, duty, or payment arising under this Agreement.

20. **Severance.** If any provision hereof is held invalid or unenforceable by any court or tribunal of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision hereof, and such invalid provision shall be reformed to the minimum extent required to bring it into compliance with applicable law, or to otherwise make such provision enforceable. Such reformation shall be performed by first taking into account the purposes sought by the Town in any such provision; second, by the intent of the parties as set forth in such provision; and third, by the intent of the parties as gleaned from other provisions in this Agreement. If such reformation is not possible then such provision shall be severed from the Agreement and the balance of this Agreement shall remain in force and effect. However, any provision of this Agreement held invalid or unenforceable, whether as written or as applied, shall be confined in its operation and interpretation only to the jurisdiction, circumstances, persons, and provisions of this Agreement as were directly involved in the controversy in which such judgment or determination shall have been rendered, and such invalidity or unenforceability shall not be applied to other jurisdictions, persons, circumstances, or provisions of this Agreement.

21. **Construction:** The captions and titles in this Agreement are for convenience only and shall not define or limit any of the terms hereof. All nouns and pronouns shall be construed in the singular, plural, masculine, feminine, or neutered context when the provisions hereof so demand or admit. Capitalized words shall have their defined meanings and all words, capitalized or otherwise, shall have standard meanings as applied within the context of the clause in which such terms appear. Subject headings are for convenience and shall not be construed or applied to limit or restrict the subject matter and terms appearing under such subject heading. Whenever any reference is made to any section of law or regulations, such reference shall be interpreted to include such law or regulation as later amended, renumbered, or re-codified, and a mere typographical citation error as to any applicable section of law or section of this Agreement shall not be given effect.

22. **Non-Assignability:** This Agreement may not be assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the Town.

23. **Indemnity and Waivers Warranties and Recoveries:**

A. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE TOWN SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO DEVELOPER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTIONS AND TERMS CONTEMPLATED UNDER OR SET FORTH IN THIS AGREEMENT, INCLUDING THE PERFORMANCE OR NON-PERFORMANCE THEREOF, INCLUDING BUT NOT LIMITED TO LOSSES OF PROFITS, LOSSES OF THE BENEFITS OF USE, OR LOSSES OF BUSINESS, EVEN IF TOWN IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES, AND EVEN IF SUCH DAMAGE OR LOSS WAS FORSEEABLE. It is expressly

understood and agreed that each and every provision of this Agreement that provides for indemnity, a limitation of liability, a disclaimer of warranties, or an exclusion of damages is intended by the parties to be severable from any other provision and is a separable and independent element of risk allocation, and is intended to be enforced as such.

B. Developer shall indemnify and hold the Town harmless, to the fullest extent permitted by law, from and against all claims, losses, liabilities (including negligence, tort and strict liability), damages, judgments, suits, and all legal proceedings, and any and all costs and expenses in connection therewith (including attorneys' fees) arising out of or in any manner connected with the manufacture, purchase, financing, ownership, delivery, rejection, non-delivery, possession, use, transportation, storage, operation, maintenance, repair, return, or other disposition or performance of any work, good, or service provided under or in relation to this Agreement, including, without limitation (i) claims for injury to or death of persons and for damage to property, (ii) claims relating to patent, copyright, trademark infringement, advertising injuries, disparagement, and the like, and (iii) claims relating to latent or other defects in any land or any equipment, whether or not discoverable by the Town or any party upon the application of any level of diligence. Developer agrees to give the Town prompt notice of any such claim or liability. The indemnity required by this Agreement shall include the defense of the Town, and the costs of defense, including attorneys', experts', and consultants' fees. Developer shall at all times and without limitation indemnify the Town 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 Agreement. The indemnity requirements of this Agreement shall be construed and applied only to the maximum extent permitted by law, including any limitations set forth in the NYS Labor Law or General Obligations Law prohibiting certain forms of indemnity to a negligent party.

24. **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 Agreement, 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 Agreement to be null and void, in whole or in part or as a matter of law, then said clause or part hereof shall be deemed to be severed and deleted from this Agreement 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 Driver's 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, County or other Municipal Law which pertains hereto regarding work on municipal contracts, matters of employment, length of hours, workers' compensation and human rights.

25. **Conflict Of Interest:** Developer hereby stipulates and certifies that there is no owner, officer, shareholder, director, owner, manager, or other key party affiliated with Developer that is holding a municipal office in the Town or who is related to any existing municipal officer or employee with any forbidden or prohibited conflict or other interest in the this Agreement, and that in all respects the Developer has no prohibited interest or conflict of interest in relation to this Agreement as such terms are used and construed in Article 18 of the NYS General Municipal Law.

