

Minutes of the Town of Thurston Regular Town Board Meeting
 Held: Wednesday March 21, 2012 at 7:00pm
 Location : 7475 County Route 333 Thurston, N.Y.

Present: Town Supervisor: Wendy Lozo

Town Council: Gary Lewis, Judith Whitbred, Steven Frederick, Sue Conklin

Town Highway Superintendent: Richard Gauss, Jr.

Town Attorney: Jennifer Prossick

Town Dog Control Officer: Randy Akins

Town Assessor: Gordon Foster

Town Code Enforcement Officer: Raymond Orr

Visitors: Tom Ryan, Helen Stephens, Dan Gauss, Myral Gauss

Wendy Lozo called the meeting to order at 7:00 pm. The Board opened with the U. S. Pledge of Allegiance.

Public Comments: Helen Stephens asked the Board to check with the NYS Dept. of Health to get the Thurston town resident water wells tested free of charge. This request was accompanied by an editorial from the Addison Post written by Dan Farrand. Wendy Lozo will contact Dan Farrand for more information regarding qualifications for free water well testing. Tom Ryan addressed the Board with an update on Steuben County news.

Minutes: Motion was made by Steven Frederick seconded by Judith Whitbred to accept and approve the regular Town Board meeting minutes dated February 15, 2012. Put to vote: Gary Lewis, aye; Judith Whitbred, aye; Wendy Lozo, aye; Steven Frederick, aye; Sue Conklin, aye. Carried.

Bills Payable: Motion was made by Sue Conklin seconded by Gary Lewis for Wendy Lozo to pay all claims A47-A66 listed in the General Fund totaling \$8,472.07, Highway Fund claims 39-59 totaling \$40,046.46, and Capital Fund claims 4-7 totaling \$14,649.13 all included in the audit report dated March 21, 2012. Put to vote: Gary Lewis, aye; Judith Whitbred, aye; Wendy Lozo, aye; Steven Frederick, aye; Sue Conklin, aye. Carried.

Town Clerk's Report: February 2012 monthly report was presented to the Board. Dolores Crooker stated that she would like to attend the annual Town Clerk's training conference being held at Corning Community College in April. Steven Frederick encouraged Dolores to go. Jamie Nelson from the Northeast Regional Council of Carpenters has requested certified payroll records for Massa Construction, Inc. and all contractors or subcontractors performing work for them. Certified copies of Capital project audits dated Feb. 2011 through Jan. 18, 2012 were mailed to Jamie on March 8, 2012. Actual payroll records are kept on file in the Clerk's office for three years.

Justice Report: nothing

Tax Collector's Report: Sandra Nowicki submitted a tax levy report dated February 29, 2012. Town tax levy totaling \$600,619.64 and County tax levy totaling \$570,956.55.

Assessor's Report: Gordon Foster asked if the Board of Assessment Review Members were still the same members as in previous years. Steven Frederick stated that Stephen Smith, Patricia Frederick, and George Whitbred are the three Board members. Gordon attended Campbell Town Board meeting with the Landowners Coalition to listen to a moratorium discussion on gas drilling. Gordon asked if the Town of Thurston is considering a moratorium. Steven Frederick responded to the question with an answer of "no".

Historian Report: nothing

Code Enforcement Officer's Report: One Building Permit was issued for \$118.00 to Tim Kriner on Crane Rd. for a two car garage. Raymond Orr discussed a Building Permit issue with Town Attorney, Jennifer

Prossick. Raymond Orr stated that a final electric inspection needs to be complete before he can issue a Certificate of Occupancy at the new Town Hall.

Dog Control Officer's Report: February 2012 monthly report was presented to the Board. Randy Akins reported two dogs missing, one dog found, and two dogs running at large. Randy attended a DCO meeting in Avoca on Feb. 24, 2012. Randy stated that the Thurston Town Rabies Vaccination Clinic is scheduled for Saturday April 21, 2012 from 10:00 am - 12:00 pm. Location will be at 7475 County Route 333 Thurston. Corrections were made to the DCO contractual account.

Town Supervisor's Report: A detailed statement of all money received and disbursed for the month of February 2012 was presented to the Board. The annual Supervisor's report is complete and was sent to the State on February 29, 2012. A copy of the annual report is on file in the Town clerk's office.

