

ROAD USE AND BONDING AGREEMENT

THIS ROAD USE AND BONDING AGREEMENT, dated the _____ day of _____, _____, is between

UNION TOWNSHIP, a political subdivision of Washington County, Pennsylvania, with its principal office located at 3904 Finleyville-Elrama Road, Finleyville, PA 15332, hereinafter referred to as the "Township".

AND

_____, maintaining a business address of _____ (the "Company").

WITNESSETH:

WHEREAS, the Company will be engaged in various activities in the Township and it will be necessary for certain heavy equipment and machinery of the Company to travel over and use various public roadways of the Township; and,

WHEREAS, the Company and the Township have recognized that the public roadways may become damaged as a result of the use by the Company; and,

WHEREAS, the Company and the Township desire to set forth their mutual understanding and agreement concerning the use, care, maintenance and repair of the public roadways in the Township under the circumstances more fully provided herein.

NOW THEREFORE, incorporating the above recitals by reference, in consideration of the mutual promises herein and intending to be legally bound hereby, the parties agree as follows:

1. DEFINITIONS. The following words and phrases shall have the particular meaning specified for the purposes of this Agreement:
 - a. "Bonded Roadway" refers to a Township road that has been officially permitted by the Township and added to the Bonded Roadways List. Attached hereto as Exhibit A is a list of Bonded Roadways, which may be amended from time to time by agreement of the Township and the Company.
 - b. "Covered Contractors/Subcontractors" means all contractors and/or subcontractors accessing Company's gas well sites within the Township that are covered under this Agreement by Company and properly listed on the Contractor/Subcontractor List as Exhibit B.

- c. “Excess Maintenance” means maintenance, restoration, build up and stabilization but not betterment of a posted Township roadway in excess of Normal Maintenance, caused by use of Over-Posted-Weight Vehicles.
- d. “Normal Maintenance” means the usual and typical activities necessary to maintain the roadway, shoulders and drainage facilities in the state of repair existing at the date of the inspection prescribed in § 189.4(f)(1) (relating to use under permit).
- e. “Over-Posted-Weight Vehicle” means a vehicle or combination having a gross weight in excess of a Posted Weight Limit.
- f. “Posted Weight Limit” means a restricted weight limit posted on a Township roadway under authority of 75 Pa.C.S. § 4902.
- g. “Preliminary Excess Maintenance” means build-up or stabilization of a Bonded Roadway prior to the operation of and reasonably necessary to assure safe passage of Over-Posted Weight Vehicles.
- h. “Pre-Development Inspection” refers to an inspection conducted by Company and Township on a Bonded Roadway or potentially Bonded Roadway in order to determine if Preliminary Excess Maintenance is required, including but not limited to build-up and stabilization of the Roadway. After inspection, the Company is to submit findings along with any proposed preliminary excess maintenance plans to Township for approval.
- i. “Stabilization” refers to the build-up and widening of existing township roads, where deemed reasonably necessary by the Township and Company, and maintain or restore said road in its improved condition after oil and gas drilling and related operations have ceased.

2. BONDED ROADWAYS

- a. The Company and its contractors/subcontractors accessing the Company’s project sites within the Township are hereby **only** licensed to travel over and use the Township roadways that have been approved and added to the Bonded Roadways List. Said use will be for transporting Over-Posted-Weight Vehicles necessary for the construction and operation of authorized uses. (Exhibit A)

- b. On-Site Inspection(s). In order to determine the pre-use condition of the portion(s) of Township Road(s) and appurtenances, an on-site field inspection shall be made by the Township Engineer, which may be attended by Company and/or representative. Furthermore, the on-site field inspection will be performed in order to determine if preliminary excess maintenance is required, including but not limited to build-up and stabilization of the roadway. After inspection, the Company is to submit findings along with any proposed preliminary excess maintenance plans to the Township for approval. During use, the subject roadway is to be re-inspected by the Township Engineer annually and at increments determined by the Township and its Engineer in order to document any conditions or concerns related to overweight usage by the Company. The Company shall be notified prior to all inspections and invited to attend. The Company shall also be notified of any third party reported damage prior to an inspection occurring. All reasonable costs of inspection(s) shall be paid by Company.