26. **Independent Contractor Status:** Developer covenants and agrees that it will conduct itself consistent with its status as an independent contractor and that it and its employees and agents will neither hold themselves out as, nor claim to be an officer or employee of, the Town for any purposes, including for such purposes as, but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security or Retirement membership or credits.

27. **Environmental Covenants:** Developer will at all times comply with and will not violate any applicable federal, state, county, or local statutes, laws, regulations, rules, ordinances, codes, licenses, and permits of any governmental authorities relating to environmental matters, and any amendments or extensions thereof, including, without limitation (i) the Clean Air Act, (ii) the Federal Water Pollution Control Act of 1972, (iii) the Resource Conservation and Recovery Act of 1976 (iv) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (v) the Toxic Substances Control Act, (vi) the New York State Environmental Conservation Law, Public Health Law, and Navigation Law, (vii) SARA (the Superfund Amendment and Reauthorization Act), and (viii) all other applicable environmental regulations and requirements, as all now exist or are hereafter amended or re-codified. Developer will not cause any hazardous or toxic materials, substances, pollutants, or contaminants to be released into the environment, or deposited, discharged, placed, or disposed of on, at, or near and worksite or related location (the "Premises"). Upon receipt of actual or constructive notice of any violation of any of the matters referred to in this clause Developer will promptly notify Town and deliver copies of all documents relating thereto to Town. Developer shall reimburse, defend, indemnify, and hold Town harmless from and against any and all liabilities, claims, damages, penalties, expenditures, losses, or charges (including, but not limited to, all costs of investigation, monitoring, legal fees, fines, penalties, remedial response, removal, restoration or permit acquisition) which may now or in the future be undertaken, suffered, paid, awarded, assessed, or otherwise incurred as a result of (i) any contamination on, above, adjacent to, downstream from, or under the Premises at any time that exists as a result of any act of, or failure to act by, Developer, Developer's employees, agents, contractors, subcontractors, visitors, customers, lessees, successors or assigns, or (ii) any investigation, monitoring, cleanup, removal, restoration, remedial response, or remedial work undertaken on or near the Premises by or on behalf of Town or Developer at any time which is necessitated by an act of, or failure to act by, Developer, Developer's employees, agents, contractors, subcontractors, visitors, customers, lessees, successors or assigns. Developer acknowledges and agrees that the termination or expiration of this Agreement shall not relieve or release Developer of or from any legal liability or responsibility.

28. **OFAC, Patriot Act, and Related Requirements:** Developer hereby represents and warrants that Developer is not and has never been designated as an individual or entity that has been determined to have committed, or that poses a significant risk of committing, acts of terrorism or violations of US or international law that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the U.S. These representations and warranties apply to: (i) all trade embargoes and prohibitions imposed by the U.S.; (ii) the International Emergency Economic Powers Enhancement Act of 2007; (iii) the Trading with the Enemies Act; (iv) the Foreign Narcotics Kingpin Designation Act; (iv) Executive Order 13224, entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," and related subsequent orders prohibiting trade or commerce with certain persons or entities (all together, the "Order"); (v) and any rules of the US Department of the Treasury and OFAC that prohibit transactions with persons, entities, countries, governments, governmental agencies, and NGOs listed in any Order, upon the Controlled Countries List, or the Specially Designated Nationals Lists, or

which pertain to any prohibition in trade or commerce in relation to certain designated goods or conflict mineral (the violation of any of the foregoing being hereafter and collectively "Prohibited Acts and Transactions"). In relation to each and all of the foregoing, the Developer further represents and warrants that Developer: (i) is not owned or controlled by, or acting on behalf of, any persons or entities that would violate any Order; (ii) is not conducting any operations in any manner as would constitute Prohibited Acts and Transactions; (ii) has not and will never assist in, sponsor, or provide financial, material, or technological support for, or financial or other goods and services in violation of, any rules or laws as would constitute Prohibited Acts and Transactions; (iii) is not otherwise associated with certain individuals or entities designated in or covered by or under the Order, or otherwise engaged in any commerce or business relationships as would be in technical or material violation of any of the representations and warranties of this paragraph; and (iv) Developer shall not contract with, hire, or assign this Agreement, or any rights or responsibilities herein, to any person, group, entity, or nation as would cause Prohibited Acts and Transactions to occur. Developer hereby agrees to defend, indemnify, and hold harmless the Town, and its respective employees, agents, officers, members, managers, directors, and shareholders from and against any and all fines, penalties, actions, claims, damages, losses, liabilities, and expenses (including attorneys' fees and costs) arising from or related to any alleged violation or breach of the foregoing requirements, warranties and representations, regardless of how incurred or how arising, whether judicially, administratively, or otherwise.