Highway Superintendent's Report: A detailed statement of items of interest and work performed February 15, 2012 - March 21, 2012 was presented to the Board. Vantage Equipment was awarded the bid for a new 2012 Wheeled Excavator. Their bid was \$179,239.00 with a thirty six month warranty which included a \$10,000.00 trade in value for the 1988 Cat 212 Excavator. The spare parts and filters for the Cat 212 Excavator were sent back to various vendors. A check from Milton Cat for \$436.31 plus credit from Napa for \$43.31 and credit from Crane's Towing for \$81.17 all totaled a return value of \$561.23. The boom mower has been used to cut brush on Helms Rd, Forty Dollar Rd, Foster Rd, Yost Rd, and Green Hill Rd. Trees have been trimmed on Forty Dollar Rd, Foster Rd, and a large tree was removed that fell across South Hill Rd. The roads have been sanded three times and plowed once in the last month. Spring pothole grading started on March 12. All of the roads have been graded. A large hole along side of a cross pipe on Forty Dollar Rd was repaired, this pipe will be replaced this year. 564.45 ton of #1A stone has been purchased for use on the Tucker Rd project and for making cold patch. 400 yard of cobble stone from the Sylvester pit was also used in the Tucker Rd project. Three quarters of the oil and stone roads have been patched. All of the oil and stone roads should be completely swept by March 21. Two Highway employees spent half a day backfilling and compacting around the pillars for the side door exit stairway at the new Town Hall. They also spent some time while there on exterior clean up. One day was spent doing some reclaiming work at the Sylvester pit. FEMA money has been deposited in the amount of \$23,231.25 from the Federal level and \$3,871.88 from the State for a total of \$27,103.13. The National Association of State Agencies for Surplus Property is going to do a story about the restoration project of the Case W24 loader that was purchased through OGS. The NASASP was impressed with the before and after pictures and are using stories like this to keep the funding for the program. Wendy Lozo and Richard Gauss, Jr. attended a meeting at the Steuben County Office Building for workers comp which introduced the new carrier, PERMA. Repairs were made to the following equipment. The John Deere clam cylinder was repaired by Hes, Inc. at a charge of \$527.94. A new one from Five Star costs over \$2,100.00. Four new tires totaling \$6,400.00 have been mounted and placed on the John Deere 644 loader. A hydraulic line was replaced and a new battery was installed in the Roller. A new hydraulic pump was installed in the 1993 895 Case Tractor. The York rake received new teeth. The fan belt and two hydraulic hoses were replaced on the boom mower. The Ford 4000 broom tractor received a new battery, carburetor, cover, and ignition coil. A new water valve and turbo gasket was installed in the T427 Volvo truck. The T414 Volvo truck received new bearings on the sprocket shaft for the side dump conveyor chain. Steven Frederick made a motion seconded by Gary Lewis to accept the Road Use Agreement Policy. Put to vote: Gary Lewis, aye; Judith Whitbred, aye; Wendy Lozo, aye; Steven Frederick, aye; Sue Conklin, aye. Carried. Richard Gauss, Jr. stated that a site plan review is still open to discussion. This form works along with the Road Use Agreement Policy. Richard Gauss, Jr. stated that for drainage purposes at the new Town Hall a retaining wall could be installed or grading with landscape vegetation is an option. Motion was made by Judith Whitbred seconded by Steven Frederick to accept all reports from the Clerk's report to the Highway Superintendent's report. Put to vote: Gary Lewis, aye; Judith Whitbred, aye; Wendy Lozo, aye; Steven Frederick, aye; Sue Conklin, aye. Carried.

Old Business: Wendy Lozo asked Sue Conklin to post a reminder on the Town of Thurston web page about the DEC No Burn Ban Law in effect March 16- May 14, 2012. Steven Frederick made a motion seconded by Gary Lewis for Wendy Lozo to make the first installment payment on the new Town Hall to Chemung Canal in April. Put to vote: Gary Lewis, aye; Judith Whitbred, aye; Wendy Lozo, aye; Steven Frederick,

aye; Sue Conklin, aye. Carried. Sue Conklin stated that she will need a check made out to Staples Office Supply for \$22,399.84 to purchase 16 fireproof impact resistant filing cabinets. Judith Whitbred made a motion seconded by Steven Frederick for Wendy Lozo to cut a check to Staples for the filing cabinets. Put to vote: Gary Lewis, aye; Judith Whitbred, aye; Wendy Lozo, aye; Steven Frederick, aye; Sue Conklin, aye. Carried. This money will be reimbursed to the Town from the Records Management Grant Award. Sue Conklin stated that the Cemetery Maintenance Agreement with Jeff Harrison needs to be complete. Judith Whitbred stated that the furniture donated by Corning Inc. has been cleaned and moved to the first floor of the new Town Hall. The back exit door stairway is complete. Motion was made by Sue Conklin seconded by Judith Whitbred to close Old Business. Put to vote: Gary Lewis, aye; Judith Whitbred, aye; Wendy Lozo, aye; Steven Frederick, aye; Sue Conklin, aye. Carried.

New Business: nothing

Motion was made by Sue Conklin seconded by Gary Lewis to enter into executive session at 8:02 pm. Put to vote: Gary Lewis, aye; Judith Whitbred, aye; Wendy Lozo, aye; Steven Frederick, aye; Sue Conklin, aye. Carried. Motion was made by Steven Frederick seconded by Sue Conklin to close executive session at 8:27 pm. Put to vote: Gary Lewis, aye; Judith Whitbred, aye; Wendy Lozo, aye; Steven Frederick, aye; Sue Conklin, aye. Carried.