- c. Attached hereto as Exhibit B is a list of currently known Covered Contractors/Subcontractors accessing the Company's facilities within the Township. The parties acknowledge that this list may change from time to time, and that the Company, with input from the Township, will use its best efforts to keep the list reasonably current. Any maintenance issues arising out of the actions of any Covered Contractors/Subcontractors shall be the sole responsibility of Company. Any disputes between Company and a Covered Contractor/Subcontractor shall be handled according to agreements between those parties and shall not impact Company's duties under this Agreement.

3. FINANCIAL SECURITY

- a. The Company shall post with the Township a bond in the amount of **TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS PER MILE OF BONDED ROADWAY**, issued by a licensed insurance or bonding agent, which shall cover the Excess Maintenance of the Bonded Roadways as required by this Agreement. This sum shall be available at all times during the effective time-period of this Agreement, unless released in accordance with Paragraph 10 below. The posting of this amount shall be in lieu of the Company posting individual bond amounts for each road that is added to the Bonded Roadways List (Exhibit A).

- b. The amount of this bond shall be adjusted from time to time as roads are added to or deleted from the Bonded Roadways list. The posting of additional roadways shall require an updated Bonded Roadways List (Exhibit A) and be in lieu of the Company executing an entirely new Agreement. In addition to the foregoing security, the Company shall post a one time additional bond in the amount of fifty thousand (\$50,000.00) dollars (the "Supplemental Bond"). The purpose of the Supplemental

Bond shall be to provide security for the use of non-Bonded Roadways by Over-Posted-Weight-Vehicles in the following circumstances:

- (1) When, due to emergency circumstances, as mutually agreed to by the Township and the Company,
- (2) Bonded Roadways are not available to access Company facilities;
- (3) For seismic testing; and
- (4) For road cuts and road bores. All applicable escrow amounts shall be required unless an agreement in lieu of individual escrow.

4. NOTICE TO TOWNSHIP

a. Forty-eight (48) hours prior to commencing the use of any Bonded Roadway by Over-Posted-Weight Vehicles, the Company shall notify the Township Supervisors and Code Enforcement Officer of the following (if said information has not already been provided or been updated since the time of zoning application):

- (1) The specific location of the gas well site requiring the use of Bonded Roadways by Over-Posted-Weight Vehicles;
- (2) The projected time frame within which the Company will be using the Bonded Roadways for Over-Posted-Weight Vehicles in conjunction with the erection, construction and establishment of the gas well; and
- (3) The type of machinery, equipment and materials which will be transported and a method by which the vehicles operating on the roadways may be identified.

b. The Township will provide the Company, in writing, the Township's contact person to be notified in the event of

- (1) The Company's inability to adequately remove dirt and debris from the Township roadways; or
- (2) Any damage occurring to a Township roadway as the result of the Company's use of the roadway and/or the erection, construction and use of the Company's facilities and operations.

5. REMOVAL OF DIRT AND DEBRIS. The Company shall be responsible to remove the dirt and debris from any Township roadway which results from Company's use of the roadway and/or the erection, construction and use of the

Facility. Removal of dirt and debris shall be performed by use of a power broom or the equivalent, subject to the ability of the Company to acquire the necessary equipment.

6. EXCESS MAINTENANCE. The Company shall be liable to the Township for the Excess Maintenance and/or repair of any Bonded Roadway not adequately maintained by the Company as provided herein or damaged as the result of the Company's use of the Bonded Roadway. The Company's liabilities shall extend to the cost of labor, materials and time which may be needed to adequately maintain, repair or replace the Bonded Roadway or any portion thereof requiring Excess Maintenance hereunder.

a. Performance of Excess Maintenance. All Excess Maintenance required hereunder shall be performed by the Company and/or its contractor(s) in accordance with the specifications of Publication 408 and supplements thereto issued by the Pennsylvania Department of Transportation or other applicable specifications approved by the Pennsylvania Department of Transportation for winter road repair. In connection with the performance of the Excess Maintenance, the Company shall:

(1) Provide proper traffic protection at all times during its performance of Excess Maintenance.

