

ROAD REPAIR AGREEMENT
BETWEEN
THE CITY OF FORT WORTH
AND

This Road Repair Agreement, (Agreement), is made and entered into on this the ____ day of _____, 20__, by and between the City of Fort Worth, Texas (“City”), a home rule municipal corporation of the State of Texas, located within Tarrant, Denton, Wise Counties, Texas (Hereinafter referred to as the “City”) and _____ (“Operator”) for the repair of certain streets and/or roadways within the City of Fort Worth, Texas as more fully described herein.

WHEREAS, Operator is in the business of drilling gas wells and, in connection therewith, shall be engaged in drilling and production activities on property known generally as _____, which abuts, is adjacent to, and/or is accessed by roadways within the City of Fort Worth; and

WHEREAS, use of the roadways by the Operator for the purpose of performing the activities described hereinabove may cause damage to the roadways; and

WHEREAS, the City and Operator, for the mutual consideration hereinafter stated, desire to enter into this Agreement for Operator to repair said roadways for the duration of the term of this Agreement in consideration of Operator’s use of said roadways for the purpose of the activities described hereinabove;

IT IS NOW THEREFORE AGREED THAT:

ARTICLE 1.
REPAIR OBLIGATION

1. Operator shall repair damages caused by Operator or its contractors, subcontractors, employees, and agents, excluding ordinary wear and tear, if any, to roadways that abut the above-described property being used by Operator for the drilling and production of gas wells pursuant to a Gas Well Permit issued to Operator. The repair obligation shall continue even if the Gas Well Permit is amended to allow for the drilling of additional gas wells. This obligation shall continue during the term of this Agreement, and Operator shall, prior to the termination of this Agreement, as provided herein, repair such damages to such roadways, excluding ordinary wear and tear, if any, to the condition in which such roadways existed prior to the execution of this Agreement. Operator shall make a videotape of such roadways prior to the start of Operator drilling and operation of its gas wells and shall provide a copy of the videotape to the Director of Transportation and Public Works. Operator shall notify the Director of Transportation and Public Works when drilling or fracing operations are complete so that the Director of Transportation and Public Works can determine if repairs are required.

2. In connection with its obligation to repair said roadways, Operator shall use materials of the same or better quality than those utilized to surface and/or repair the roadways

prior to execution of this Agreement and in accordance with the current standards specifications of the City. Deviation from the materials described herein shall not be permitted without the prior written consent of the Director of Transportation and Public Works. Repairs shall be completed in accordance with standard engineering practices acceptable to the City.

3. Operator shall repair the damage to the roadways at its sole cost and expense.

4. During the term of this Agreement, Operator shall periodically inspect the roadways during drilling, fracture stimulation or reworking of the gas well to determine whether or not any damage has occurred as a result of Operator's activities. Immediately upon discovering the existence of any such damage to the roadways, Operator shall undertake to repair and/or remedy same. Upon discovery of damage by the Operator, the Operator will have 48 hours to contact the Director of Transportation and Public Works to work out a schedule of repairs. Repairs shall take place within 30 days or immediately if the damage affects the immediate health and safety of individuals.

ARTICLE 2. TERM OF AGREEMENT

This Agreement shall commence upon the date indicated above and shall continue in full force and effect until Operator has completed and/or permanently discontinued the activities upon the roadways, as described hereinabove.

ARTICLE 3. INSURANCE AND INDEMNITY

The Operator shall provide or cause to be provided the insurance described below for each well unless a Gas Well Permit has been issued wherein such insurance has been provided for the issuance of the Gas Well Permit under the terms and conditions described in the Fort Worth "Gas Drilling and Production" Ordinance and such insurance to continue until the well is abandoned and the site restored.