Gary Lewis made a motion seconded by Judith Whitbred to adjourn the regular Town Board meeting at 8:28 pm. Put to vote: Gary Lewis, aye; Judith Whitbred, aye; Wendy Lozo, aye; Steven Frederick, aye; Sue Conklin, aye. Carried.

Minutes Respectfully Submitted by Dolores Crooker, Town Clerk

Town of Thurston
Road Use and Repair Agreement

This Agreement effective the ____ day of _____, 20__ is made and entered into by and between **Town of Thurston** acting through its duly constituted Highway Superintendent located at 6855 County Route 333, Cameron Mills, NY 14820 and _____
(**Contractor**), a corporation, 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 of transporting heavy construction equipment and hauling construction materials.

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

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

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

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

Contractor

By: _____
Name:

Date: _____

Town of Thurston

By: _____
Richard Gauss, Highway Superintendent
Town of Thurston

Date: _____

Approved as to Form:

By: _____
Town Attorney

Date: _____

Exhibit “A”

Town of Thurston General Terms and Conditions

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

1. **EXECUTORY CLAUSE:** This contract shall be deemed executory only to the extent of money available to the Town of Thurston for the performance of the terms hereof. In accordance with Section 41 of the State Finance Law, the Town shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **NON-ASSIGNABILITY CLAUSE:** This contract may not be assigned, transferred, conveyed, sublet or disposed of without the consent, in writing, of the Town of Thurston, prior to assignment, transfer, conveyance, sublet or disposition.
3. **INSURANCE:** The Contractor shall carry at his expense, from insurers licensed in the State of New York, at least the insurance coverage and limits as set forth in Appendix A: “Town of Thurston Standard Insurance Requirements.”
4. **INDEMNITY:** The Contractor shall at all times 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 Contractor and in particular, as may arise from the performance under this contract.
5. **APPROVAL OF SUB-CONSULTANTS:** Any additional subconsultants to the Contractor shall be subject to the approval of the Town.
6. **COMPLIANCE WITH RULES, REGULATIONS, AND LAWS:** It is mutually agreed that all rules, regulations and laws pertaining hereto shall be deemed to be part of this contract, and anything contained herein that may be in whole or in part inconsistent therewith shall be deemed to be hereby amended and modified to comply with such legislation, rules, regulations and laws, for and during such time the same shall be in effect, but at no other time. If any provision contained herein is found now or during the life of this Contract to be null and void, in whole or in part as a matter of law, then said clause or part hereof shall be deemed to be severed and deleted from this Contract leaving all other clauses or parts thereof in full force and effect. It is further agreed that there shall be no gap in the coverage or applicability of said remaining clauses or parts thereof. Contractor agrees to comply with the Federal Commercial Drivers License Drug and Alcohol Testing Program requirements set forth in 49 CFR Parts 40 and 382. In acceptance of this Agreement, Contractor covenants and certifies that it will comply in all respects with all Federal, State, Town or other Municipal Law which pertains hereto regarding work on municipal contracts, matters of employment, length of hours, workers’ compensation and human rights.
7. **CONFLICT OF INTEREST:** Contractor hereby stipulates and certifies that there is no member of the Town of Thurston Board or other Town of Thurston Officers or employees forbidden by law to be interested in the contract directly or indirectly, who will benefit therefrom or who is a party thereto.
8. **LICENSES:** Contractor hereby agrees that it will obtain, at its own expense, all licenses or permits necessary for this work, if any are necessary, prior to the commencement of said work.

9. INDEPENDENT CONTRACTOR STATUS: Contractor covenants and agrees that it will conduct itself consistent with its status, said status being that of an independent contractor and that itself, its employees or agents will neither hold themselves out as, nor claim to be an officer or employee of the Town of Thurston, for such purposes as, but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security, Retirement membership or credit.

10. AUDIT: Contractor shall take such action, if applicable and as necessary and appropriate, to comply with Federal Circular A-128 or Circular A-133 relative to Single Audit of Federal Financial Assistance. In any event, Contractor shall provide the Town with appropriate documentation should the Town wish to conduct an audit relative to the expenditure of the funds for road repairs pursuant to this agreement.

11. DISPUTE RESOLUTION:

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

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

11.3 Progress During Resolution Proceedings: Contractor shall carry on the work and adhere to the progress schedule during all disputes or disagreements with the Town. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Town and Contractor may otherwise agree in writing. Contractor shall make no claim for damages for delay in the performance of this contract occasioned by any act or omission to act of the Town or any of its representatives, and agrees that any such claim shall be fully compensated for by extension of time to complete performance of the work as provided herein.

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

12. GOVERNING LAW: This contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

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

Exhibit “B”

ARTICLE I **DEFINITION OF ROAD STRUCTURAL CLASSES**

Section 1.1 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 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 (total estimated 18-KIP Equivalent Single Axles Loads) throughout the duration of the anticipated construction 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 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.

