

**GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER**

AND

EMPIRE STATE PIPELINE/EMPIRE PIPELINE, INC.

PAYMENT IN-LIEU-OF-TAX AGREEMENT

Relating to:

Acquisition, Construction and Equipping of a Compressor Station and Related
Improvements in the Town of Oakfield, Genesee County, New York
for the Company's Natural Gas Pipeline Project

Affected Tax Jurisdictions:

**Genesee County
Town of Oakfield
Oakfield-Alabama Central School District**

Dated as of July 1, 2007

PAYMENT IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT IN-LIEU-OF TAX AGREEMENT, dated as of July 1, 2007 (the "PILOT Agreement"), is by and among the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER**, a public benefit corporation duly existing under the laws of the State of New York with offices at One Mill Street, Batavia, New York 14020 (the "Agency"), **EMPIRE STATE PIPELINE**, a joint venture formed and existing under the laws of the State of New York, with offices at 6363 Main Street, Williamsville, New York 14221 and **EMPIRE PIPELINE, INC.**, a corporation duly organized and validly existing under the laws of the State of New York, with offices at 6363 Main Street, Williamsville, New York 14221, as joint venture partners (collectively, the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 565 of the Laws of 1970 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act"), as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (i) the acquisition by the Agency of fee title to or a leasehold or other interest in certain property located at 3261 Lockport Road, Oakfield, and certain other properties located throughout Genesee County, New York and the existing improvements located thereon (collectively the "Land"), (ii) the construction and equipping on the Land of (1) a 20,620 horsepower compressor station and (2) a portion of the Company's 78.3 mile 24-inch diameter natural gas pipeline beginning in Victor, New York and traversing the Finger Lakes region through the counties of Genesee, Ontario, Yates, Schuyler, Chemung and Steuben, and terminating in Corning, New York (the compressor station and the portion of such gas pipeline located in Genesee County, hereinafter referred to collectively as the "Improvements"), and (iii) the acquisition in and around the Improvements of certain items of equipment and other tangible personal property including pipes, valves, meters, fittings, and compressors (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); all in furtherance of providing natural gas service to users located or locating at or in areas surrounding the Land in said Counties; and

WHEREAS, in order to induce the Company to acquire, construct and equip the Facility, the Agency is willing to take a leasehold interest in the Facility pursuant to that certain Lease Agreement, dated as of July 1, 2007 (the "Lease Agreement") and then lease said land, improvements and personal property back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement, dated as of July 1, 2007 (the "Leaseback Agreement"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and

service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into this PILOT Agreement, making provisions for payments in-lieu-of-taxes by the Company to the Agency for the benefit of Genesee County (the "County"), the Town of Oakfield, New York (the "Town") and the Oakfield-Alabama Central School District (the "School" and, together with the County and Town, the "Affected Tax Jurisdictions").

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Section I - Payment in lieu of Ad Valorem Taxes:

Section 1.1 A. Subject to the completion and filing by the taxable status date (**March 1, 2008**) (the "Taxable Status Date") of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes commencing with the **2009** County and Town tax year and the **2008/2009** School tax year. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County, Town and School. The Company shall provide to the Agency the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Lease Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee. As long as the Facility is owned or leased by the Agency or under its jurisdiction, control or supervision, the Company agrees to pay annually to the Affected Tax Jurisdictions, as a payment in-lieu-of-taxes, on or before **January 1** of each calendar year for County and Town taxes and on or before **September 1** of each calendar year for School taxes (collectively, the "Payment Date"), commencing on **September 1, 2008** and **January 1, 2009**, respectively, an amount equal to the lower of the otherwise applicable taxes or the Total PILOT payment as described on Schedule A attached hereto.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County and Town and special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT payment due date. For school district purposes, the tax rates used to determine the PILOT payment shall be the rate relating to the school year which includes the PILOT payment due date.

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this PILOT Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total PILOT Payment. The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then, and in that event, said valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased PILOT payment until a different Total PILOT Payment shall be established. If a lesser Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding PILOT payment(s).

1.5 Period of Benefits. (A) The tax benefits provided for herein should be deemed to include (i) the **2008/2009** School tax year through the **2019/20** School tax year, and (ii) the **2009** County and Town tax year through the **2019** County and Town calendar tax year. This PILOT Agreement shall expire on **December 31, 2019**; *provided, however*, the Company shall pay the **2019/2020** School tax bill and the **2020** County and Town tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this PILOT Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide

benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

B. Extension of Term. The parties agree that the intent of this PILOT Agreement is to facilitate construction of the Facility and secure PILOT Payment revenues for the Affected Tax Jurisdictions for a period of ten (10) full PILOT Years (as such term is illustrated in Schedule A attached hereto) following the date of the Company commencing commercial operation of the Project. In the event construction of the Project is delayed beyond the Projected Completion Date (as defined in the Leaseback Agreement) as a result of events reasonably unforeseeable by the Company, with the prior approval of the Agency, the Lease Agreement and Leaseback Agreement shall be amended to provide for a delay in the commencement of the ten (10) full PILOT Years following the actual date of Project completion.

