

Road Damage Remediation Agreement

STATE OF TEXAS §
 §
COUNTY OF JOHNSON §

ROAD DAMAGE REMEDIATION AGREEMENT

This Road Damage Remediation Agreement, (hereafter the “Agreement”), is made and entered into on this the _____ day of _____, 200_____, by and between the City of Burleson, Texas (hereafter the “City”), a municipal corporation and a home-rule municipality of the State of Texas, located within Johnson & Tarrant Counties, Texas; and _____ (hereafter the “Operator”) for the payment of fees for damage remediation of certain streets and/or roadways within the City of Burleson, 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 identified on Operator’s gas well permit, which abuts or is adjacent to, and/or is accessed by roadways within the City of Burleson, and

WHEREAS, the Operator’s gas well permit from the City of Burleson, dated _____200____, is made a part of this Agreement by reference; and

WHEREAS, the nature of heavy vehicular traffic during natural gas well development (“drilling”), post-production well stimulation (“fracing”) and re-working activities will exceed the normal and anticipated use of the public roadways within the City’s corporate limits; and

WHEREAS, according to the study conducted by C & P Engineering, LTD., (hereafter the “Study”) the life expectancy of a roadway decreases with heavy vehicular traffic traveling upon it, and heavy equipment loads produce greater amounts of road distress according to the Study; and

WHEREAS, distress which may either be structural or functional, which in turn, increases overall maintenance oversight, repair, and replacement costs to the City respecting the roadways, in connection with the Operator’s gas well drilling and production activities; and

WHEREAS, structural distress is recognized as the pavement’s ability to carry traffic and/or cracking or deterioration of the pavement section; whereas functional distress is recognized as the ride quality and safety of the pavement; and

WHEREAS, use of the roadways by the Operator for the purpose of performing the activities described hereinabove causes distress to the roadways as a result of the frequency of their specific operations and such distress may be immediate or it may be gradual and delayed, and also will exceed the design criteria of said roadways, thus causing greater than ordinary wear and tear and damaging of the roadways; and

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

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

ARTICLE 1.
RECITALS

The foregoing recitals are understood and agreed upon by the parties and are incorporated into the terms of this Agreement.

ARTICLE 2.
DAMAGE REMEDIATION OBLIGATION

1. Fee: City and Operator understand and agree that use by Operator, its contractors, subcontractors, employees and agents (all hereafter referred to as "Operator") of roadways that abut and lead to the property for which a Gas Well Permit has been issued to Operator, will decrease the life expectancy of such roadways. Operator and City agree that it is and will continue to be impracticable and extremely difficult to determine the actual amount of such damage. Therefore, City and Operator hereby agree that Operator shall pay to City a road damage remediation fee based upon the formula set forth in Exhibit "A" to this Agreement, a copy of which is attached hereto and incorporated herein. Both City and Operator agree that the amount assessed pursuant to the formula set forth herein is the minimum value of the costs and actual damage and decreased life expectancy of roadways caused by the normal use of the roadways by Operator. Such sum of money shall be paid by Operator to the City prior to the commencement of any activity under the Gas Well Permit. It is expressly understood and agreed that such formula and fee are not to be considered a penalty, nor a tax, but shall be deemed taken and treated as a fee that is roughly proportionate and necessary for City to repair and maintain its roadways based upon normal usage by Operator acting in the ordinary course of its business.

2. Truck Route: Operator shall be liable for and shall pay additional road damage assessments should Operator deviate from the truck route that is designated in the Gas Well Permit.

4. Timely Payment: In the event that Operator does not timely and adequately make payment under this Agreement upon written demand of the City, the City has the authority to prohibit further use of its roadways by Operator's vehicles, to suspend any and all Gas Well Permits issued to Operator, and to make a claim on Operator's bond or other security instrument.

ARTICLE 3.
ROAD DAMAGE REMEDIATION FEE

1. Methodology: The Road Damage Remediation Fee shall be calculated using the method outlined in Exhibit "A." Replacement costs for asphalt and/or concrete road segments shall be determined from current fair market value cost per square yard of road surface material, including installation and labor. The City shall provide as an attachment to this Agreement, a copy of the calculations directly related to the methodology used to determine the fee paid by Operator; such attachment is identified as Exhibit "A", a copy of which is attached hereto and incorporated herein.

The City's investigation and determination of any and all aspects of the above referenced methodologies constitute generally accepted practices of road replacement, repair, and maintenance professionals undertaking similar project evaluations at the same time, and in the same geographical area. The City observes the same degree of care and skill generally exercised by professionals under similar circumstances and conditions.

2. Road Damage Remediation Fee Calculation: The Road Damage Remediation Fee, hereafter stated, and in compliance with all applicable methodologies hereinabove enumerated, shall be an amount as determined by the Road Damage Remediation Calculation, Exhibit "A".