In addition to the bond or letter of credit required pursuant to this Agreement and the Fort Worth "Gas Drilling and Production" ordinance, the Operator shall carry a policy or policies of insurance issued by an insurance company or companies authorized to do business in Texas. In the event such insurance policy or policies are cancelled, the Gas Well Permit shall be suspended on such date of cancellation and the Operator's right to operate under such Gas Well Permit shall immediately cease until the Operator files additional insurance as provided herein.

1. General Requirements applicable to all policies.
 - a. The City, its officials, employees, agents and officers shall be endorsed as an "Additional Insured" to all policies except Employers Liability coverage under the Operator's Workers Compensation policy.
 - b. All policies shall be written on an occurrence basis except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess or Umbrella Liability, which may be on a claims-made basis.

- c. All policies shall be written by an insurer with an A-: VIII or better rating by the most current version of the A. M. Best Key Rating Guide or with such other financially sound insurance carriers acceptable to the City.
- d. Deductibles shall be listed on the Certificate of Insurance and shall be on a “per occurrence” basis unless otherwise stipulated herein.
- e. Certificates of Insurance shall be delivered to the City of Fort Worth, Development Department, 1000 Throckmorton Street, Fort worth, Texas 76102, evidencing all the required coverages, including endorsements, prior to the issuance of a Gas Well Permit.
- f. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
- g. Any failure on part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement specified herein.
- h. Each policy shall be endorsed to provide the City a minimum thirty-day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten days notice shall be acceptable in the event of non-payment of premium.
- i. During the term of the Gas Well Permit, the Operator shall report, in a timely manner, to the Gas Inspector any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
- j. Upon request, certified copies of all insurance policies shall be furnished to the City.

2. **Standard Commercial General Liability Policy.**

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.

3. **Excess or Umbrella Liability**

- \$ 5,000,000 Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
- \$10,000,000 Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a “claims made” basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period Insurance when necessary.

4. **Workers Compensation and Employers Liability Insurance**

- a. Workers Compensation benefits shall be Texas Statutory Limits.
- b. Employers Liability shall be a minimum of \$500,000 per accident.
- c. Such coverage shall include a waiver of subrogation in favor of the City and provide coverage in accordance with applicable State and Federal laws.

5. **Automobile Liability Insurance**

- a. Combined Single Limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.
- b. Coverage must include all owned, hired and not-owned automobiles.

6. **Certificates of Insurance**

- a. The company must be admitted or approved to do business in the State of Texas, unless the coverage is written by a Surplus Lines insurer.
 - b. The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO, or an equivalent policy form acceptable to the City.
 - c. Sets forth all endorsements and insurance coverage according to requirements and instructions contained herein.
 - d. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT 30 DAYS ADVANCED WRITTEN NOTICE TO THE OWNER AND THE CITY EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE 10 DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".
 - e. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.
7. The cancellation of any insurance for the sole purpose of the repair of roadways will not release the obligation of the Operator to meet all requirements of insurance and bonding under the Fort Worth "Gas Drilling and Production" Ordinance.
8. Operator shall and hereby does indemnify, defend and save harmless the City, its officers, agents and employees from all suits, actions or claims of any character, name and description brought for or on account of any injuries or damages received as sustained by any person, persons or property on account of the operations of the Operator, its agents, employees, contractors or subcontractors; or on account of any negligent act or fault of the Operator, its agents, employees, contractors or subcontractors in connection with the obligations under this Road Repair Agreement; and shall pay any judgment, with costs, which may be obtained against the City growing out of such injury or damage.

ARTICLE 4.
PERFORMANCE BONDS

1. Operator shall provide a performance bond, unless a performance bond has been provided for the issuance of a Gas Well Permit under the terms and conditions described in Fort Worth "Gas Drilling and Production" ordinance, in an amount not less than the amount necessary to repair the roadways, as determined by the City Director of Transportation and Public Works.

