

ROAD USE AGREEMENT

This Road Use Agreement ("Agreement") is entered into this ____ day of _____, 2010 between _____, with its primary business address at _____ ("Contractor"), and the Town of Candor, a municipal corporation having offices at 101 Owego Road, Candor, New York 13743 ("Town").

RECITALS

WHEREAS, Contractor is engaged in the business of or a business associated with "natural gas development and production", which for purposes of this Agreement means any business relating to or supporting the exploration for, extraction of or transportation of natural gas (herein referred to as "business operations"); and

WHEREAS, Contractor will necessarily need to traverse Town highways, roads and related fee-owned land, rights-of-way or easements, bridges and culverts owned or maintained by the Town (collectively "Town roads") with trucks, machinery and equipment, and other similar vehicles and conveyances (collectively "vehicles"); and

WHEREAS, Contractor acknowledges that the nature and frequency of heavy vehicular traffic on the Town roads in connection with its business operations will exceed the normal and anticipated use of Town roads, causing damage which may either be structural or functional and which will in turn increase overall maintenance, oversight, repair, and replacement costs to the Town in connection with the Contractor's business operations and which damage may be immediate or may be gradual and delayed; and

WHEREAS, the Town seeks guarantees and assurances from Contractor that Contractor will pay and/or otherwise indemnify the Town for any damage to the Town roads arising from or related to the Contractor's business operations activities;

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

1. Contractor Responsibilities.

a. Contractor shall be responsible for obtaining any approvals, permits, and/or orders, including renewals thereof which are or may be required for its business operations by governing law, and Contractor shall not permit any vehicles to be operated or placed on any

Town roads while its business operations are not approved by an applicable permit.

b. To the extent that the Contractor's business operations involve installation of permanent facilities below road surfaces, Contractor 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 facility.

c. Contractor agrees that it shall be responsible for ensuring that all debris, garbage, and waste deposited upon Town roads as a result of its **business operations are disposed of** promptly and in accordance with governing law.

d. Contractor shall pay in full the cost of improving Town roads in order to prevent damage and for maintaining and repairing Town roads damaged as a result of the Contractor's business operations.

e. Contractor shall defend and indemnify the Town its consultants and agents and employees or any of them, from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from Contractor's performance or omissions connected with its business operations, whether performed or to be performed by the Contractor or by others, or arising out of or resulting from any damage to the Town roads, but only to the extent caused in whole or in part by the acts, actions, omissions, negligence, fault or breach of the Contractor, or anyone directly or indirectly employed by the Contractor, or anyone for whose act either or both of them may be liable, regardless of whether or not any such claim, damage, loss or expense is caused in part by the party indemnified hereunder. This indemnification provision shall include, without limitation, fees and disbursements of counsel incurred by the Town in any claim, action or proceeding connected with such personal injuries, or death, or property damage related to the Contractor's business operations, and such provision shall also cover and include any losses or damages incurred by any third party that are related, in whole or in part, to the Contractor's business operations, anyone directly or indirectly employed by either party, or anyone for whose act either party may be liable. The Contractor is not obligated to indemnify the Town for damage caused by the Town's own negligence.

f. Contractor shall enter into an Escrow Agreement with the Town in the form set forth in Attachment I as security for its obligations to the Town under this Agreement.

g. Contractor shall maintain insurance coverage and provide to the Town Certificates of Insurance evidencing that the Contractor has and shall maintain policies of liability insurance coverage naming the Town as additional insured in the amount of at least:

Commercial General Liability (CGL), including:

- Products & completed operations shall not be excluded.
- Town of Candor shall be named as an additional insured. The

\$5,000,000/\$10,000,000
Per occurrence/minimum
annual aggregate limit

additional insured endorsement for the insurance shall not contain any exclusion for bodily injury or property damage arising from completed operations.

- Proof of additional insured coverage shall be evidenced through a carrier issued endorsement.

