



**TEMPLATE DOCUMENT!
FOR REFERENCE ONLY!
CONTACT ENVIRONMENTAL RESOURCES DIVISION
FOR INFORMATION OR ASSISTANCE**

ROAD MAINTENANCE AGREEMENT

This Road Maintenance Agreement ("Agreement"), is made and entered into on this the ____ day of _____, 2003, by and between the Town of Flower Mound, Texas ("Town"), a Texas home rule municipality, and _____ ("Corporation") for the repair of certain streets and/or roadways maintained in whole or in part by the Town of Flower Mound, Texas, as more fully described herein.

WHEREAS, the Town had adopted regulations and permitting requirements to reasonably govern oil and natural gas wells, oil and natural gas exploration, and oil and natural gas operations within the jurisdiction of the Town; and

WHEREAS, Corporation is in the business of drilling oil and/or gas wells and, in connection therewith, shall be engaged in oil and/or gas well drilling and production activities on truck routes on roadways maintained in whole or in part by the Town of Flower Mound, as shown on Corporation's Transportation Route Map submitted to the Town pursuant to Section 34-421(d)(3) of the Town's Code of Ordinances; and

WHEREAS, the nature of heavy vehicular traffic during oil and natural gas well development (drilling) and post-production well stimulation (fracing) activities will exceed the normal and anticipated use of the public roadways within the Town's corporate limits; and

WHEREAS, many of the Town's public roadways are not designed to support heavy vehicle loadings and are highly susceptible to increased deterioration rates due to heavy vehicular traffic associated with oil and gas well drilling and production activities; and

WHEREAS, the condition of a road segment decreases in quality with heavy vehicular traffic, and heavy equipment loads produce greater amounts of road damage, which in turn, increases overall maintenance oversight, repair, and replacement costs to the roadways, in connection with Corporation's oil and/or gas well drilling and production activities; and

WHEREAS, the Town and Corporation, for the mutual consideration hereinafter stated, desire to enter into an Agreement for Corporation to pay to the Town a designated fee for the Town to temporarily and/or permanently repair said roadways, as necessary, for the duration of the term of this Agreement in consideration of Corporation's use of said roadways for the purpose of the activities described hereinabove.

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NOW, THEREFORE, IT IS AGREED THAT:

**ARTICLE 1.
REPAIR OBLIGATION**

1. Corporation agrees to pay to the Town a designated road maintenance fee ("fee"), as identified and enumerated in Article 3 of this Agreement, for the sole purpose of repairing damage, excluding ordinary wear and tear, to truck routes as identified on an approved Transportation Route Map, Exhibit _____ attached hereto and hereby incorporated by reference, caused by or related to, motor vehicle operations by Corporation, its contractors, subcontractors, employees, agents, or representatives in connection with activities authorized by the oil, gas, or combined well permit issued by the Town. This obligation to pay all required fees shall continue during the term of this Agreement.
2. Corporation shall notify the Town's oil and gas inspector in writing within five (5) business days when oil and/or gas well drilling, well stimulation activities ("fracing"), or reworking operations are complete so that the Town's Public Works Division can determine what repairs, if any, are required to road routes identified on the Transportation Route Map.
3. Pursuant to this Agreement, the Town, after receiving all applicable fees from Corporation, and issuance of an oil, gas, or combined well permit, shall take full responsibility for the repair to damaged roadways when, in the Town's determination, such damage is caused by motor vehicle activities of the Corporation, due to normal and anticipated operations related to the development, production, and/or maintenance of oil and/or natural gas wells, including all associated activities.
4. During the term of this Agreement, Corporation shall periodically inspect said roadways during drilling, fracture stimulation, or reworking of the oil and/or gas well to determine whether any damage has occurred as a result of Corporation's activities. Upon discovery of damage by the Corporation, the Corporation will have forty-eight (48) hours to contact the Town oil and gas inspector in writing regarding the nature and extent to any identified damage that has occurred as a result of Corporation's activities and operations.
5. Any work requiring interruption of motor vehicle traffic shall require prior submittal and approval by the Town Engineer of a Traffic Control Plan in accordance with the Texas Manual on Uniform Traffic Control Devices, as amended.