2. Prior to the beginning of any activity pursuant to the issuance of a Gas Well Permit, unless a performance bond has been provided for the issuance of a Gas Well Permit under the terms and conditions described in the Fort Worth "Gas Drilling and Production" Ordinance, Operator shall provide the Gas Inspector with a security instrument in the form of a bond or an irrevocable letter of credit as follows:

a. **Bond.** A bond shall be executed by a reliable bonding or insurance institution authorized to do business in Texas, acceptable to the City. The bond shall become effective on or before the date the Gas Well Permit is issued and shall remain in force and effect for at least a period of six (6) months after the expiration of the Gas Well Permit term or until the well is plugged and abandoned and the site is restored, whichever occurs first. The Operator shall be listed as principal and the instrument shall run to the City, as obligee, and shall be conditioned that the Operator will comply with the terms and regulations of this Ordinance and the City. The original bond shall be submitted to the Director of Transportation and Public Works with a copy of the same provided to the City Secretary and the Gas Inspector.

b. **Letter of Credit.** A letter of credit shall be issued by a reliable bank authorized to do business in Texas and shall become effective on or before the date the Gas Well Permit is issued. The letter of credit shall remain in force and effect for at least a period of six (6) months after the expiration of the Gas Well Permit term. The City shall be authorized to draw upon such letter of credit to recover any fines or penalties assessed under this ordinance. Evidence of the execution of a letter of credit shall be submitted to the Director of Transportation and Public Works submitting an original signed letter of credit from the banking institution, with a copy of the same provided to the City Secretary and the Gas Inspector. If the Letter of Credit is for a time period less than the life of the well as required by Ordinance Number 14880, _____ agrees to either renew the Letter of Credit or replace the Letter of Credit with a bond in the amount required by the City of Fort Worth Ordinance Number 14880, on or before 45 days prior to the expiration date of the Letter of Credit. If _____ fails to deliver to the City of Fort Worth either the renewal Letter of Credit or replacement bond in the appropriate amount on or before 45 days prior to the expiration date of the Letter of Credit, the City of Fort Worth may draw the entire face amount of the attached Letter of Credit to be held by the City of Fort Worth as security for _____'s performance of its obligations under Ordinance Number 14880.

c. Whenever the Gas Inspector or the Director of Transportation and Public Works Department finds that a default has occurred in the performance of any requirement or condition imposed by this Agreement, a written notice shall be given to Operator. Such notice shall specify the work to be done, the estimated cost and the period of time deemed by the Gas Inspector or the Director of Transportation and Public works Department to be reasonably necessary for the completion of such work. After receipt of such notice, the Operator shall, within the time therein specified, either cause or require the work to be performed, or failing to do so, shall pay over to the City one hundred twenty-five percent (125%) of the estimated cost of doing the work as set forth in the notice.

d. The City shall be authorized to draw against any irrevocable letter of credit or bond to recover such amount due from Operator. Upon receipt of such monies, the City shall proceed by such mode as deemed convenient to cause the required work to be performed and completed, but no liability shall be incurred other than for the expenditure of said sum in hand..

e. In the event Operator does not cause the work to be performed and fails or refuses to pay over to the City the estimated cost of the work to be done as set forth in the notice, or

the issuer of the security instrument refuses to honor any draft by the City against the applicable irrevocable letter of credit or bond the City may proceed to obtain compliance and abate the default by way of civil action against Operator, or by criminal action against the Operator, or by both such methods.

f. The cancellation of any bond or letter of credit for the sole purpose of the repair of roadways will not release the obligation of the Operator to meet all requirements of insurance and bonding under the Fort Worth "Gas Drilling and Production" Ordinance. Any bond required by the Fort Worth "Gas Drilling and Production" Ordinance shall stay in full force and effect until the terms and conditions set out in the Ordinance are met.

3. If the cost of the completing the repair is an amount of \$15,000 or less, as determined by the Director of Transportation and Public Works, cash in the amount necessary to complete the repairs, as determined by the Director of Transportation and Public Works, may be deposited with a bank or escrow agent pursuant to an escrow agreement acceptable and approved by the City ensuring completion of the repair.

