

Presently in  
Effect

**DRAFT**

This Road Use Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, having offices at \_\_\_\_\_, hereinafter referred to as "Company", and the Town of \_\_\_\_\_, a municipal corporation having offices at \_\_\_\_\_ New York, hereinafter referred to as "Town".

**RECITALS**

WHEREAS Company is a private corporation, limited liability or other business entity

WHEREAS Company intends to engage in \_\_\_\_\_, located in the Town or \_\_\_\_\_ passes through; and

WHEREAS Company has [applied for/been issued} (a) permit(s) by New York State Department of Environmental Conservation, numbered \_\_\_\_\_ which will allow Company to engage in \_\_\_\_\_

WHEREAS Company will necessarily need to conduct certain construction activities within the Town, some of which may involve construction activities within roads (hereinafter "construction activities"); and

WHEREAS Company will necessarily need to traverse Town highways, roads, culverts and related fee owned land, rights-of-way or easements owned or maintained by the Town (hereinafter collectively referred to as "road" or "roads") with heavy machinery, including but not limited to, trucks, construction machinery and equipment and other related items (hereinafter "road use activities"); and

WHEREAS Company acknowledges that the nature of road use activities \_\_\_\_\_ during activities will exceed the normal and anticipated use of public roadways within the Town's limits, causing distress to the roads which may either by structural or functional and which in turn increase overall maintenance, oversight, repair, and replacement costs to the Town in connection with the \_\_\_\_\_ and which distress may be immediate or may be gradual and delayed, and also will exceed the design criteria for said roadways, thus causing greater than ordinary wear and tear and damaging of the roadways; and

WHEREAS the Town seeks guarantees and assurances from Company that Company will pay and/or otherwise indemnify the Town for any distress or damage to the roads caused by construction activities;

NOW, THEREFORE, in consideration of these promises and other good and valuable consideration, the receipt and sufficiency which are hereby acknowledged, Company and the Town, each intending to be legally bound, agree as follows:

**1. Company Responsibilities.**

a. Company shall be responsible for obtaining any approvals, permits, and/or orders, including renewals thereof which are or may be required by governing law. The application fee for a Road Use Agreement is \$500.00. It shall be submitted to the Town Clerk with the application . Said Fee may be hereafter modified by the Town Board.

b. To the extent that construction activities involving installation of permanent facilities below roads, the Company shall be responsible for obtaining any consents, easements or rights-of-way from the Town and appropriate property owners to authorize the installation of such

c. Company agrees that it shall be responsible for insuring that all debris, garbage, and waste upon roads related to \_\_\_\_\_ activities are disposed of in accordance with governing law. It will be the practice of the company to check the roadway for dust and make dust control a part of its regular maintenance of the roadways used by the company.

d. The term "Company" shall include its employees, officers, directors, members, managers, partners and/or other principals along with the Company's agents, licensees, vendors, contractors, subcontractors, haulers and the like. Company shall require that each and every person or entity, including all employees, officers, directors, members, managers, partners and/or other principals along with the Company's agents, licensees, vendors, contractors, subcontractors, haulers and the like will comply with the terms and conditions of this agreement. A failure of any of the Company's employees, officers, directors, members, managers, partners and/or other principals along with the Company's agents, licensees, vendors, contractors, subcontractors, haulers and the like to comply with the terms and conditions of this agreement shall constitute a default by the Company regardless of any intent or knowledge on behalf of the Company and regardless of any defense, the Company may have at law, in contract or in equity against any such person or entity.

## **2. Road Surveys and Routes.**

a. Prior to the commencement of any road use activity, Company will provide the Town with a proposed truck route containing a list of the roads that it intends to traverse as part of the \_\_\_\_\_.

hereof , and shall serve as a basis for the required bonding set forth in Section 6.

c. Prior to the commencement of road use activities, Company will prepare a suitable video survey of the roads identified in the road route and shall provide a copy thereof to the Town.

d. If in the opinion of the permit holder a section of the designated truck route will need strengthening to make it capable to carry the intended traffic, the permit holder, may at his expense do the repairs as needed. Any such repair shall meet the Town Highway Superintendent's approval.

e. The company shall maintain "proper signage" along the established truck route.

f. Immediately following the completion of heavy industrial activities, Company shall prepare a suitable post-construction video road survey of the roads identified in the road route and notify the Town that construction activities have been completed.

g Immediately following the completion of the post-construction video road survey, Company will provide to the Town all pre and post construction road surveys of the roads identified in the road route exhibit.

h. In the event Company deviates from the road route designated in Addendum A, the Town may request and the Company shall upon such request cease and desist such deviation. The Company shall be liable for any and all damages to the Town for repair of said roads in accordance with the procedure set forth in paragraph 3, below.