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**ARTICLE 2.
TERM OF AGREEMENT**

This Agreement shall commence upon the date indicated above and shall continue in full force and effect until Corporation's oil, gas, or combined well permit issued by the Town has expired, has been terminated, or until the Corporation has permanently discontinued the activities upon the roadways, as described hereinabove, whichever is later. Corporation's obligation to repair the roadways shall terminate in accordance with the expiration or termination of the oil, gas, or combined well permit issued by the Town or if the Corporation has appropriately abandoned said well(s) in accordance with the requirements of Section 34-430, Plugged and Abandoned Wells, of the Town's Code of Ordinances, as amended.

**ARTICLE 3.
ROAD MAINTENANCE FEE**

1. The Road Maintenance Fee shall be calculated using the following method prepared by the Town:
 - a. All road segments identified on the Transportation Route Map, Exhibit ____, attached hereto and hereby incorporated by reference, shall be used in calculating the total required Road Maintenance Fee.
 - b. Each separate segment of the road route shall be individually calculated and added together to provide for the total Road Maintenance Fee required.
 - c. The Paving Coefficient Index (PCI) methodology, which is a standard street rating system, shall be used by the Town to calculate the fee per each road segment, as follows:
 - i. The PCI shall use the following criteria and corresponding weighting factors to determine the PCI:

1. Cracking	20%
2. Sub Base	20%
3. Drainage	15%
4. Surface Condition	25%
5. Distortion	15%

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6. Ride Quality 5%

- ii. Each criterion, hereinabove stated, shall receive a ranking coefficient on a scale ranging from one (1), constituting the poorest condition, to five (5), representing the best condition.
 - iii. The resultant ranking coefficient for each criterion shall be multiplied by the corresponding weighting factor set forth above, the total of which is then multiplied by a constant factor of twenty (20), with the resultant number constituting the PCI rating for said road segment, ranging in a scale of zero (0) to one-hundred (100).
- d. A condition classification shall be applied to each road segment as determined from said roadway's PCI rating, as follows:
- i. Excellent 80-100 PCI
 - ii. Good 70-79 PCI
 - iii. Fair 60-68 PCI
 - iv. Poor Below 60 PCI
- e. The following fee structure shall be applied to each road segment condition classification to determine the projected replacement cost due to motor vehicle operations and activities related to the oil and/or natural gas exploration, development, production, and abandonment:
- i. Excellent 10% of projected replacement cost
 - ii. Good 15% of projected replacement cost
 - iii. Fair 20% of projected replacement cost
 - iv. Poor 25% of projected replacement cost
- f. 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.
- g. The Town shall provide as an attachment to this Agreement, a copy of all calculations directly related to the PCI, condition classification,

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and projected replacement cost, which attachment is incorporated herein by this reference.

- h. The Town'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 Town observes the same degree of care and skill generally exercised by professionals under similar circumstances and conditions.
2. The Road Maintenance Fee, hereinafter stated and in compliance with all applicable methodologies hereinabove enumerated, shall be an amount of no more than \$ _____, as determined from the following ratings:

- a. Road Segment _____
 - i. PCI rating: _____
 - 1. Cracking Criterion Rating: _____
 - 2. Sub Base Criterion Rating: _____
 - 3. Drainage Criterion Rating: _____
 - 4. Surface Condition Criterion Rating: _____
 - 5. Distortion Criterion Rating: _____
 - 6. Ride Quality Criterion Rating: _____
 - ii. Road Segment Condition Classification: _____
 - iii. Road Segment Replacement Fee: _____
- b. Road Segment _____
 - i. PCI rating: _____
 - 1. Cracking Criterion Rating: _____
 - 2. Sub Base Criterion Rating: _____
 - 3. Drainage Criterion Rating: _____

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- 4. Surface Condition Criterion Rating: _____
 - 5. Distortion Criterion Rating: _____
 - 6. Ride Quality Criterion Rating: _____
 - ii. Road Segment Condition Classification: _____
 - iii. Road Segment Replacement Fee: _____
 - c. Total Road Maintenance Fee: _____
3. The Road Maintenance Fee is required to be paid in full at the time of an oil, natural gas, or combined well permit application submittal to the Town's oil and natural gas inspector. Said permit application shall be considered administratively incomplete until this Agreement is executed, Road Maintenance Fee payment received, and both are on file with the Town's oil and natural gas inspector.