Section 1.2 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 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 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.

Section 1.3 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 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.

Section 1.4 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 and demanding development 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 construction 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.

Section 1.5 Structural Class 5 - (Gravel Roads): The road structure has been upgraded to an adequate and high quality base of uniform thickness and material type. The driving surface is gravel and in good to excellent condition. The granular base is less than 5 years old and has 5 – 10 years of life remaining. The complete road structure is capable of supporting heavy construction equipment (total estimated 18-KIP Equivalent Single Axles Loads) throughout the duration of the anticipated construction 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 structure and shorten the life expectancy of the road, even though visible damage at the end of the project may not be severe. Visible damage could include increased extent of one or more of the following distresses; potholes, raveling, rutting (especially in the wheel paths), and overall ride roughness.

Section 1.6 Structural Class 6 – (Gravel Roads): The road structure has not been upgraded. The gravel base is of inconsistent structure, poor to marginal quality and less than desired thickness. The gravel surface 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 and demanding development project. Use of the road without prior reconstruction may result in significant distresses such as severe potholes, excessive raveling, severe rutting, and very rough ride-ability within the duration of the construction project. The accelerated deterioration would create excessive demand for repairs. 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). Consequently the safe passage of the traveling public as well as construction equipment would be seriously compromised.

ARTICLE II **DESIGNATION OF HAUL ROUTES**

The Developer(s) shall submit routes (hereto referred to as Designated Haul Routes) for hauling equipment and materials to and from the project. These routes will be further designated by the Town as Structural Class 1, 2, 3, 4, 5 or 6 (as defined in ARTICLE I herein) with certain requirements stipulated for their use as set forth in sections 2.1, 2.2, and ARTICLE III below. A list and map of the Designated Haul Routes are identified in Appendix “B”. Appendix “B” shall be submitted by the Developer (s), to the Town, prior to final signing of the Road Use Agreement.

Section 2.1 Class 1, 2, 3 and 5 Roads: These roads can be used by the Developer(s) of the project without any repairs or improvements to the pavement structure prior to construction. However,

geometric improvements (turning radii etc) and bridge or culvert improvements will still be required as needed.

Section 2.2 Class 4 and 6 Roads: The Developer(s) may proceed to use the road at their own risk. However, the Town may deem necessary for the safety of the traveling public, that the Developer(s) shall reconstruct the road before the construction process begins. This determination shall be at the sole discretion of the Town. The Town shall monitor the use of the road during the construction 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 Contractor(s) shall be required 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 Town shall determine the full cross section design and material specifications for this reconstruction. The Contractor(s) shall hire a qualified contractor of its choice, to be approved by the Town, to construct the pavement system (base and asphalt pavement layers) according to the full specifications provided by the municipality. The Contractor(s) shall pay for all associated costs in accordance with the percentages of costs explained in Article VI below for the costs of the labor, materials, and equipment needed, as well as the costs for design and construction inspection services. The Contractor(s) shall provide a full and detailed record of all costs encumbered for the repairs.

Section 2.3 Time Requirement for Designation of Haul Routes: The Haul Routes shall be designated no later than three months prior to the commencement of construction activities and prior to the final signing and execution of the Road Use Agreement. The Pre-Construction Survey will begin after the signing of the Road Use Agreement.

ARTICLE III **USE OF DESIGNATED HAUL ROUTES**

Section 3.1 Use of Designated Roads: In connection with the development, construction, operation and maintenance of the Project, the Town hereby acknowledges and agrees that (CONTRACTOR), its contractors and subcontractors and each of their respective agents, employees, representatives, and permitted assigns (collectively, the “Contractor(s)”) shall use the roads and highways located in the Town identified on Appendix “B” hereto (the “Designated Haul Routes”). These Designated Routes shall be used by all tandem axle or tri-axle trucks, equipment and assembled cranes both to and from the work site. Any other vehicles (cars, pickups and single axle dump trucks) associated with the Contractor(s) Project are not limited to the Designated Haul Routes and thus may use any other alternate Town of Thurston Town Roads. The Highway Superintendent reserves the right to exclude certain Town roads from the Designated Haul Routes if the loads hauled by the Contractor do not significantly change that road’s traffic loading. Appendix B identifies the Designated Haul Routes that will be used for: (1) transportation and delivery of equipment and components and other materials and equipment to be used in connection with the Project; (2) movement of any assembled cranes, the route for which is set forth on Appendix “B”; and (3) transportation and delivery of local sources of materials, including concrete and gravel.

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

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

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

(b) **One Time Use’ of a road that is not a Designated Haul Route:** In the event the Contractor determines it is necessary for the Project to use a Town road not identified on Appendix “B” as a Designated Haul Road, then the Contractor shall notify the Town Highway Superintendent, describing in detail such use and the reasons therefore. If the use is to be ‘one time’ the Town Highway Superintendent shall make the determination to allow the road use without the road being added to Appendix “B” as a Designated Haul Route. If the Developer(s) determines that the road may be used multiple times it shall be added to Appendix “B” as described in section 3.3 (a) of this Article as a Designated Haul Route.