### **3. Road Damage.**

a. If any damage occurs to any Town road during road use activities and such damage is, in the sole opinion of the Town Highway Superintendent, a danger to the public using the road, then the Town shall undertake immediate repairs to the town road. In the event Company becomes aware of any such damage or a safety concern, it shall notify the Town within 24 hours of such damage. The Company will make repairs immediately. The Town shall submit a written invoice to Company detailing the costs, fees, expenses and any other bills incurred by the Town to repair said damage. Company shall pay the invoice within 10 (business) days, unless Company reasonably disputes the invoice. In the event of a reasonable dispute, then both parties shall abide by the procedure set forth herein for dispute resolution.

b. Within 15 (business) days following the completion of \_\_\_\_\_ activities and/or construction activities and notification to the Town by Company, the Town must notify Company in writing if the Town finds that damage(s) to the road(s) listed in the road route exhibit arose from or are related to \_\_\_\_\_ activities or road use activities. Damage may include but not necessarily be limited to accelerated deterioration, cracking, imprinting, pitting, tracking, buckling or asphalt and road base, damage to culverts, bridges and/or drainage facilities (hereinafter "damage").

c. Within 7 business days of a receipt of an allegation of damage from the Town, Company shall notify the Town in writing of its agreement or disagreement with the allegations. The Town shall then submit a written invoice (hereinafter "invoice") to Company detailing the costs, fees, and/or expenses incurred or to be incurred by the Town to repair the damage which occurred. It will be the policy of the Town to submit three (3) written estimates.

d. Company shall pay the invoice and any other billings within 10 (business) days following receipt unless Company reasonably disputes the invoice. If the Company disputes any invoice, it shall pay the Town for all undisputed items and shall provide a detailed written statement as to its basis for contesting the disputed amount(s) within the foregoing 10 (business) day period. In the event of a dispute, then both parties shall abide by the procedure set forth herein for dispute resolution in paragraph 4 below.

e. The manner of repair of any road damage described in this agreement shall be at the sole discretion of the Town Highway Superintendent. The Town Highway Superintendent, in exercising his discretion, shall apply Town road standards that are otherwise applicable throughout the Town for the type of road involved.

### **4. Dispute Resolution.**

a. In the event that the company shall, upon reasonable grounds and in good faith, dispute any notice of repairs upon the grounds that it did not cause such damage, such damage was pre-existing, such damage is not in excess of ordinary wear and tear or disputes the estimated cost of repairing, replacing same, the parties shall submit the matter for resolution by binding arbitration, before three arbitrators with each party selecting one arbitrator and the two arbitrators selecting the third in accordance with the rules then pertaining to the American Arbitration Association. The site of the arbitration hearing will be at the offices of the Town Hall 169 Main Street, Afton New York. In the event the majority of the arbitrators determine that the company's disputing of the town's notice of repairs, estimated costs, etc.... was not based upon reasonable grounds or was without good faith, then the company shall be liable to pay the Town's costs of arbitration.

b. Notwithstanding, the company's dispute of the Town's notice of need for repairs, the town, at any time, may proceed to make such repairs, replacements and pay the costs thereof from the town funds (non-escrow funds). In the event arbitration proceedings result in an award in favor of the Town, the Town shall have the right to withdraw from the escrow account an amount sufficient to pay to the Town, the monies awarded to the Town pursuant to the arbitrators' decision. the arbitrators' decision shall be final and binding upon both parties and in the event the award is unpaid later than 10 days of notice of decision judgment may be entered in any Court having jurisdiction thereof.

c. Not later than 10 (business) days after the receipt of written notice by U.S. mail to the company by the Town a deduction of monies from the escrow account to pay the arbitrators' award, the company shall deposit with the Town Clerk, a sum of money sufficient to bring the balance of the escrow account back to \$30,000.

d. Any action arising under the terms and conditions of the Agreement shall lie in Chenango County , New York .

5. Indemnification and Insurance. The Company, at its own cost and expense, agrees to the insurance, indemnification and general terms and conditions set forth in Addendum B attached hereto entitled " General Contract and Insurance Specifications", which are to be incorporated herein by reference as if fully set forth.

## **6. Bonding and Escrow Provision.**

a. Prior to the commencement of each and every construction activity, and in order to ensure performance of its obligations under this agreement, the Company shall obtain and deliver to the Town a Sum in the cash amount of \$30,000 and a Bond in the amount of \$\_\_\_\_\_, that is calculated based upon the truck route (calculated by the mileages and types of road and types of bridges) as set forth in Addendum A. Such Bond shall be executed by a reliable bonding or insurance institution authorized to do business in the State of New York and acceptable to the Town, and shall be attached to this agreement as Addendum C. The Permittee shall pay the sum of thirty thousand dollars (\$30,000.00), which the Town Clerk shall cause to be deposited in an interest bearing account the Town's official depository bank and shall be kept separate and apart from all other Town monies and not co-mingled therewith. Said escrow fund shall be utilized solely by the town for the purpose of making repairs or replacement of damages to or destruction of Town Roads and highways in excess of ordinary wear and tear caused by the road use permit holder, its employees, subcontractors, assignees and others working in furtherance of the project or activity requiring concentrated heavy traffic. This escrow fund may be also used to pay the costs of clean up or remediation of any spills, leakage, release, discharge or placement of foreign substances on the road surface, ditches, drainage, etc. Including but not limited to chemicals, toxic, hazardous or pollutant type materials or substances. The escrow fund may also be used to pay any and all legal expenses incurred by the town to remedy any actions needed to accomplish the intent of this agreement.

