

**ROAD DAMAGE AND REPAIR AGREEMENT**

**THIS ROAD DAMAGE AND REPAIR AGREEMENT** (“Agreement”) is made on its Effective Date by and between *[NAME OF CORPORATION]* (“Company”), and Callahan County, Texas (“County”), the parties to this Agreement, in exchange for the covenants, promises, representations, obligations, and monetary consideration herein described, the sufficiency of which is acknowledged, and the parties hereby agree as follows:

**(1) Project Description.** The Company (including its successors and permitted assigns) is developing and shall own, construct, operate, maintain, replace, repair, and remove (said activities hereafter described as “Project Operations”) the following business project in Callahan County, Texas: \_\_\_\_\_.

The purpose of the Project is as follows: \_\_\_\_\_  
\_\_\_\_\_.

**(2) Road System.** The County’s public road and bridge system (“Road System”) is owned, operated, and maintained in Callahan County, Texas, and includes the County’s: roads, easements, and rights of way; bridges and abutments; driveways, fencing, and gates; bar-ditches, culverts, and drainage areas; traffic signals, delineators, road signs, and other traffic control devices; and all other land, infrastructure, facilities, equipment, and personal property owned or used by the County for its public roads and bridges located in Callahan County, Texas.

**(3) Term of Agreement, Default, and Amendment.** This Agreement shall begin on its Effective Date (the date of the last signing party) and continue as long as the Company conducts Project Operations in Callahan County, Texas, unless the Agreement is terminated by a party because of the conduct, act, or omission of a defaulting party which violates this Agreement. Should a violation of this Agreement be committed by a party, the non-defaulting party shall provide written notice to the defaulting party and if the defaulting party fails to cure such default within thirty (30) days (or if such cure reasonably requires longer than thirty (30) days, such longer period as may be reasonably required not to exceed sixty (60) days, provided that such party promptly commences the cure within such thirty (30)-day period and thereafter pursues it to completion), the non-defaulting party may pursue and recover all remedies authorized by law or equity, including Agreement termination, litigation, and the recovery in litigation by the prevailing litigant of all damages, costs, attorneys fees, interest or other litigation remedies allowed by law. No waiver of a Default occurs if the non-defaulting party fails to immediately declare a default or delays taking action for a default committed by the defaulting party. A default of this Agreement shall survive Agreement termination, and the default may be alleged and pursued by the non-defaulting party against the defaulting party in post-termination litigation. This Agreement may be amended or revised by the written consent of the parties in a subsequent agreement.

**(4) Road System Repairs.**

(a) The Company may utilize the Road System for the transport of necessary or desired (but legally licensed and permitted by federal or state authorities) vehicles, equipment, and weight loads for Project Operations.

(b) Using its authority, discretion and best business judgment, and using County labor, materials, and equipment (through the application of County forces or contracted services with third-parties), the County shall repair its Road System damaged by a Company caused damage event during Project Operations determined based on the following:

(i) The Company, at its expense, will have a pre-construction survey completed for all roads in the Road System to be used by the Company for Project Operations, which will include current conditions.

(ii) Upon completion of construction, the Company, at its expense, will have a post-construction survey completed, the methods of which shall be similar to those of the pre-construction survey described above. The two sets of pre and post-construction data will be compared and if there is any wheel lane rutting, cracking or other damage resulting from Project Operations, the County and the Company will determine the extent of the repairs or improvements needed to return the roads used for Project Operations to a pre-construction condition, taking into consideration and excluding normal wear and tear and use by the public (which shall take into consideration and exclude damages caused by other users conducting Project Operations for their projects).

(iii) After completion of construction, the Company shall only be responsible for damages resulting from any additional Project Operations conducted from time to time. The Company, at its expense, may have pre- and post-use surveys completed to document the conditions of the roads prior to and after conducting any further Project Operations. The two sets of pre and post-use data will be compared and if there is any wheel lane rutting, cracking or other damage resulting from Project Operations, the County and the Company will determine the extent of any repairs or improvements needed to return the roads used for Project Operations to a pre-use condition, taking into consideration and excluding normal wear and tear and use by the public (which shall take into consideration and exclude damages caused by other users conducting Project Operations for their projects).

(iv) If any Project Operations are conducted for which the Company does not cause pre- and post-use surveys to be completed, the Company and the County shall meet to jointly review the condition of the roads upon request by the County to determine if there is any wheel lane rutting, cracking or other damage resulting from Project Operations, and the County and the Company will determine the extent of any repairs or improvements needed to return the roads used for Project Operations to a pre-use condition, taking into consideration and excluding normal wear and tear and use by the public (which shall take into consideration and exclude damages caused by other users conducting Project Operations for their projects).

(c) The Company shall deliver one or more \$100,000.00 damage deposits, as hereafter described, to the County (to the office of the Callahan County Judge) when the Company signs this Agreement, in the form of a Company check made payable to the order of said county. The County shall use the damage deposits during the term of this Agreement for

the periodic repair of the Road System damaged by a Company caused damage event during Project Operations.

(d) A separate \$100,000.00 damage deposit shall be required to be timely delivered by the Company to the County during the term of this Agreement for each County Commissioner Precinct which (a) is a location for the Company's Project Operations, facilities, equipment, or improvements, or (b) is a location through which the Company's vehicles, equipment, or improvements travel or are transported for Project Operations.

