

MASTER ROAD REPAIR AGREEMENT

STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF JOHNSON §

This Master Road Repair Agreement, (“Agreement”), is made and entered into on this the ____ day of _____, 20__ by and between the City of Cleburne, Texas (“City”), a Texas home rule municipality, and _____, a _____ (“Operator”) for the repair of certain streets and/or roadways maintained by the City of Cleburne, Texas as more fully described herein.

WHEREAS, Operator is in the business of drilling gas wells and/or oil wells and, in connection therewith, shall be engaged in gas well drilling and production activities and/or oil well drilling and production activities within the City and will use certain specified streets and roadways maintained by the City of Cleburne; and

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

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

NOW, THEREFORE, IT IS AGREED THAT:

ARTICLE 1. REPAIR OBLIGATION

1. Operator agrees to repair damages, excluding ordinary wear and tear, on streets and roadways as identified on any approved Gas Well Permit(s) and/or Oil Well Permit(s) and associated site plan(s) submitted by Operator, its contractors, subcontractors, employees, agents, or representatives in connection with gas well activities authorized by the approved Gas Well Permit(s) and/or oil well activities authorized by the approved Oil Well Permit(s). This obligation shall continue during the term of this Agreement and shall include any site plans, Gas Well Permit(s), Oil Well Permit(s) or other associated matters approved after the date of this Agreement. Prior to the termination of this Agreement, Operator shall pay for the repair of the damages to the streets and roadways to restore them to the condition in which they existed, excluding ordinary wear and tear, prior to the execution of this Agreement, or if they have been subsequently improved, to the condition described in Section 2, below. Operator shall make a videotape of the city streets and roadways which the City has approved for use by Operator prior to the start of Operator’s drilling and operation of its gas well(s) and/or oil well(s). Operator shall provide a copy of the videotape to the City. Operator shall notify the City when gas well or oil well drilling, fracing or reworking operations are complete so that the City can determine if

repairs are required. Upon inspection, City shall notify Operator of what repairs, and their associated costs, if any, are required or shall notify Operator that repairs are not required.

2. After the execution of this Agreement, Operator agrees that if any of the streets or roadways utilized by Operator in its gas drilling, oil drilling or other production activities are paved or otherwise improved by the City or a third party, and if Operator subsequently damages such streets or roadways, that Operator shall repair the improved streets and roadways to the condition which existed immediately before they were damaged by Operator, excluding ordinary wear and tear.

3. Operator shall be responsible for the costs associated with the repair of streets and roadways damaged by Operator's use in accordance with the provisions contained herein. Upon determination by the City of the cost to repair damage to the streets and roadways caused by Operator, City shall invoice Operator for the full amount. Operator agrees to remit payment in full within 30 days of the date of the invoice. City shall be responsible for contracting the roadway repair services and, where required by State law, shall employ a competitive bidding process to ensure that the roadway repairs are performed in the most cost effective manner possible. Should payment be insufficient to fully repair the damage caused to the streets and roadways by Operator, City may invoice Operator for the balance and payment shall be due within 30 days of the date thereof. Conversely, the City agrees to reimburse Operator the balance of any funds not used in the repair of the streets and roadways.

4. Notwithstanding the foregoing, if, in the City's sole discretion, the damage to the streets and roadways affects the immediate health and safety of individuals, the City may take immediate remedial action to repair the streets and roadways at its own expense and invoice Operator for the full amount thereafter.

5. During the term of this Agreement, Operator shall periodically inspect said streets and roadways during drilling, fracture stimulation or reworking of the gas well(s) or oil well(s) to determine whether or not any damage has occurred as a result of Operator's activities. Within 48 hours of discovering the existence of any such damage to the streets and roadways, Operator shall notify the City's Director of Public Works of the need for repair. City shall then invoice Operator in accordance with Section 3, above.

ARTICLE 2. TERM OF AGREEMENT

This Agreement shall commence upon the date indicated above and shall continue in full force and effect until all damage caused to the streets and roadways by Operator's activities have been repaired, Operator has paid all invoice amounts in full and Operator has permanently discontinued the activities upon the streets and roadways, as described hereinabove.

ARTICLE 3. BLANKET INSURANCE AND INDEMNITY

1. Operator shall provide or cause to be provided insurance that meets the requirements of Chapter 118, "Oil and Gas Drilling; Mineral Exploration," Code of Ordinances

of the City of Cleburne. Such insurance shall continue until the well is abandoned and the site restored.

2. 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 or sustained by any person, persons or property 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 shall pay any judgment, with costs, which may be obtained against the City growing out of such injury or damage.

ARTICLE 4. BLANKET PERFORMANCE BOND

Operator shall provide or cause to be provided a security instrument in the form of a performance bond or irrevocable letter of credit that meets the requirements of Chapter 118, "Oil and Gas Drilling; Mineral Exploration", Code of Ordinances of the City of Cleburne, to secure the obligation of Operator to pay for the repair of damages, excluding ordinary wear and tear, to public streets and roadways and other public property, including but not limited to bridges. Such bond shall continue until the well is abandoned and the site restored.

ARTICLE 5. MISCELLANEOUS PROVISIONS

1. Operator understands and agrees that Operator, its employees, agents, contractors, subcontractors or representatives shall at no time represent themselves to be employees, agents, contractors, subcontractors or representatives of the City.

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.

ARTICLE 6. FORCE MAJEURE

The performance of this Agreement shall be subject to events of 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, partially 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. Notwithstanding the foregoing, the Operator may assign this Agreement if the Gas Well Permit or Oil Well Permit has been assigned in accordance with Chapter 118, "Oil and Gas Drilling; Mineral Exploration", of the Code of Ordinances of the City of Cleburne.

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 U.S. Mail, return receipt requested, postage prepaid; to:

CITY: Office of the City Manager
City of City of Cleburne
10 North Robinson
Cleburne, TX 76033-0657

OPERATOR: _____

Attn: _____

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 affect 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 all obligations of the parties hereto, created by this Agreement are performable in Johnson County, Texas. Venue of any suit or cause of action under this Agreement shall lie exclusively in Johnson County, Texas.

ARTICLE 12. ENTIRE AGREEMENT

This Agreement constitutes 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; provided however, that this Agreement shall apply in addition to the requirements of any Gas Well Permit(s) and/or Oil Well Permit(s) issued to Operator by the City, 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__.

CITY OF CLEBURNE, TEXAS

By: _____
Steve Polasek, City Manager

ATTEST:

City Secretary

OPERATOR'S NAME:

By: _____

(Title)

Texas Railroad Commission
Operator Number

STATE OF TEXAS §
 §
COUNTY OF JOHNSON §

Before me, the undersigned notary public, on this day personally appeared Steve Polasek, City Manager of the City of Cleburne, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said City of Cleburne, Texas.

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

Notary Public

STATE OF TEXAS §
 §
COUNTY OF JOHNSON §

Before me, the undersigned notary public, on this day personally appeared _____ of _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said _____.

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

Notary Public