Automobile Liability (Comprehensive Form)

Must cover owned, non-owned and hired vehicles

\$1,000,000

Combined Single Limit

Workers' Compensation and Employer's Liability

Statutory Amounts

Disability Insurance

Statutory Amounts

Said insurance shall be maintained throughout the term of the Agreement and the aforementioned certificate shall provide for 30 days notice to the Town prior to cancellation of coverage. Except where prohibited by law, the Town will require its insurers to waive all rights of recovery or subrogation against Contractor, its subsidiaries and affiliated companies, and its and their respective officers, directors, shareholders, employees, and agents. The amount of insurance carried in compliance with the above requirements is not to be construed as either a limitation on or satisfaction of the indemnification obligation in this Agreement.

h. Contractor shall obtain and maintain throughout the term of this Agreement a 911 address for each and every gas well or other and related appurtenances

2. Road Surveys and Routes.

a. No later than four (4) weeks prior to the Contractor undertaking any actions in furtherance of its business operations, Contractor shall provide the Town Highway Superintendent with a list of the Town roads that it intends to traverse in connection with its business operations.

b. Within that four (4) weeks, Contractor and the Town Highway Superintendent shall agree upon a designated truck route to be used for all vehicles engaged in the Contractor's business operations. Final decision shall be that of the Town Highway Superintendent. A description of the road route agreed upon will be deemed a supplemental exhibit to this Agreement, incorporated herein and made a part hereof (hereinafter "Road Route").

c. Prior to undertaking its business operations Contractor will prepare a video road survey and a written road survey of the roads identified in the Road Route **in a format acceptable to the Town Highway Superintendent** and provide the same to the Town Highway Superintendent.

d. If, in the opinion of Highway Superintendent of the Town, the Road Route includes seasonal or gravel roads which cannot, due to their construction and condition, withstand the structural and functional damage anticipated by the operation or placement of

vehicles on and over Town roads in connection with the Contractor's business operations, the Contractor agrees to make or cause to be made such improvements ("Work") in accordance with the Town road standards as may be necessary to accommodate the heavy vehicular traffic prior to traversing the Road Route. Contractor shall not operate or place any vehicles on any Town road identified in the Road Route until all improvements required under this Agreement are made and approved by the Town Highway Superintendent. The Town Highway Superintendent shall issue a certificate of approval when all required improvements have been made and approved.

e. After all improvements to the Town roads within the Road Route have been completed the Town Highway Superintendent shall make an estimate of the cost to maintain and repair the Town roads within the Road Route and recommend to the Town Board an amount to be deposited into the Escrow Fund as security for the Contractor's obligations hereunder. The Town Highway Superintendent's recommendation shall take into account the condition of the Town roads in the Road Route at the commencement of the Contractor's business operations, the presence or absence of bridges in the Road Route, the likely cost of repairing the Town roads in the Road Route, the potential use of the roads in the Road Route by other contractors and the availability of resources for repairing the Town roads in the Road Route under other road use agreements, and the Town's experience with the Contractor for maintaining and repairing Town roads under other road use agreements. The Town Board shall establish the initial amount to be deposited in the Escrow Fund based upon the Town Highway Superintendent's recommendation and the Contractor's comments. The Contractor shall not operate or place any vehicles on any Town roads until the Escrow Agreement is completed and signed and the escrow funds have been deposited. If during the term of this Agreement the Town Highway Superintendent determines that the Escrow Fund has been depleted below the amount required to provide adequate security to the Town for the Contractor's obligations under this Agreement, the Town Highway Superintendent shall recommend to the Town and to the Contractor that additional funds sufficient to provide adequate security to the Town for the Contractor's obligations under this Agreement be deposited into the Escrow Fund by delivering a notice that the Escrow Fund is inadequate to the Town and to the Contractor ("Notice of Inadequacy"). The Contractor shall not operate or place any vehicles on any Town roads while there exists an unresolved "Notice of Inadequacy".

f. At any time the Contractor determines that its business operations with respect to this Agreement have ceased, the Contractor shall notify the Town Highway Superintendent in writing that it has ceased its business operations and has discontinued operating or placing vehicles on and over Town roads within the Road Route. ("Notice of Cessation of Business Operations"). The Contractor shall deliver with the Notice a post-construction video road survey and written road survey of the Town roads identified in the Road Route **in a format acceptable to the Town Highway Superintendent.**

g. Within 14 days following the Town Highway Superintendent's receipt of the Notice of Cessation of Business Operations and the post-construction video road survey and written road survey, the Town Highway Superintendent shall notify Contractor in writing of any

damage to the Town roads listed in the Road Route that arose from or is related to the Contractor's business operations and the cost of repairing any such damage. Such Damages shall be valued in accordance with the FEMA Rate Books.