(c) **Extreme Weather Conditions:** Once construction begins on the Project, the Town Highway Superintendent shall be entitled, at any time, to notify the Contractor (s) that use of a/the Designated Haul Road(s) may result in excessive damage to a/the Designated Haul Road(s) due to weather conditions that may pose a serious safety risk to the traveling public. The Contractor(s) shall work with such Town Highway Superintendent to develop a plan to mitigate or prevent the safety liabilities of such weather conditions. If the Parties are able to develop a plan to mitigate or prevent such safety liabilities, then the Contractor (s) may continue to use such roads provided such mitigation is implemented. If the Parties are unable to develop such a plan, the Contractor(s) may propose an alternate route to the Project site for approval by the Town (such approval not to be unreasonably withheld).

ARTICLE IV

PRE-USE SURVEY OF ROADS & BRIDGES

Section 4.1 Construction Traffic Estimation: The Contractor(s) shall engage and pay for the services of a NYS licensed Civil Engineering firm appearing on the current approved NYS Civil Engineer lists, 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 by the Contractor(s) or NYS Licensed Civil Engineering firm. This shall be done for overweight vehicles hauling any components as well as all non-overweight loads carrying aggregate, concrete and any other building supplies and materials 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 AASHTO Pavement Design Guide, over the duration of the project. This shall be done for each Designated Haul Route that the Contractor(s) will use for the project. A complete written report of this analysis for each road will be reported to the Town at least three (3) months in advance of the work. The Road Use Agreement will be executed only after this data is submitted and the Haul Routes are designated. As part of written report all bridges and any culverts with a clear span greater or equal to 5 ft. have a load reading included in the report.

Section 4.2 Third Party Engineering Firm: As soon as practicable after the execution of this Agreement, but in any event, prior to the commencement of the Contractor's project, the Contractor(s) shall select a third party NYS licensed Civil Engineering firm appearing on the current approved NYS Civil Engineer lists, to conduct the surveys and assessments explained in section 4.4 below. Roads and highways within the boundaries of the Town anticipated to be used as Designated Haul Routes, plus any roads anticipated to be used 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 Town Highway Superintendent prior to data collection to review how the data will be collected and reported. The Town shall agree and approve the data collection process and the report formats. The Pre-use survey shall be done after the signing of the Road Use Agreement, during the three (3) month period before construction begins. Roads will be posted to heavy traffic if the road use agreement is not executed on time, no exceptions.

Section 4.3 Structural Class Designation: The Town shall retain exclusive rights to designate the Road Structural Class for the Designated Haul Routes. The Contractor(s) agrees to abide by this decision. The Town shall make this decision based on the road surface condition, work history, structural condition, and the traffic using the road. Pre-construction road survey requirements are enumerated in section 4.4 (a)-(d) below.

Section 4.4 Pre-Use Survey: A full report of the assessments in (a) – (d) below shall be provided to the Town at no cost to the Town prior to the commencement of construction.

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

(b) Distress Survey: 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) Rutting and cross slope assessment: 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) Road Roughness: 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 Town at no cost to the Town prior to the commencement of construction.

Section 4.5 Inspection of Culverts and Bridges: Within one (1) month after the execution of this agreement, and prior to the commencement of construction, the Town shall select a NYS licensed engineering company appearing on the current approved NYS Civil Engineer lists, to inspect the culverts and bridges on the Designated Haul Routes. The inspection shall be done within that same month following execution of the agreement. Culverts and bridges on any other roads anticipated to be used 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 and survey of the culvert and bridges. The full costs of the inspections will be borne by the Contractor(s). Based on the inspections, the selected engineering firm shall provide a report discussing the status of culverts and bridges that shall require improvements/upgrades prior to their use in the Project. This report shall also present the recommended improvements/upgrades to the structures and shall be submitted to the Town for review. The Town will prepare a final list of improvement/upgrade projects that must be done prior to commencement of the Project. 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 the qualified NYS licensed engineering firm. The full cost of the evaluation(s) will be borne by the Contractor(s).

ARTICLE V **POST USE ROAD SURVEY** **PROJECT COMPLETION DATE**

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

(a) Photo & Video Survey of Roads, Culverts and Bridges: Repeat as described in section 4.4 (a) above.

(b) Distress Survey: Repeat as described in Section 4.4 (b) above.

(c) Rut Depth and Cross Slope measurements: Repeat as described in Section 4.4 (c) above.

(d) **Road Roughness:** Repeat as described in Section 4.4 (d) above.