ARTICLE 5 MISCELLANEOUS PROVISIONS

1. Operator understands and agrees that Operator, its employees, servants, agents, and representatives shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent Operator.

2. By entering into this Agreement, the City does not waive, nor shall it be deemed to waive, any immunity or defense that would otherwise be available to it against claims arising by third parties.

3. This Agreement represents the entire agreement between Operator and City for repair of roadways and supersedes all prior negotiations, representations, and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the governing body of the City or those authorized to sign on behalf of the City's governing body.

ARTICLE 6. FORCE MAJEURE

Events of Force Majeure shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto government action (unless caused by acts or omissions of the party), fires, explosions, rain or other weather delays, floods, strikes, slowdowns or work stoppages.

ARTICLE 7.
ASSIGNABILITY/CONSENT

Except as otherwise provided herein, or except as may be hereafter determined by the parties, no party to this Agreement may sell, assign, or transfer its interest in this Agreement, or any of its right, duties, or obligations hereunder, without the prior written consent of the other party. Whenever the consent or the approval of a party is required herein, such party shall not unreasonably withhold, delay, or deny such consent or approval. Operator may assign this Agreement to any successor entity to whom the applicable Gas Well Permit has been assigned upon written notice to the City of said assignment.

ARTICLE 8.
NOTICE

Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be by personal delivery; sent by registered mail or certified mail; or by United States Mail, return receipt requested, postage prepaid; to:

CITY: Office of the City Manager
 City of Fort Worth, Texas
 1000 Throckmorton Street
 Fort Worth, Texas 76102

OPERATOR _____

Notice shall be deemed to have been received on the date of receipt as shown on the return receipt or other written evidence of receipt.

ARTICLE 9.
MODIFICATION

No waiver or modification of this Agreement or of any covenant, condition, limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, unless such waiver or modification is in writing, duly executed. The parties further agree that the provisions of this Article will not be waived unless as herein set forth.

ARTICLE 10.
SAVINGS/SEVERABILITY

In the event that any one or more of the provisions hereof contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not effect the other provisions, and the Agreement shall be

construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

ARTICLE 11.
GOVERNING LAW AND VENUE

This Agreement shall be construed under and governed by, and in accordance with the laws of the State of Texas, and venue for any action arising under the terms and conditions of this Agreement shall lie in the state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas, Fort Worth Division.

ARTICLE 12.
ENTIRE AGREEMENT

This Agreement and the exhibits attached hereto, constitute the entire agreement among the parties hereto with respect to the subject matter hereof, and supersede any prior understandings or written or oral agreements between the parties with respect to the subject matter of this Agreement. No amendment, modification, cancellation or alteration of the terms of this Agreement shall be binding on any party hereto unless the same is in writing, dated subsequent to the date hereof, and is duly authorized and executed by the parties hereto.

ARTICLE 13.
WAIVER OF TERMS AND CONDITIONS

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE 14.
CAPTIONS

The captions contained in this Agreement are for informational purposes only and shall not in any way affect the substantive terms or conditions of this Agreement.

ARTICLE 15.
COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and constitute one and the same instrument.

IN WITNESS WHEREOF, the parties do hereby affix their signatures and enter into this Agreement as of the _____ day of _____, 20__.

ATTEST:

CITY OF FORT WORTH

City Secretary

By: _____
Charles Boswell, City Manager

APPROVED AS TO FORM
AND LEGALITY:
David Yett, City Attorney

By: _____

Operator

STATE OF TEXAS §
COUNTY OF TARRANT §

Before me, the undersigned notary public, on this day personally appeared Charles Boswell, the City Manager of the City of Fort Worth, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the instrument for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____, 20__.

Notary Public

STATE OF _____ §
COUNTY OF _____ §

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of _____ (the corporation) and that he executed the same as the act of said _____ (corporation) for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this ____ day of _____, 20__.

Notary Public