3. Bridges.

In order to further preserve the lifespan of Bridges in the Town of Candor; more specifically the fourteen (14) Town Bridges, the Contractor shall not operate or place any vehicles on, over or across any bridge in excess of the weight limit set for such bridge. If the Contractor cannot perform any operation reasonably necessary to its business operations without moving or placing a vehicle exceeding the established weight limit on, over or across a bridge then the Contractor shall perform the following, in the listed order of the Town's preference to avoid crossing bridges:

- i. Create a truck by-pass to the Bridge(s)
- ii. Pump water from the point prior to the Bridge(s) to the destination or a retainer, without crossing the Bridge(s)
- iii. Be rerouted to avoid the Bridge(s)
- iv. Crib the Bridge(s)

In the event the Contractor violates this provision regarding bridges the Town Highway Superintendent may give notice to the Contractor directing the Contractor to cease using all Town roads in the Road Route until the Town Highway Superintendent completes such inspection of the bridge as may be necessary to determine whether the bridge was damaged as a result of the Contractor's violation and the Town Highway Superintendent has caused all required repairs to be made to restore the condition of the bridge damaged. The Town Highway Superintendent shall pay the cost of all inspections and any repairs from the funds in escrow. The Town Highway Superintendent shall notify the Contractor in writing of the work done and the amount withdrawn from the escrow funds to pay the cost of the work within two business days of commencing the work

4. Road Damages.

a. If the Town Highway Superintendent learns that any Town road within the Road Route has not been maintained properly or has been damaged as a result of the Contractor's business operations, other than damage constituting an immediate danger to public health or safety, the Town Highway Superintendent shall cause the necessary maintenance or repair to be made and pay the cost of such maintenance or repair from the funds in escrow. The Town Highway Superintendent shall notify the Contractor in writing of the work done and the amount withdrawn from the escrow funds to pay the cost of the work within two business days of commencing the work.

b. If the Town Highway Superintendent learns of any damage to a Town road in the Road Route resulting from the Contractor's business operations and the damage in the opinion of the Highway Superintendent, constitutes an immediate danger to the public health or safety then the road shall be closed. The Town Highway Superintendent shall cause the

necessary repairs to be made to re-open the Town road and pay the cost of such repair from the funds in escrow. The Town Highway Superintendent shall notify the Contractor in writing of the work done and the amount withdrawn from the escrow funds to pay the cost of the work within two business days of commencing the work.

c. The manner of repair of any road damage described in this Agreement shall be at the 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.

d. The Contractor shall have an affirmative duty to notify the Town Highway Superintendent of any damage to a Town road within one hour of learning of the damage. The Contractor shall not make any repairs to any Town road without first receiving the Town Highway superintendent's approval of the nature and scope of the intended repair.

5. Injunctive Relief.

The Town may enforce the provisions of this agreement by seeking an injunction from a Court having jurisdiction.

6. Attorneys' Fees and Expenses of Enforcement.

In the event of litigation to enforce any provision of this Agreement as a result of one party's breach, the prevailing party shall be entitled to collect (in addition to any other remedies or damages) reasonable attorneys' fees, costs and expenses connected with such litigation and any subsequent enforcement or collection of a judgment.

7. Subcontracts

Contractor hereby agrees to incorporate into its subcontracts, purchase orders, or other such agreement with any other party furnishing labor, material or services for Contractors work, all provisions required by law and all provisions of this contract that affect the Town's rights. This contract, however, shall not create a contractual relationship between the Town and Contractor's subcontractors or suppliers.