Section 5.2 Structural Evaluation of Roads, Culverts and Bridges: After analysis of the Post Use Pavement Survey the Town shall determine if a repair selection can be made from the survey data or if a structural evaluation will also be needed in order to select the best repair alternative. If the Town determines a structural evaluation is also needed the Town shall conduct a forensic investigation that could include test pits, pavement cores, and material testing of specimens removed from the test pits. The Contractor(s) shall pay for all associated costs.

ARTICLE VI

DETERMINATION OF FINAL ROAD REPAIRS

PAYMENT FOR COST OF 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 by the end of the first three (3) months following the completion of the project. The Town shall prepare a report of the needed repairs that includes the treatment for each road segment. The report shall be submitted to the Contractor(s) within the first three-month period after the Project Completion Date (assuming the Contractor(s) submits the Post Use Pavement survey data to the Town within the first two months after the completion date as per Article V, section 5.1). Damages shall be repaired in accordance with sections 6.1 through 6.6 of this Article VI.

Section 6.1 - Class 1 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. 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 Town shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. The Town retains the right to make the final decision regarding the extent and type of road repairs. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services, shall be paid by the Contractor(s). The Contractor(s) shall hire a qualified contractor of its choice, to be approved by the Town, to construct the road repair.

Section 6.2 Class 2 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. 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 Town shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. The Town retains the right to make the final decision regarding the extent and type of road repairs. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services, shall be paid by the Contractor(s). The Contractor(s) shall hire a qualified contractor to be approved by the Town, to do the repairs.

Section 6.3 Class 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. 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 Town shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. The Town retains the right to make the final decision regarding the extent and type of road repairs.

(a) Asphalt Pavement Repair: If the needed repair is limited to the asphalt pavement only, such as micro surfacing, thick or thin asphalt overlay or a Cold-in-Place recycle with a hot mix overlay the Contractor(s) shall pay for one hundred percent (100%) of the costs of the labor, materials, and equipment needed, as well as the costs for design and construction inspection services.

(b) Full Depth Repair: If the needed repair includes replacing the asphalt pavement and the granular base the Contractor(s) shall pay for one hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services. The Contractor(s) shall hire a qualified contractor to be approved by the Town, to construct the road repair.

Section 6.4 Class 4 Roads: If the road was not rebuilt by the Contractor(s) prior to or during the Construction project then upon completion of the project the road will be repaired by one of the following methods:

1. Full pavement rehabilitation (recycling or replacement of asphalt) or
2. Full Depth Reconstruction (asphalt pavement and base layer reconstruction). The Town retains the right to make the final decision regarding the extent and type of road repairs.

(a) Asphalt Pavement Repair: If the needed repair is limited to a major rehabilitation of the asphalt pavement only, such as a thick asphalt overlay or a Cold-in-Place recycle with a hot mix overlay the Contractor(s) shall pay for one hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services.

(b) Full Depth Repair: If the needed repair includes replacing the asphalt pavement and the granular base the Contractor(s) shall pay one hundred percent (100%) of the costs of the labor,

materials, equipment, design and construction inspection services. The Contractor(s) shall hire a qualified contractor to be approved by the Town, to construct the road repair.

Section 6.5 Class 5 Roads: Upon completion of the project, it may be necessary to re-grade, reshape and/or re-compact the driving surface of the Haul Routes. However if it is determined that a significant portion of the gravel material has been lost, then the Contractor(s) shall be required to add gravel material before the final re-grading, reshaping, and re-compacting of the Haul Road. The Town shall determine the repair type, and the material specifications for the repair. The Town retains the right to make the final decision regarding the extent and type of repairs. The Contractor(s) shall pay for one hundred percent (100%) of the costs of the labor, materials, and equipment needed, as well as the costs for any design and construction inspection services. The Contractor(s) shall hire a qualified contractor to be approved by the Town to construct the road repairs.

Section 6.6 Class 6 Roads: If the road was not rebuilt by the Developer(s) prior to or during the Construction project then upon completion of the project the road will be repaired by one of the following methods.

1. Partial Base repair (placing of 4" – 6" of crushed type 4 gravel) or
2. Full Depth Repair of Gravel Road. The Town retains the right to make final decision regarding the extent and type of road repairs.

(a) Partial Base Repair: If the needed repair is limited to a placement of 4" – 6" of gravel material the Contractor(s) shall pay for one hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services.

(b) Full Depth Repair: If the needed repair includes replacing the granular base and any areas that may need undercutting with geo-textile materials the Contractor(s) shall pay one hundred percent (100%) of the costs of the labor, materials, and equipment, design and construction inspection services. The Contractor(s) shall hire a qualified contractor to be approved by the Town, to construct the road repair.