b. The bond shall be effective prior to any road use activities and shall remain in full force and effect for at least a period of 12 months following the termination of road use activities.

c. The Company will take out a bond listing the Town of Afton as the beneficiary in case of damage to the Town roads this will ensure that the company will be complying with the terms and conditions of this agreement. The original bond shall be delivered to the Town Clerk.

d. The Town shall be authorized to demand payment from and against any bond to recover any amounts due from the Company for repairs to the roads. Upon receipt of the monies, the Town will proceed with completing the required repairs. If the Issuer of the bond refuses to honor any draft by the Town, then the Company shall cease all operations until such time as it has complied or abated the default. Nothing in this subparagraph will prevent the Town from proceeding by way of a civil action to obtain compliance and abate the default.

e. In the event the Bond contains a stated termination date, then Company shall renew or obtain a new Bond in the agreed upon amount no later than 10 days prior to the stated termination date. It is the intention of the parties that the Bond for the stated amount remain in effect throughout the term of this agreement. This agreement is not transferable or assignable. Any needed repairs will be repaired.

f. The Bond is to guarantee reimbursement to the Town for all labor, material and equipment expenses the Town may incur in repairing any road damage arising from or related to \_\_\_\_\_ activities and/or road construction activities if Company fails to comply with its duties and responsibilities set forth in this agreement.

g. The cancellation of any bond will not release the Company from its obligation to meet all the requirements of this agreement.

h. Forms of Monetary Assurance:

1. Cash: ( \$30,000) or
2. Bank check payable to the Town of Afton: or
3. Certified Check payable to the town of Afton: or
4. A wire transfer to the Town's designated account

i. Monetary Assurance Funds to be Held in Escrow as set forth in Section 6a.

Monetary assurance in the form of cash, bank checks, or certified checks shall be deposited by the town Clerk into separate "Road Preservation Monetary Assurance Fund" account and held in escrow wholly separate and not co-mingled with other town funds or accounts. The depository bank shall be the same banking institution designated by the Town Board as the Town's official banking institution. funds in excess of FDIC insured limits shall be collateralized in accordance with the requirements of the General Municipal Law for all other town funds.

j. Monetary assurance proceeds shall be returned to the permit holder with interest upon completion of the permitted activities subject to passing of an inspection of the affected Town road(s) by the town Highway Superintendent or by the Town Superintendent's Designee after one year's time. In the event such inspection discloses the roadbed, surface, drainage, culvert, bridging of the affected town road(s) has been damaged during the course of the permitted activity by the Permittee, its employees, agent servants, contractors, or subcontractors to the extent that such damage is in excess of ordinary repairs, maintenance and upkeep the town annually performs on the affected town road(s), the town utilizing the monetary assurance funds shall cause the same to be repaired to as good a condition as existed immediately prior to the commencement of the permitted activities. Monetary assurance funds in excess of the amount required to pay for the cost of repairs shall be returned to the permit holder. In the event that the cost of repairs exceeds the amount of the monetary assurance funds, the permit holder shall be liable to pay the excess cost to the town not later than 10 days after invoicing for the same by the town to the permit holder. Failing that, the town may resort to any legal remedy available to it for its collection, including but not limited to the immediate suspension of all other road use permits then in effect issued by the town to the permit holder and the suspension of eligibility by the permit holder for a future road use permit(s).

## **7. 911 Address.**

Company shall obtain and maintain throughout the term of this agreement a 911 address for each site or other and related appurtenances.

## **8. Captions and Headings.**

Captions and headings throughout this agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the scope or intent of this agreement nor in any way affect this agreement.

## **9. Modifications.**

For Company:

For Town:

IN WITNESS WHEREOF, Company and the Town have caused their respective, duly

[Company Name] Town of [ ]

By: \_\_\_\_\_ By: \_\_\_\_\_

Supervisor

Title: \_\_\_\_\_

## ATTACHMENT A

### FEE SCHEDULE

The per mile road Bond shall be apportioned in the following manner:

One (1) to 3 (three )miles    \$75,000

Four (4) to Seven (7) miles    \$ 175,000

Above Seven miles                \$200,000