**ARTICLE 4.
MISCELLANEOUS PROVISIONS**

- 1. Corporation understands and agrees that Corporation, its employees, servants, agents, and representatives shall at no time represent themselves to be employees, servants, agents, and/or representatives of the Town. Corporation shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor.
- 2. By entering into this Agreement, the Town 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. Corporation agrees that the Road Maintenance Fee provided hereunder is not an impact fee under Chapter 395 of the Texas Local Government Code, and expressly agrees that this Road Maintenance 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, Corporation agrees that the Road Maintenance Fee provided hereunder will not be credited to any subsequent roadway impact fees if the subject property is subdivided or developed in the future.

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**ARTICLE 5.
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 6.
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. Notwithstanding the foregoing, the Corporation may assign this Agreement if the oil, gas, or combined well permit issued by the Town has been assigned in accordance with the Oil and Natural Gas Well Drilling and Operations Ordinance, Article VII of Chapter 34, "Environment," of the Code of Ordinances of The Town of Flower Mound, Texas.

**ARTICLE 7.
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 or sent by registered mail or certified mail; or by U.S. Mail, return receipt requested, postage prepaid; to:

TOWN: Oil & Gas Inspector
 Town of Flower Mound, Texas
 2121 Cross Timbers
 Flower Mound, Texas 75028

CORPORATION:

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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 8.
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 and duly executed. The parties further agree that the provisions of this Article will not be waived unless as herein set forth.

**ARTICLE 9.
SAVINGS/SEVERABILITY**

In the event that any one or more of the provisions hereof contained in this Agreement shall for any reason be held by a court of competent jurisdiction 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 10.
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 to be performed in Denton County, Texas. Venue of any suit or cause of action under this Agreement shall lie exclusively in Denton County, Texas.

**ARTICLE 11.
ENTIRE AGREEMENT**

This Agreement and the exhibits attached thereto, 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

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hereto unless the same is in writing, dated subsequent to the date hereof, and is duly authorized and executed by the parties hereto.

**ARTICLE 12.
WAIVER OF TERMS AND CONDITIONS**

The failure of the Town 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 13.
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 14.
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 _____, 2003.

TOWN OF FLOWER MOUND, TEXAS

By: _____
MAYOR

ATTEST:

PAULA J. LAWRENCE, TRMC, CMC, TOWN SECRETARY

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APPROVED AS TO LEGAL FORM:

TERRENCE S. WELCH, TOWN ATTORNEY

STATE OF TEXAS §
 §
COUNTY OF DENTON §

Before me, _____, the undersigned notary public, on this day personally appeared _____, the _____ of _____ Town of Flower Mound, Texas.

_____ known to me;
_____ proved to me on the oath of _____; or
_____ proved to me through his/her current _____
{description of identification card or other document issued by the federal government or any state government that contains the photograph and signature of the acknowledging person

to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed that instrument for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____, 2003.

Notary Public

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CORPORATION**

By: _____

(Printed Name and Title)

Texas Rail Road Commission CORPORATION Number:

STATE OF TEXAS §
 §
COUNTY OF DENTON §

Before me, _____, the undersigned notary public, on this day personally appeared _____, the _____ of _____ (Corporation).

_____ known to me;
_____ proved to me on the oath of _____; or
_____ proved to me through his/her current _____
{description of identification card or other document issued by the federal government or any state government that contains the photograph and signature of the acknowledging person

to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed that instrument for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____, 2003.

Notary Public