Section 6.7 One -Time Use Roads: In accordance with Article III, Section 3.3 (b), roads may be used on a one-time basis if requested in writing. The Contractor(s) will repair any damage caused by the project to the one-time use roads, and return such roads to the condition such roads were in prior to such damage (or as near as is reasonably practicable having due regard for normal wear and tear). Prior to commencement of such repair, the Town and Contractor(s) shall meet to review the damage in relation to the Initial Survey or most recent subsequent survey, as applicable. The Contractor(s) shall repair (or cause to be repaired) such damage and restore the road to the standard agreed upon, unless the Contractor(s) can demonstrate to the reasonable satisfaction of the Town Highway Superintendent that the damage was not caused by the Contractor(s). Any repair and restoration shall be promptly performed at such times as the Contractor(s) and the Town determine, having due regard for safety, the presence of emergency conditions and the costs of such repairs. In the event that the Contractor(s) 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 Contractor(s) for the costs incurred by the Town in connection with the repair. The Contractor(s) shall pay such invoiced amounts within ten (10) days following receipt of the invoice.

Section 6.8 Culverts and Bridges: Improvements/Upgrades to bridges and culverts may be required prior to commencement of the project. Damage as a result of the Construction Project to a culvert or bridge structure that was not improved or upgraded must be repaired following the project, or sooner if deemed necessary by the Town. All modifications or repairs to culverts or bridges shall be designed in accordance with accepted AASHTO and NYSDOT standards by a Professional Engineer licensed to practice in New York State and employed by a Civil Engineering firm appearing on the approved NYS Civil Engineer lists. All damage by the contractor shall be mitigated, either through repair or replacement, by the contractor at his expense to the satisfaction of Town of Thurston.

Section 6.9 Payment for road repair and inspections done by Town forces: All material, labor, inspection and equipment costs for any repair shall be paid by the Developer(s).

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

(b) The Developer(s) shall pay for any contracted inspection services performed by the Town, as well as any cost incurred by the Town to hire an Administrator to facilitate the implementation and monitor the adherence to, the Road Use Agreement(s).

ARTICLE VII

OTHER CONDITIONS

Section 7.1 Protection of Traveling Public and Pedestrian Safety Plan: The Contractor(s) shall prepare and submit a Protection of Traveling Public and Pedestrian Safety Plan to the Town prior to performing any work as part of this Agreement. The Safety Plan shall identify the Contractor’s designated Safety Officer with 24-hour contact information and address how the Contractor(s) will ensure the safety of the traveling public and pedestrians along all designated haul routes. Special consideration in the Plan shall be given to high volume routes including seasonally high volume routes near visitor attractions, bicycle and pedestrian routes, routes through Villages and Hamlets, and routes near schools and colleges. The Contractor(s) shall identify means to monitor and control the speeds of their construction vehicles at all times and the scheduling of their routes to avoid peak hour traffic in the morning and afternoon on the way to and from home, work and school.

Section 7.2 List of Materials and Construction Techniques: Ten (10) days prior to the commencement of any modification or improvement pursuant to this Article VII, the Contractor(s) shall deliver to the Town a list of all materials to be used and construction techniques to be employed in connection therewith, subject to the written approval of the Town (not to be unreasonably withheld).

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

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

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

The Parties further agree that the Contractor(s) shall be responsible for obtaining all private land rights as are necessary to permit the Contractor(s) to complete any type of installation approved by the Town and make the modifications and improvements to the Designated Haul Routes contemplated by this Agreement, including obtaining all necessary land rights from private landowners adjacent to the Designated Haul Routes. The Contractor(s) shall submit Appendix "C" to the Town prior to the commencement of construction.

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

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

ARTICLE VIII

INTERIM AND EMERGENCY REPAIRS

The Town will perform periodic inspections every quarter including bridges and culverts of the specified haul route(s) designated by the Contractor(s). The Town will determine if any repairs are required to maintain the safety of the traveling public. The Town may deem necessary that the designated haul route(s) be restored to like new conditions before the project is complete. The Contractor(s) will be expected to perform any emergency repairs to the haul roads, including the pavement, drainage structures, or any other highway related appurtenance that is damaged by the project and which the Town determines must be repaired. The Town will inform the Contractor(s) of required emergency repairs and the repair shall be accomplished within a minimum of twelve (12) hours. If more time is required the Contractor(s) shall inform the Town of the status of the repair on a daily basis, but at no time shall the road become impassable or become dangerous to the traveling public. Close communication will be required between the Town Highway Superintendent and the Contractor's manager of the project. All costs of the repair shall be paid for by the Contractor(s). Due to the constantly changing condition of gravel roads the condition of Gravel Haul routes will be monitored closely. All gravel haul routes shall be treated for dust control throughout the construction project. At a minimum two times between the months of May and September, the gravel haul routes shall be treated with Calcium Chloride or a suitable liquid asphalt prime coat. At the discretion of the Town, depending on road conditions more dust control treatments may be required. The Town will determine when re-grading and dust control treatments are required for gravel roads and shall direct the Contractor(s) when to do them.

ARTICLE IX

WARRANTIES BY CONTRACTOR

Section 9.1 Workmanship and Material Warranties: The following warranty and workmanship requirements apply to all repairs, modifications, and improvements that the Contractor (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 Contractor(s) hereunder, the time period that begins on the date repairs, modifications or improvements to Designated Roads are complete and ending on the date that is twelve (12) months after such completion date.

