

ZONING ORDINANCE

14A Attachment 5

**APPENDIX E
ROAD DAMAGE REMEDIATION AGREEMENT**

STATE OF TEXAS §
COUNTY OF DENTON §
TOWN OF BARTONVILLE §

ROAD DAMAGE REMEDIATION AGREEMENT

This Road Damage Remediation Agreement, (hereafter the “Agreement”), is made and entered into on this the _____ day of _____, 20____, by and between the Town of Bartonville, Texas (hereafter the “Town”), a municipal corporation and a Type “A” general law municipality of the State of Texas, located within Denton County, Texas; and _____ (hereafter the “Operator”) for the payment of fees for damage remediation of certain streets and/or roadways within the Town of Bartonville, 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 plat, which abuts or is adjacent to, and/or is accessed by roadways within the Town of Bartonville, and

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

WHEREAS, according to the study commissioned by the City of Denton (and modified by the Town of Bartonville to reflect Bartonville roadway conditions), (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 Town 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 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 Town and Operator, for the mutual consideration hereinafter stated, desire to enter into this Agreement for Operator to compensate Town for the maintenance and damage

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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: Town 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 Town agree that it is and will continue to be impracticable and extremely difficult to determine the actual amount of such damage. Therefore, Town and Operator hereby agree that Operator shall pay to Town 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 Town 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 Town 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 Town 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 approved vehicle route depicted in Exhibit B, attached hereto, as if fully incorporated herein.
3. Timely Payment: In the event that Operator does not timely and adequately make payment under this Agreement upon written demand of the Town, the Town 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 Town 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 Town's investigation and determination of any and all aspects of the above-referenced methodologies constitute generally accepted practices of road replacement, repair, and

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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. Payment Due: The Road Damage Remediation Fee is required to be paid in full at the time of issuance of a Gas Well Permit, or with the Operator's Notice of Activities pursuant to Section 3.1313 [sic] of the Town of Bartonville Code of Ordinances, as amended. 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 Town.

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

The Operator shall provide or cause to be provided the insurance and all other security required by Town Ordinances existing at that time regulating drilling operations and permitting of oil, gas, and mineral drilling and production. In addition, the Operator shall carry a policy or policies of insurance as specified herein. 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. All operators must provide the Town with thirty (30) days' advanced written notice that the policy will be cancelled or nonrenewed except when the policy is being cancelled for nonpayment of premium, in which case ten (10) days' advance written notice is required.
 - b. Liability policies shall be written by carriers licensed to do business in Texas and with companies rated "A" or better by A.M. Best approved by the Town. The "A" rating by A.M. Best shall be maintained for the policy period.
 - c. Liability policies shall name as "Additional Insured" the Town and its officials, agents, employees, and volunteers.
 - d. The policy phrase "other insurance" shall not apply to the Town where the Town is an additional insured on the policy and each policy shall be primary and noncontributory.
 - e. All liability policies shall include a blanket waiver of subrogation.

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- f. The operator shall present to the Town copies of the pertinent portion of the insurance policies evidencing all coverage and endorsements required by this section before the issuance of a permit.
- g. Certificates of insurance must be presented to the Town evidencing all coverages and endorsements required.
- h. The acceptance by the Town of a policy without the required limits and/or coverage shall not be deemed a waiver of these requirements.
- i. After the insurance [issuance] of the well permit, the Town may require the operator to provide a copy of the most current insurance coverage and endorsements for review at any time. An administration fee in the amount set in the Town's fee schedule will be charged to cover the cost of such reviews.
- j. Claims-made policies will not be accepted except for excess policies or unless otherwise provided by this Ordinance.

2. Minimum Required Insurance Coverage

- a. Commercial liability coverage for bodily injury and property damage coverage in a minimum combined single limit of ten million dollars (\$10,000,000.00) per occurrence with an annual general aggregate coverage of twenty million dollars (\$20,000,000.00). This coverage must include premises, operations, blowout or explosion, products, completed operations, blanket contractual liability, underground reservoir (or resources), broad form property damage, independent contractor's protective liability and personal injury.
- b. Underground reservoir (or resources) damage coverage issued on an occurrence basis, shall not be limited to sudden and accidental occurrences, shall not have a discovery or reporting limitation and shall not exclude damage to water tables, formation or strata.
- c. Environmental impairment (or seepage and pollution) coverage, shall be maintained in an amount of at least two million dollars (\$2,000,000.00) per loss, with an annual aggregate of at least twenty million dollars (\$20,000,000.00) for environmental pollution liability applicable to bodily injury, property damage, including loss of use of that damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with a loss arising from the insured site.
 - 1. Coverage shall apply to sudden and accidental pollution conditions resulting from escape or release of smoke vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste material or other irritants, contaminants or pollutants.

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2. The operator shall maintain continuous coverage and shall purchase extended coverage period insurance when necessary. The extended coverage period insurance must provide that any retroactive date applicable to coverage under the policy precedes the effective date of the issuance of the permit by the Town.
3. A discovery period for such peril shall not be less than ten years after the occurrence.
- d. Automobile Liability Insurance. Minimum Combined Single Limit of ten million dollars (\$10,000,000.00) per occurrence for Bodily Injury and Property Damage. Such coverage shall include owned, non-owned, and hired vehicles.
- e. Worker's Compensation Insurance. In addition to the minimum statutory requirements, coverage shall include Employer's Liability limits of at least one million dollars (\$1,000,000.00) for each accident, one million dollars (\$1,000,000.00) for each employee, and a one million dollar (\$1,000,000.00) policy limit for occupational disease, and the insurer agrees to waive rights of subrogation against the Town, its officials, agents, employees, and volunteers for any work performed for the Town by the operator.
- f. Excess (or umbrella) liability insurance in a minimum limit of \$20,000,000.00 providing excess coverage for each of the perils insured by the preceding liability insurance policies.
- g. Control of well insurance with a minimum limit of ten million dollars (\$10,000,000.00) per occurrence, with a maximum deductible of two hundred and fifty thousand (\$250,000.00) per occurrence. The policy shall cover the following:
 1. The cost of controlling a well that is out of control, redrilling or restoration expenses, seepage and pollution damage.
 2. Damage to Property in the Operator's Care, Custody, and Control with a sub-limit of five hundred thousand (\$500,000.00) may be added.
3. Indemnity: TOWN SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, HELD HARMLESS AND RELEASED BY OPERATOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE COMPANY, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF OPERATOR UNDER THIS AGREEMENT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF TOWN, WITHOUT, HOWEVER,