29. **Iran Divestment Act:** As a result of the Iran Divestment Act of 2012 (the "Act"), Chapter 1 of the 2012 Laws of New York, codified in part at State Finance Law §165-a, the State of New York and the Commissioner of the Office of General Services ("OGS") post and maintain lists of persons and entities engaged in defined investment activities in Iran (the "Prohibited Entities List"), and Developer, by signing this Agreement, certifies that Developer will not utilize any subcontractor, person, or entity that is identified on the Prohibited Entities List, and that Developer will not sublease or assign any rights or obligations herein to any person or entity on the Prohibited Entities List. During the term of the Agreement should the Town receive information that any violation of the Act has occurred, this Agreement shall automatically terminate and be cancelled, without right of claim or recourse by Developer, and Town may make claim for any cost or loss it incurs arising from any effort to defend against sanctions or to confirm compliance with the Act.

30. **Cooperation in Good Faith; Resolution of Disputes:** The parties shall communicate expeditiously and cooperate and negotiate in good faith with respect to all matters that must be agreed upon after the execution of this Agreement. If Developer disagrees with any decision by the Town, its attorney, Highway Superintendent, engineer, or consultants, including without limitation the extent or method of a proposed highway upgrade or repair, any cost imposed upon Developer, or an estimate of the amount of security to be held by the Town, and the Parties are unable to resolve their dispute through negotiation, Developer may make a written request to the Town Board appealing such decision and requesting a public hearing at which Developer shall have the right to appear and be heard. The Town Board shall hold such public hearing not fewer than 5 days nor more than 30 days after such request. The Town Board may reverse, modify, or affirm, wholly or partly, the decision appealed from and shall make such decision as in its opinion ought to have been made in the matter. The Town Board shall issue a determination on Developer's request within 15 days of the close of the public hearing. In view of the Town's obligation to provide its residents with safely and properly maintained highways, the Town Board's determination shall be final and the Developer shall not suspend or delay performance or payment pending any such resolution or appeal. No Article 78 action or claim shall be deemed ripe until this appeals process shall have been resolved, but

this requirement and this clause do not give rise to any action or claim not recognized in law, extend any limitations period imposed by this Agreement, nor alter the accrual date of any claim arising under or in relation to this Agreement.

31. **Notices:** Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given (i) upon hand delivery, or (ii) upon the third day following mailing via the U.S. Postal Service, or (iii) on the first day following mailing via a nationally registered United States overnight courier service, or (iv) on the day when sent by electronic mail or facsimile transmission if additional notice is also given under (i), (ii), or (iii) above within 3 business days thereafter. For purposes of this Agreement only, any notice shall be directed to the parties at their addresses as set forth above.

32. **Counterparts; Electronic Signature:** This Agreement may be executed in counterparts, each of which will be considered an original, and all of which counterparts shall together constitute one and the same instrument which may be sufficiently evidenced by any one signed counterpart or a true facsimile thereof. This Agreement may be signed electronically.

33. **Integration:** This Agreement constitutes the entire understanding of the parties, revokes and supersedes all prior discussions, negotiations, and agreements between the parties, and is intended as a final expression of their agreement. This Agreement shall not be modified or amended except when an amendment is in writing and signed by both the Town and the Developer. This Agreement shall take precedence over any other documents that may be in conflict herewith, and the parties shall not be bound by any agent's or employee's representation, promise, or inducement not set forth in this Agreement. No course of prior dealings between the parties shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement, and acceptance of or acquiescence in a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Agreement, even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

34. **Governing Law:** This Agreement shall be governed by the laws of the State of New York, without regard to or the application of its conflicts of law provisions, except where the Federal supremacy clause requires otherwise.

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

Developer:

By: _____
Name:
Title:
Date:

Town of Enfield

By: _____
Name:
Title:
Date:

APPENDIX A
ROAD PRESERVATION USE AND REPAIR WORKSHEET

Project Sponsor: _____
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/Undertaking (Check one)
Bond Amount: _____
Date Paid: _____
Letter of Credit: _____
Date Paid: _____
Other Undertaking: _____
_____
Date Posted: _____

d. Appendix B Attached: In connection with the development, construction, operation and maintenance of the Project, the Town 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 Town 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. Renewal: This agreement must be renewed one year from the effective date of filing, and each renewal will require that any application and review fee be paid.

Agreement Approval and Effective Date: _____

Approved by: _____
Municipal Official

Approved by: _____
Developer's Authorized Project Representative

APPENDIX B
DESIGNATED HAUL ROUTES

(Attach map)

Describe each Road and Road Segment to be used for the Project:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

List each Road or Road Segment that is a Town Road, Including Intersections with Town Roads:

_____
_____
_____
_____

List each Bridge or Culvert Crossing:

_____
_____
_____
_____

Date Video Survey completed and Submitted to Town: _____

Approval Date: _____

Approved by: _____
Municipal Official

Approved by: _____
Developer's 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 $225 (includes labor, all materials, stakeout and call to Dig Safely NY).