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

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

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

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

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

ARTICLE X **BONDING**

Section 10.1 Bonding: A bond, standby letter of credit, or other form of security acceptable to the Town, will be required in an amount to be determined subsequent to the designation of Haul routes. The bond posting dates must be for a period starting no later than the commencement of construction date and ending upon project completion as set forth in Article V. The security will be in accordance with the following schedule:

1. Class 1 Roads – \$ 150,000 / mile
2. Class 2 Roads - \$ 185,000 / mile
3. Class 3 Roads - \$ 240,000 / mile
4. Class 4 Roads - \$ 300,000 / mile
5. Class 5 Roads - \$ 95,000 / mile
6. Class 6 Roads - \$ 190,000 / mile
7. Bridges and Culverts – to be determined by Town upon completion of route.

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

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

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

ARTICLE XI

DEFAULT AND REMEDIES

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

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

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

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

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

ARTICLE XII

NOTIFICATION OF ALL ASSOCIATED MUNICIPALITIES

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

Appendix “A”
TOWN OF THURSTON STANDARD INSURANCE REQUIREMENTS

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

ITEMS:

A. Town of Thurston, NY shall be named as an additional insured (for the purposes of coverage but not the payment of premium).

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

C. Prior to non-renewal, cancellation or a change of converge on this policy, at least thirty (30) days advance written notice shall be given to Town of Thurston, Town Supervisor, 7578 County Route 333, Campbell, NY 14821.

MINIMUM COVERAGE AND LIMITS

Workers' Compensation Coverage will be required for anyone doing any kind of work for the Town of Thurston. This includes self-employed individuals. The Town Board of Thurston may elect to waive this requirement if so desired.

TYPE OF CONTRACT	COVERAGES REQUIRED	LIMITS REQUIRED
PROFESSIONAL SERVICES	PROFESSIONAL LIABILITY	\$3million/occ; \$5 million in the aggregate
	AUTO LIABILITY TO INCLUDE: OWNED, HIRED & NON OWNED	MINIMUM \$1,000,000
	WORKERS COMPENSATION	STATUTORY
	EMPLOYERS LIABILITY	STATUTORY
	DISABILITY BENEFITS	STATUTORY
CONSTRUCTION & MAINTENANCE	COMPREHENSIVE GENERAL LIABILITY TO INCLUDE: PREMISES & OPERATIONS, PRODUCTS & COMPLETED OPERATIONS, INDEPENDENT CONTRACTOR, CONTRACTUAL, BROAD FORM PROPERTY DAMAGE, (XCU HAZARDS)	MINIMUM \$1,000,000
	AUTO LIABILITY TO INCLUDE: OWNED, HIRED, & NON OWNED	MINIMUM \$1,000,000
	WORKERS' COMPENSATION	STATUTORY
	EMPLOYERS LIABILITY	STATUTORY
	DISABILITY BENEFITS	STATUTORY
ACQUISITION OF SUPPLIES OR EQUIPMENT	COMPREHENSIVE GENERAL LIABILITY TO INCLUDE: PRODUCTS & COMPLETED OPERATIONS, CONTRACTUAL, BROAD FORM PROPERTY	MINIMUM \$1,000,000
	WORKERS' COMPENSATION	STATUTORY
	EMPLOYERS LIABILITY	STATUTORY
	DISABILITY BENEFITS	STATUTORY
TOWN PROPERTY USED BY OTHERS	COMPREHENSIVE GENERAL LIABILITY TO INCLUDE: PREMISES & OPERATIONS, PRODUCTS & COMPLETED OPERATIONS, INDEPENDENT CONTRACTOR, CONTRACTUAL, PERSONAL INJURY, LIQUOR LEGAL LIABILITY	MINIMUM \$1,000,000
	AUTO LIABILITY TO INCLUDE: OWNED, HIRED, & NON OWNED	MINIMUM \$1,000,000
	WORKERS' COMPENSATION	STATUTORY
	EMPLOYERS LIABILITY	STATUTORY
	DISABILITY BENEFITS	STATUTORY
CONCESSIONAIRE SERVICES LIVERY SERVICES MUNICIPAL AGREEMENTS	COMPREHENSIVE GENERAL LIABILITY TO INCLUDE: PREMISES & OPERATIONS, PRODUCTS & COMPLETED OPERATIONS, INDEPENDENT CONTRACTOR, CONTRACTUAL, PERSONAL INJURY, LIQUOR	MINIMUM \$1,000,000
	AUTO LIABILITY TO INCLUDE: OWNED, HIRED, & NON OWNED	MINIMUM \$1,000,000
	WORKERS' COMPENSATION	STATUTORY
	EMPLOYERS LIABILITY	STATUTORY
	DISABILITY BENEFITS	STATUTORY