Section II - Special District Charges, Special Assessments and other charges.

2.1 Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices.

Section III - Transfer of Facility.

3.1 In the event that the Facility is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I herein, or this PILOT Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

Section IV - Assessment Challenges.

4.1 Except as otherwise provided in the Leaseback Agreement, the Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

4.2 Except as otherwise provided in the Leaseback Agreement, the Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this PILOT Agreement, as if, and to the same extent as if, the Company were the owner of the Facility.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section VI - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I hereof within thirty (30) days of the Payment Date (the "Delinquency Date") and failure to pay same within 10 days after notice; (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; and failure to pay same within 10 days after notice or (iii) cure any occurrence and/or continuance of any events of default under the Lease Agreement after any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section I herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows: (A) with respect to payments to be made pursuant to Section I hereof, if said payment is not received by the Delinquency Date defined in Section 6.1 above, the Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5.00%) of the amount due, and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month; and (B) with respect to all other payments due hereunder, if said payment is not paid within any applicable cure period,

Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

Section VII - Assignment.

7.1 Other than in connection with an assignment of the Lease Agreement, no portion of any interest in this PILOT Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

Section VIII - Miscellaneous.

8.1 This PILOT Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

8.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Genesee County Industrial Development Agency
d/b/a Genesee County Economic Development Center
One Mill Street
Batavia, New York 14020
Attn: Steven G. Hyde, President & CEO

With Copy To: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Russell E. Gaenzle, Esq.

To the Company: Empire State Pipeline/Empire Pipeline, Inc.
6363 Main Street
Williamsville, New York 14221
Attn: Ronald C. Kraemer, Vice President

With Copy To:	Keyser, Maloney & Winner LLP HSBC Bank Building, 2 nd Fl. 150 Lake Street Elmira, New York 14901 Attn: George H. Winner, Jr., Esq.	Phillips Lytle LLP 437 Madison Avenue New York, New York 10022 Attn: Milan K. Tyler, Esq.
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or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8.3 This PILOT Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Genesee County, New York.

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency and the Company hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency or the Affected Taxing Jurisdictions, as the case may be, by the Company. No member of the Agency or the Company, nor any person executing this PILOT Agreement on the Agency's or the Company's behalf shall be liable personally under this PILOT Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent (other than the Company), servant, or employee, as such, of the Agency or the Company, or of any successor or political subdivision, either directly or through the Agency or the Company or any such successor, all such liability of such members, officers, agents (other than the Company), servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this PILOT Agreement.

[Remainder of Page Intentionally Left Blank]

[Signature Page to PILOT Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement as of the day and year first above written.

**GENESEE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY D/B/A
GENESEE COUNTY ECONOMIC
DEVELOPMENT CENTER**

By: 
Steven G. Hyde, President & CEO

**EMPIRE STATE PIPELINE, A JOINT VENTURE
By: EMPIRE STATE PIPELINE COMPANY, LLC**

By: _____
Ronald C. Kraemer, Vice President

EMPIRE PIPELINE, INC.

By: _____
Ronald C. Kraemer, Vice President

[Signature Page to PILOT Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement as of the day and year first above written.

**GENESEE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY D/B/A
GENESEE COUNTY ECONOMIC
DEVELOPMENT CENTER**

By: _____
Steven G. Hyde, President & CEO

EMPIRE STATE PIPELINE, A JOINT VENTURE

By: _____
Ronald C. Kraemer, Vice President *ADH*

EMPIRE PIPELINE, INC.

By: _____
Ronald C. Kraemer, Vice President *ADH*

SCHEDULE A

TO PILOT AGREEMENT DATED AS OF JULY 1, 2007,
By and Between the Genesee County Industrial Development Agency d/b/a
Genesee County Economic Development Center
and
EMPIRE STATE PIPELINE / EMPIRE PIPELINE, INC.

"Total PILOT Payment" shall be in the amounts set forth below:

<u>PILOT Year</u>	<u>County and Town Tax Year</u>	<u>School Tax Year</u>	<u>Total PILOT Payment</u>
Year 1	2009	2008/2009	Full Taxes
Year 2	2010	2009/2010	\$810,985
Year 3	2011	2010/2011	\$810,985
Year 4	2012	2011/2012	\$810,985
Year 5	2013	2012/2013	\$810,985
Year 6	2014	2013/2014	\$810,985
Year 7	2015	2014/2015	\$810,985
Year 8	2016	2015/2016	\$810,985
Year 9	2017	2016/2017	\$810,985
Year 10	2018	2017/2018	\$810,985
Year 11	2019	2018/2019	\$810,985