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WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE TOWN UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS AGREEMENT IS AN INDEMNITY EXTENDED BY OPERATOR TO INDEMNIFY AND PROTECT TOWN FROM THE CONSEQUENCES OF THE OPERATOR'S AS WELL AS THE TOWN'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

ARTICLE 6. SECURITY

1. Security Required: Prior to the issuance of a gas well permit, the operator shall file with the Town a cash bond in the minimum amount of \$125,000.00 for any single well or a blanket bond in the amount of \$375,000.00 that will cover up to five wells on a single pad site. The bond must provide that it cannot be cancelled without at least thirty (30) days' prior written notice to the Town except when the policy is being cancelled for nonpayment of premium, in which case 10 days' advance written notice is required.
2. Increase in Required Bond Amount: The Town Council may increase the required amount of the bond if the Town Engineer determines that additional security is necessary to protect against damage to Town streets as a result of the vehicle routes to be utilized for travel to and from the well development site and operation site, or, using the AASHTO standards, the expected life of a street will decrease as a result of the operator's activities, or there are other circumstances, based on the operator's prior actions, which require additional security.
3. Condition of Bond:
 - a. The bond shall become effective on or before the date of the gas well permit is issued and shall remain in force and effect for at least a period of six months after the expiration of the gas well permit term or until the well is plugged and abandoned and the site is restored to the reasonable satisfaction of the Town Administrator, whichever occurs later.
 - b. The Town shall be authorized to draw upon the bond to recover any fines or penalties assessed under this Chapter or any other costs or work for which the operator is assessed and fails to pay.
 - c. Any operator who initially posted a cash bond, and whose well is in compliance with these regulations, is in the producing stage and all drilling operations have ceased, may submit an application to the Town to reduce the bond to \$25,000.00. When determining whether the bond should be reduced, the Town Council will take into consideration circumstances based on the operator's prior actions. During reworking operations, the amount of the bond shall be maintained at the original amount required.

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ARTICLE 7. 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 Town. The Town 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 8. GOVERNMENTAL IMMUNITY

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.

ARTICLE 9. 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.

ARTICLE 10. 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 11. 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 12. NOTICE

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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:

TOWN: Town Administrator
Town of Bartonville, Texas
1941 E Jeter Rd
Bartonville, TX 76226
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 13. 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 14. 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 15. 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 16. ENTIRE AGREEMENT

This Agreement and the appendices 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

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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 Town Ordinances, as amended.

ARTICLE 17. NONWAIVER

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 18. 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 19. CONSTRUCTION OF AGREEMENT

The parties hereto have negotiated the terms of this Agreement and therefore agree that as a negotiated document, this contract shall not be more strictly construed against either party.

ARTICLE 20. 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:

Town Secretary

“TOWN”
TOWN OF BARTONVILLE, TEXAS

By: _____
Mayor

“OPERATOR”

By: _____

Printed Name: _____

Title: _____

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STATE OF TEXAS §
 COUNTY OF DENTON §

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, Mayor of the Town of Bartonville, 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 Town of Bartonville, Texas and that he executed the same as the act of such Town of Bartonville, 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

Gas Well Plat (Name of Plat)	Truck Route (Proposed Route)	Length (Mi) (x miles)
_____	_____	_____

Water Supply (Hauled)				
<u>Roadway Design</u> Life	Well Traffic Impact	Consumptive Use	Roadway Cost	Assessment Cost per Mile

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(ESAL's)	(ESAL's)	(%)	(\$ per mile)	(\$)
3300	2000	.61	*	*

Water Supply (On-Site)				
<u>Roadway Design</u>	Well Traffic	Consumptive	Roadway Cost	Assessment Cost
<u>Life</u>	Impact	Use	(\$ per mile)	per Mile
(ESAL's)	(ESAL's)	(%)	(\$ per mile)	(\$)
3300	1121	.34	*	*

Fee Calculation

<u>Water Supply</u>	Assessment Cost		Length		Roadway
	per Mile		(Mi)		Assessment
	(\$)				(\$)
Hauled	*	x		=	
On-Site	*	x		=	
			Total Assessment		<hr style="width: 100px; margin-left: auto; margin-right: 0;"/>

*Indicates costs and assessments that are amended from time to time as construction costs change. For current costs and assessments please refer to the Town's most recent adopted Fee Schedule.

Note: This assessment is intended to assess the developers of gas wells in Bartonville for that portion of the useful life of public roadways consumed by truck traffic that serves those wells, Payment of this assessment does not absolve the developer of the responsibility to post a road repair bond to ensure repair of visible damage to the roadway.

EXHIBIT "B" VEHICLE ROUTE

(Ordinance 451-08, sec. 4, adopted 5/20/08; Ordinance 526-11, sec. 4, adopted 10/18/11)