8. Termination.

After the Contractor's delivery of a Notice of Cessation of Business Operations and upon payment of the amount established by the Town Highway Superintendent as the cost to repair damages to the Town roads or the completion of all such repairs, whichever occurs first, the Contractor may submit a request to the Town Board to terminate this agreement and receive refund of the balance of funds held in escrow, if any. The Contractor shall present to the Town its certificate that it has ceased its business operations with respect to this Agreement and an undertaking that it will not resume business operations with respect to the same Road Route without entering into a new Road Use Agreement containing substantially the same terms as provided for in this Agreement.

9. 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.

10. Modifications.

This Agreement cannot be changed orally, but only by Agreement in writing signed by the party against whom enforcement of the change, modification or discharge is sought or by its duly authorized agent.

11. Severability.

If any provision of this Agreement, or any portion of any provision of this Agreement, is declared null and void, such provision or such portion of a provision shall be considered separate and apart from the remainder of this Agreement, which shall remain in full force and effect.

12. Governing Law.

This Agreement shall be governed and construed in accordance with the laws of the State of New York.

13. Binding Effect.

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. **Contractor may not assign this Agreement to any subsidiary or affiliate or entity owned or controlled by Contractor of said subsidiary, affiliate or entity, or as part of the sale of that part of its business, or pursuant to any merger, acquisition, consolidation or other reorganization, without the Town's written prior consent. Any assignee of the Contractor shall be deemed to have all of the rights and obligations of the Contractor as set forth in this Agreement. It is understood that no assignment shall release the Contractor from any of its obligations hereunder.**

14. Entire Agreement.

The entire Agreement of the parties is contained in this Agreement. No promises, inducements or considerations have been offered or accepted except as herein set forth. This Agreement supersedes any prior oral or written agreement, understandings, discussion, negotiations, and offers of judgment or statements concerning the subject matter thereof.

15. Authority of Parties.

The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this Agreement.

16. Notice.

a. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given (1) upon hand delivery, or (2) upon the third day following delivery via the U.S. Postal Service, or (3) on the first day following delivery via a nationally registered United States overnight courier service, or (4) on the day when sent by facsimile transmission if additional notice is also given under (1), (2), or (3) above within three (3) business days thereafter.

b. For purposes of this Agreement only, any notices to the parties shall be directed to the party as set forth below:

For Contractor:

Contractor
Address

For Town of Candor:

Town of Candor
101 Owego Road
Candor, New York 13743

IN WITNESS WHEREOF, Contractor and the Town have caused their respective, duly authorized officers to execute this Agreement under seal as of the day and year first above written.

Contractor

Town of Candor

By: _____

By: _____

Darlene Cobler, Supervisor

Title: _____

Kevin Noble, Highway Superintendent

Attachment I – Escrow Agreement

Attachment II – Road Route

ATTACHMENT I

ESCROW AGREEMENT TO SECURE PAYMENT TO REPAIR ROADS

FOR VALUABLE CONSIDERATION this Escrow Agreement ("Escrow Agreement") is entered into this ____ day of _____, 2010 between _____, with its primary business address at _____ ("Contractor"), the Town of Candor, a municipal corporation having offices at 101 Owego Road, Candor, New York 13743 ("Town") and _____, a financial institution having its principal office at _____ ("Escrow Agent").

Whereas, the Contractor and the Town have entered into a Road Use Agreement ("RUA") contemporaneously herewith; and

Whereas, the RUA provides that the Contractor will furnish cash in escrow to secure and guarantee the Town against damage to the Town roads and bridges in connection with the Contractor's business operations as defined in the RUA;

Whereas, the Contractor, the Town and the Escrow Agent wish to establish the terms and conditions for holding and releasing the escrow funds;

Now, Therefore, the parties hereto agree as follows:

1. DEPOSIT IN ESCROW.

Contractor hereby deposits and assigns to the Town all of the Contractor's interest in the cash amount of \$_____ as a collateral security deposit made by Contractor with _____ ("Escrow Agent") for the purpose of securing the Contractor's obligations under a Road Use Agreement made between the parties contemporaneously herewith.

2. INCREASES IN ESCROW FUNDS.

All deposits into the escrow fund and any increases in the fund due to interest or other income shall be

considered to be part of the escrow fund and shall be held and released in the same manner as all escrow funds held pursuant to this agreement.