Type I - Six inch (6") flex base with chip seal.

Type II - Six inch (6") treated flex base with chip seal.

Type III - Six inch (6") treated flex base with two inch (2") asphalt overlay.(No C&G)

Type IV - Six inch (6") treated flex base with two inch (2") asphalt overlay.(With C&G)

Type V - Eight inch (8") treated soil subgrade with six inch (6") asphalt overlay.

Type VI - Eight inch (8") treated soil subgrade with seven inch (7") asphalt overlay.

Type VII - Six inch (6") treated soil subgrade with five inch (5") reinforced concrete.

Type VIII - Six inch (6") treated soil subgrade with six inch (6") reinforced concrete.

Type IX - Six inch (6") treated soil subgrade with seven inch (7") reinforced concrete.

3. Payment Due: The Road Damage Remediation Fee is required to be paid in full at the time of issuance of a Gas Well Permit by the City Council. Such permit application shall be considered administratively incomplete until this Agreement is executed, Road Damage Remediation Fee payment received, and both are on file with the City.

ARTICLE 4. 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 5. INSURANCE AND INDEMNITY

1. Insurance: The Operator shall provide or cause to be provided the insurance and other security that meet the requirements of Section 14-361 of the Code of Ordinances of the City of Burleson, Texas, as amended. Such insurance shall be maintained in effect at all times when the Operator is engaged in exploration, development, and production of gas in the city of Burleson.

2. Indemnification: Operator hereby agrees to indemnify, defend and save harmless the City, its departments, agents, officers, servants 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, including personal injury or death, on account of the operations of Operator, its agents, employees, contractors, subcontractors or representatives, or on account of any negligent act or fault of Operator, its agents, employees, contractors, subcontractors or representatives in connection with the obligations of Operator under this Agreement; and Operator shall pay any judgment, with costs, and if applicable attorney's fees which are a part of the judgment, which may be obtained against the City growing out of such injury or damage. It is understood and agreed that such indemnity is an indemnity extended by the Operator to indemnify and protect the City of Burleson and/or its departments, agents, officers, servants, or employees *from the consequences of the negligence of the City of Burleson, Texas and/or its departments, agents, officers, servants and employees, whether that negligence is the sole or a contributing cause of the resultant injury, death, and/or damage.* Operator specifically agrees that road damage in excess of the road damage remediation fee assessment provided for in this Agreement shall be paid from Operator's security required under Section 14-361 of the Code of Ordinances of the City of Burleson, Texas, as amended.

ARTICLE 6.
INDEPENDENT CONTRACTOR

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 contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

ARTICLE 7.
GOVERNMENTAL IMMUNITY

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.

ARTICLE 8.
NO IMPACT FEE

Operator agrees that the Road Damage Remediation Fee provided hereunder is not an impact fee under Chapter 395 of the Texas Local Government Code, and expressly agrees that this Road Damage Remediation Fee is not a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to new development. Further, Operator agrees that the Road Damage Remediation Fee provided hereunder will not be credited to any subsequent roadway impact fees if the subject property is subdivided or developed in the future.

The Road Damage Remediation Fee shall not be applied to roadways other than those maintained by the City and designated as "haul routes" as part of the permit application. Funds from these fees shall not be expended on public roadways or streets, other than those designated as City maintained gas well haul routes.

ARTICLE 9.
FORCE MAJEURE

In the event that the performance by either party of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

ARTICLE 10.
ASSIGNABILITY/CONSENT

Except as otherwise provided herein, or except as may be hereafter determined by the parties and added as a written amendment or modification hereto, 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.

ARTICLE 11.
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: City Manager
 City of Burleson, Texas
 141 W. Renfro Street,
 Burleson, Texas 76028

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 12.
MODIFICATION

No waiver, amendment, 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, amendment, or modification is in writing, duly executed by both parties. The parties further agree that the provisions of this Article will not be waived unless as herein set forth.

ARTICLE 13.
SAVINGS/SEVERABILITY

In the event that any one or more of the provisions, terms, phrases or clauses of the provisions 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 affect the other provisions, terms, phrases or clauses of the provisions contained herein and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision, term, phrase, or clause had never been contained in this Agreement.

ARTICLE 14.
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 Denton County, Texas.

ARTICLE 15.
ENTIRE AGREEMENT

This Agreement and the exhibits and other documents attached hereto and/or referenced herein, 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. Notwithstanding the foregoing, this Agreement is cumulative of all applicable City Ordinances, as amended.

ARTICLE 16.
NON-WAIVER

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 17.
CAPTIONS

February 12, 2008

XX - XX

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Curtis Hawk, City Manager of the City of Burleson, Texas, 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 City of Burleson, Texas and that he executed the same as the act of such City of Burleson, Texas for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this the ____ day of _____, 200__.