(e) At any time during the term of this Agreement, should the active fund balance of any such damage deposit required by this Agreement be less than \$30,000.00, and upon the County's delivery of written notice to the Company regarding that fact, the Company shall make a subsequent damage deposit for that respective Commissioner Precinct to the County (to the office of said County Judge), in the form of a Company check delivered on or before 7 calendar days from the receipt of the aforesaid County notice, in an amount sufficient to replenish the total fund balance of any such damage deposit to the agreed amount of \$100,000.00, as requested by the County in said notice. Upon Agreement termination, the remaining and unused funds in the damage deposit shall be returned to the Company within thirty (30) days after such termination.

(5) Governing Law and Venue. This Agreement shall be interpreted under Texas law. Mandatory venue for any suit regarding this Agreement shall be in Callahan County, Texas or the appropriate federal court designated for said county. This Agreement is expressly performable in Callahan County, Texas.

**(6) INDEMNITY. TO THE EXTENT AUTHORIZED BY TEXAS LAW, THE COMPANY, INCLUDING ITS SUCCESSORS AND PERMITTED ASSIGNS (COLLECTIVELY "INDEMNITOR"), SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY FROM AND REGARDING ANY AND ALL LIABILITIES, CLAIMS FOR RELIEF, ACTIONS, CAUSES OF ACTION, AND DAMAGES BROUGHT OR ALLEGED BY THIRD PARTIES AND ARISING FROM THE NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL ACT, OR WILLFUL MISCONDUCT OF INDEMNITOR IN THE PERFORMANCE OF THIS AGREEMENT; HOWEVER, THIS INDEMNITY OBLIGATION SHALL NOT APPLY IN THE EVENT SUCH LIABILITIES, CLAIMS FOR RELIEF, ACTIONS, CAUSES OF ACTION, AND DAMAGES BROUGHT OR ALLEGED BY THIRD PARTIES ARE ATTRIBUTABLE TO A DEFAULT COMITTED BY THE COUNTY OF THIS AGREEMENT OR TO THE EXTENT ATTRIBUTABLE TO THE NEGLIGENCE, INTENTIONAL ACT, OR WILLFUL MISCONDUCT OF THE COUNTY OR ITS EMPLOYEES, AGENTS, CONTRACTORS OR OTHER THIRD PARTIES.**

(7) **Assignment.** This Agreement may not be assigned without the express written consent of both parties, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the Company may assign this Agreement to a company, partnership, or affiliate controlled or owned by *[NAME OF CORPORATION]*, or an affiliate thereof.

(8) **Road Crossings and Driveways.**

(a) Crossings and Entrances. In addition to the use of the Road System for Project transport during Project Operations, the Company may utilize the Road System for the following uses, but subject to the following restrictions, during Project Operations:

(i) Project crossings of the Road System with Project equipment, facilities, and infrastructure (collectively “Improvements”) shall not result in the placement or operation of any permanent or temporary surface improvements in the Road System right of way -- except as reasonably needed by the Company during the construction or maintenance phases of the Project. Furthermore, no poles or supporting structures of overhead lines or the foundations thereof shall be located in or extend into the Road System right of way.

(ii) Any surface, above ground, or underground Project improvements placed in the Road System right of way during Project crossings of said system shall meet the minimum clearance and placement standards required by all applicable federal, state, and local statutes or regulations pertaining to the construction, operation, or maintenance of electric transmission lines, high voltage electricity lines, overhead electricity lines, overhead electrical or communication circuits or conductors, electrical generating, transmission, and distribution lines or systems, or pertaining to the construction, operation, or maintenance of oil, gas, or other hydrocarbon collection or transmission lines, as the case may be, including without limitation: (1) the National Electric Safety Code published in March, 1948 by the National Bureau of Standards, Handbook 30, as revised by Handbook 81, published by said agency in November, 1961, or as later revised or amended; (2) the Texas Health and Safety Code, Texas Utilities Code, Texas Transportation Code, and Texas Natural Resources Code; (3) the administrative regulations of the Texas Public Utility Commission, Texas Commission on Environmental Quality, Texas Railroad Commission, and Texas Department of Transportation; and (4) the County’s active flood damage prevention order, subdivision regulations, or other County development regulations.

(iii) The highest point of any underground Project improvements placed in the Road System right of way shall be: (i) buried to a depth of at least thirty-six (36) inches below the lowest point of barrow ditch (or bar ditch) at the point of crossing; and (ii) the road and barrow ditch shall be restored to its condition (as good or better) it existed before the commencement of construction or maintenance the Project Improvements.

(f) Specifications and Review. Construction specifications for the crossings and entrances specified in subparagraph (a) above shall be reviewed and approved by the Commissioners Court prior to the construction thereof, which approval will not be unreasonably withheld or delayed. At least seven (7) days’ prior notice of commencement of construction of such crossings or entrances shall be given to the Commissioners Court, by and through the Callahan County Judge. The County agrees to provide to the Company

promptly upon request any specifications of the County for crossings or entrances or other Improvements specified in subparagraph (a) above.

(g) Additional Permits. No additional County permits for the Project crossings, driveways, or other Project improvements described in subparagraph (a) above are required, subject to Company compliance with subparagraph (b) above -- except, if applicable, those permits or orders signifying Commissioners Court approval pursuant to the County’s active floodplain management regulations, sewer/septic/on-site sewerage regulations, subdivision or manufactured home rental community regulations, or other County development regulations.

**THIS AGREEMENT** is executed by the Parties on the Effective Date.

**COMPANY:**

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

Printed Name: \_\_\_\_\_

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

Date: \_\_\_\_\_, 20\_\_\_\_

**COUNTY:**

**CALLAHAN COUNTY, TEXAS**

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

Nicki Harle, County Judge  
Callahan County, Texas

Date: \_\_\_\_\_, 20\_\_\_\_

**ATTEST:**

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

Nicole Crocker, County Clerk,  
Callahan County, Texas