3. PAYMENTS FROM ESCROW FUNDS.

Escrow Agent shall pay escrow funds only to the Town of Candor upon written application signed by the Town Highway Superintendent and the Town Supervisor or Deputy Supervisor. Receipt of the Town Highway Superintendent and the Town Supervisor or Deputy Supervisor shall constitute a complete receipt and release of the Escrow Agent for any payments evidenced by the signed receipt. Escrow Agent shall promptly pay funds upon the Town's written application therefore and shall not withhold funds or refuse payment of any funds held on account for any reason.

4. LIABILITY OF ESCROW AGENT.

The Escrow Agent's obligation under this agreement shall be limited to holding and disbursing the escrow funds in accordance with the terms of this Agreement. Escrow Agent shall have no liability or obligation with respect to the Escrow Fund except for Escrow Agent's willful misconduct or gross negligence. Escrow Agent's sole responsibility shall be for the safekeeping and disbursement of the Escrow Fund in accordance with the terms of this Escrow Agreement. Escrow Agent shall have no implied duties or obligations and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein. Escrow Agent may rely upon any instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by the person or parties purporting to sign the same and to conform to the provisions of this Escrow Agreement. In no event shall Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages. Escrow Agent shall not be obligated to take any legal action or commence any proceeding in connection with the Escrow Funds, any account in which the Escrow Fund is deposited, this Escrow Agreement or the Underlying Agreement, or to appear in, prosecute or defend any such legal action or proceeding. Escrow Agent may consult legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its duties hereunder, and shall incur no liability and shall be fully indemnified from any liability whatsoever in acting in accordance with the opinion or instruction of such counsel. Parent shall promptly pay, upon demand, the reasonable fees and expenses of any such counsel.

5. FEES AND EXPENSES OF ESCROW AGENT.

Escrow Agent shall be entitled to receive its ordinary fees and expenses for maintaining the account in accordance with its customary practices. Escrow Agent shall provide periodic statements of its fees and expense to the Contractor and to the Town. No fees or expenses shall be deducted from the escrow funds without prior written consent of the Contractor and the Town.

6. TERMINATION.

This agreement and the Escrow Agent's obligations hereunder shall terminate when all escrow funds have been paid and the account has been closed.

IN WITNESS WHEREOF, the parties hereto have signed their names on the date indicated above.

Dated:

Contractor

By: _____

Dated:

Town of Candor

By: _____
Darlene Cobler, Supervisor

Dated:

By: _____
Escrow Agent

ATTACHMENT II

ROAD ROUTE

[TOWN OF CANDOR PUBLIC WORKS DEPARTMENT LETTERHEAD]

To Contractor
Address
Method of delivery

CERTIFICATE OF APPROVAL

The undersigned, Highway Superintendent for the Town of Candor, New York, has inspected the roads designated in the attached Road Route and hereby certifies that:

☐ No improvements to the roads are required

☐ All required improvements to the roads have been completed

The Contractor is authorized to operate and place vehicles on the Town roads designated in the attached Road Route subject to the continuing obligations under the Road Use Agreement made between the Contractor and the Town of Candor and dated _____, 2010.

Dated:

Kevin Noble, Town Highway Superintendent

[TOWN OF CANDOR PUBLIC WORKS DEPARTMENT LETTERHEAD]

To Contractor
Address
Method of delivery

NOTICE OF INADEQUACY OF ESCROW

PLEASE TAKE NOTICE that the Town of Candor Highway Superintendent has determined that the funds now held in escrow pursuant to a Road Use Agreement between the Contractor and the Town of Candor dated _____, 2010 are not adequate to secure the Contractor's continuing obligations under the Road Use Agreement for the reason set forth in the attached report.

The Town Highway Superintendent has determined that the sum of \$ _____ should be held in escrow as security for the Contractor's continuing obligations under the Road Use agreement.

The amount now held in Escrow pursuant to the Agreement is \$ _____

The Town Highway Superintendent recommends that the Contractor deposit into the Escrow Account the additional sum of \$ _____

Dated:

Kevin Noble, Town Highway Superintendent

cc: Candor Town Board