[SEAL]

Notary Public in and for the State of Texas

* * * * *

STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, (title) for _____ (Entity Name of Operator), 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 _____ (Entity Name of Operator) and that he executed the same as the act of such Operator for the purposes and consideration therein expressed and in the capacity therein stated.

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

[SEAL]

Notary Public in and for the State of Texas.

EXHIBIT A

ROAD DAMAGE REMEDIATION CALCULATION

Well ID

Road Type	Construction Cost/Lane Mile 2005	Drilling and Fracturing - Piped Water			Assessment Per Lane Mile
		AASHTO Design Life (ESAL)	Consumptive Use (ESAL)	Consumptive Use (%)	
I	\$61,248	600	488.35	81.392%	\$49,851
II	\$77,440	5,700	488.35	8.568%	\$6,835
III	\$93,413	37,500	488.35	1.302%	\$1,216
IV	\$229,000	138,100	488.35	0.354%	\$811
V	\$342,000	376,100	488.35	0.130%	\$445
VI	\$369,000	1,060,900	488.35	0.046%	\$170
VII	\$260,000	200,000	488.35	0.244%	\$634
VIII	\$278,000	500,000	488.35	0.098%	\$272
IX	\$298,000	1,100,000	488.35	0.044%	\$130

Road Type	Construction Cost/Lane Mile 2005	Drilling and Fracturing - Hauled Water			Assessment Per Lane Mile
		AASHTO Design Life (ESAL)	Consumptive Use (ESAL)	Consumptive Use (%)	
I	\$61,248	600	1,336.05	222.875%	\$136,384
II	\$77,440	5,700	1,336.05	23.439%	\$18,151
III	\$93,413	37,500	1,336.05	3.583%	\$3,328
IV	\$229,000	138,100	1,336.05	0.987%	\$2,214
V	\$342,000	376,100	1,336.05	0.355%	\$1,214
VI	\$369,000	1,060,900	1,336.05	0.126%	\$465
VII	\$260,000	200,000	1,336.05	0.668%	\$1,737
VIII	\$278,000	500,000	1,336.05	0.267%	\$742
IX	\$298,000	1,100,000	1,336.05	0.121%	\$358

Road Type	Assessment Per Lane Mile Piped Water	X Access Lane Miles Per Site (Haul Route)	Fee Calculation Assessment Per Haul Route Lane Mile	X OCI	Assessment Per Road Type
I	\$49,851				
II	\$6,835				
III	\$1,216				
IV	\$811				
V	\$445				
VI	\$170				
VII	\$634				
VIII	\$272				
IX	\$130				
Total Haul Route Assessment:					\$

Road Type	Assessment Per Lane Mile Hauled Water	X Access Lane Miles Per Site (Haul Route)	Fee Calculation Assessment Per Haul Route Lane Mile	X OCI	Assessment Per Road Type
I	\$136,384				
II	\$18,151				
III	\$3,328				
IV	\$2,214				
V	\$1,214				
VI	\$465				
VII	\$1,737				
VIII	\$742				
IX	\$358				
Total Haul Route Assessment:					\$

- Road Type I is Six inch (6") flex base with chip seal.
- Road Type II is Six inch (6") treated flex base with chip seal.
- Road Type III is Six inch (6") treated flex base with two inch (2") asphalt overlay.(No C&G)
- Road Type IV is Six inch (6") treated flex base with two inch (2") asphalt overlay.(With C&G)
- Road Type V is Eight inch (8") treated soil subgrade with six inch (6") asphalt overlay.
- Road Type VI is Eight inch (8") treated soil subgrade with seven inch (7") asphalt overlay.
- Road Type VII is Six inch (6") treated soil subgrade with five inch (5") reinforced concrete.
- Road Type VIII is Six inch (6") treated soil subgrade with six inch (6") reinforced concrete.
- Road Type IX is Six inch (6") treated soil subgrade with sevenx inch (7") reinforced concrete.

OCI = Overall Condition Index from City of Burlington Street Inventory (10 = New, No maintenance needed and 100% of it's design life remaining).

OCI = Overall Condition Index

OCI Ratings from 1 to 10; 10 is new pavement or pavement that has been reconstructed to new condition and has 100% of it's design life remaining.

Access Lane Miles Per Site is total number of lane miles per type road that make up the "Haul Route" identified on the Gas Well Permit and verified by City.

Assessment Per Road Type is the total dollar assessment per lane mile of haul route as determined by the OCI per site.

Assessment Fees will be applied to each site with the total per site not to exceed the OCI of the Consumptive Use total.

Fees apply for a time period not to exceed the Gas Well Permit.

At such time as wells are re-drilled or re-fraced, fees shall be reapplied.