(2) Promptly perform Excess Maintenance as needed. If the Township determines that the Company is not maintaining or restoring the Bonded Roadways to the level agreed to herein, the Township shall notify the Company, in writing, of this determination and the Company shall perform the required Excess Maintenance reasonably promptly after receipt of such notice, but in no event later than thirty (30) days after receipt of such notice, unless delayed by adverse weather or a force majeure event. The Township acknowledges that the Company's development of sites in the Township may take place from time to time throughout the term of this Agreement. As a result, the Township hereby agrees that the Company shall have the right to make temporary repairs to the Bonded Roadways subject to the approval of the Township, not to be unreasonably withheld, in order to satisfy its Excess Maintenance obligations hereunder during the term of this Agreement. If such temporary repairs are acceptable to maintain the Bonded Roadways in accordance with the standards herein, then the Company shall not be required to replace or repave the Bonded Roadways to satisfy its Excess Maintenance obligations hereunder until the Company has completed all of its oil and gas development activities in the Township.

b. Maintenance Not Covered

- (1) The Company shall only be obligated to perform Excess Maintenance on Bonded Roadways due to the use of the Bonded Roadways by the Company's Over-Posted-Weight-Vehicles. Such Excess Maintenance shall not include any existing damage to the applicable roadways reflected in a memorandum of the on-site inspection unless Preliminary Excess Maintenance is required as defined in this Agreement, damage caused by the Township, or any damage caused by vehicles other than the Company's. In addition, in no event shall the Company be obligated to perform Normal Maintenance, to perform maintenance to remedy damage directly resulting from Force Majeure, to remove snow or ice or to perform any maintenance, repair or replacement arising from damage caused by another user of the applicable roadway.
- (2) Force Majeure. The Company is not liable for failure to perform its obligations if such failure is a result of an act of god, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, blockage, embargo, labor dispute, strike, lockout, or interruption of utility services or material supply.

c. Joint Maintenance

- (1) Allocation by Agreement. The Township shall require all operators of Over-Posted-Weight Vehicles to obtain a permit, post bonding and execute an excess maintenance agreement with the Township under terms consistent with this Agreement. If during the term of this Agreement one or more additional users obtain a permit to operate Over-Posted-Weight Vehicles on the Bonded Roadways ("Additional Users"), the Company and Additional Users (collectively referred to herein as "Users") may agree among themselves as to their relative responsibilities for Excess Maintenance relating to the Bonded Roadways and enter into an agreement whereby:
 1. Option 1: Each User performs a designate portion of the Excess Maintenance;
 2. Option 2: One of the Users performs the Excess Maintenance and the other Users reimburse the performing party for the same based upon agreed upon shares; or

3. Option 3: If agreed to by the Township, the Township performs the Excess Maintenance and each of the Users reimburses the Township for its agreed upon share.
- (2) Allocation by the Township. If the Users cannot agree upon their respective responsibilities for Excess Maintenance, the Township Road Master shall within 10 days of receipt of a written request by any of the Users, reasonably determine in writing the respective responsibility of each of the Users based on the following factors, among others: (1) vehicle weight; (2) distance traveled; (3) duration of use and time of year; (4) number of trips; (5) vehicle type; and (6) pre-existing road conditions (the "Township Determination"). The Township Determination shall designate Option 2, with the Company being the party responsible for performance of the Excess Maintenance, and the other Users being responsible for reimbursing the Company for their respective shares.
- (3) Appeal of Township Determination. Any User may appeal the Township Determination by filing a written notice with the Township within 10 days of the User's receipt of the Township Determination, with copies being provided to all other Users. The appeal shall be heard by the Township Engineer, as arbitrator and conducted by the Township Solicitor. The arbitrator shall hear such evidence and review such documentation as the arbitrator in his or her sole opinion deems necessary, and after consideration of the factors set forth above shall render a written decision no later than 20 days after the date of filing of the appeal (the "Arbitrator's Decision"). The Arbitrator's Decision shall be final and binding and not subject to appeal. The fee for an appeal shall include the cost of the arbitrator at an hourly rate of \$95.00, the Township solicitor at an hourly rate of \$125.00 (for attendance at the hearing only) along with and reasonable administrative costs and the appearance fee for a stenographer. The fee shall be borne equally by all Users, unless the arbitrator determines that the appeal was frivolous, in which case a higher proportion of the fee may be assessed against the appealing User at the discretion of the arbitrator.
- (4) Performance of Excess Maintenance. After the Township Determination without any appeal by a User, or after the Arbitrator's Decision if such an appeal is filed:

1. The Company shall perform the Excess Maintenance with costs being allocated among the Users pursuant to the applicable Township Determination or Arbitrator's Decision; and
 2. The Additional Users shall reimburse the Company for their respective shares within 10 days of receipt of an invoice from the Company. In the event any Additional User fails to pay the Company in a timely fashion, after the date of the circulation of the arbitrator's decision, the Township shall immediately suspend the Additional User's permit, prohibit that Additional User's Over-Posted Weight Vehicles from operating on any Township weight-restricted road, initiate summary offense proceedings against the offending Additional User or vehicle, and make a claim and assign to the Company the Township's rights under any bond or other security posted by that Additional User.
7. The Township's contact person (discussed in Paragraph 4.b above) shall solely and reasonably determine the adequacy of any Excess Maintenance performed by the Company. After receipt of the written notice provided in Paragraph 6.a(2) above, receipt of a Township Determination under Paragraph 6.c(2) or receipt of an arbitrator decision under Paragraph 6.c(4), if the Company fails to perform the Excess Maintenance in accordance with the specified time period, then the Township may, in its discretion, take any or all of the following actions:
- a. Rescind the Company's permission to perform the Excess Maintenance, and to move Over-Posted-Weight Vehicles over and across the Bonded Roadways until the Excess Maintenance is satisfactorily performed or costs thereof are paid;
 - b. Maintain or restore the Bonded Roadways with the Company reimbursing the Township for all costs so incurred;
 - c. Proceed against the security provided pursuant to Paragraph 3 hereof; or
 - d. Terminate this Agreement by delivering written notice of termination to the Company.
8. The Township Supervisors shall solely and reasonably set the times, standards and specifications for repair and/or replacement of any damaged Bonded Roadway or portion thereof, subject to the provisions of Paragraph 6.a and the limitations provided in Paragraph 6.b.
9. TERM. This Agreement shall extend for a period of five (5) years from the date set forth above, and shall automatically extend on a year to year basis subject to the following provisions:

- a. Company continues to be engaged in the construction and/or operation of authorized uses and/or use Bonded Roadways for Over-Posted-Weight Vehicles following the original date of expiration.
 - b. Company must be in compliance with this Agreement and any subsequent Amendments, involving use, maintenance, and repair of Township roads.
10. RELEASE OF BOND. The Township shall authorize the release of any bond held hereunder within sixty (60) days following the date which the Company notifies the Township that it will no longer be traversing the Bonded Roadways with Over-Posted-Weight Vehicles, and has completed all Excess Maintenance to the satisfaction of the Township, less any amounts payable to the Township after Township performs an inspection of the Bonded Roadways.
11. TERMINATION. As long as the Company has project sites under construction or in operation in the Township, termination of this Agreement requires written consent of both the Township and the Company. As soon as possible after receipt of notice of termination by either party, the Township and the Company shall meet to determine compliance with all the terms of this Agreement. If at said meeting the Company has completed all necessary Excess Maintenance required hereunder in accordance with the terms of this Agreement, then this Agreement shall be terminated and of no further force or effect and all security delivered to the Township by the Company shall be released to the Company. If at said time the Company has not completed all necessary Excess Maintenance required hereunder in accordance with the terms of this Agreement, then, at the Company's option, the Company or the Township shall complete any required Excess Maintenance in accordance with the terms of this Agreement and, upon the completion of such Excess Maintenance and, if applicable, upon reimbursement to the Township of any costs incurred by the Township in connection with the performance of such Excess Maintenance, this Agreement shall be terminated and of no further force or effect and all security delivered to the Township by the User shall be released to the Company.
12. NOTICES. With the exception of notice required under Paragraph 4 above, all notices or communications under this Agreement shall be in writing and shall be sent to the parties at the following addresses:

To Township: Union Township
 3904 Finleyville-Elrama Road
 Finleyville, PA 15332

To Company: _____

Attn: _____

With a copy to: Gary L. Sweat, Esquire
 Solicitor
 23 East Beau Street, Washington, PA 15301
 Phone: 724-222-5150

Fax: 724-222-5009

Each notice or other communication shall be (a) delivered by hand (with written confirmation of receipt) or sent by a nationally recognized overnight delivery service (receipt requested) or (b) sent certified or registered mail, return receipt requested, postage prepaid, addressed to the address of the applicable party set forth in this Paragraph (or to such other address as such party may designate in writing from time to time), and the actual date of receipt shall determine the time at which notice was given.

13. NON-WAIVER. The failure by the Township to require performance by the Company of any provision of this Agreement shall not affect the Township's right to require performance any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default, or a waiver of the provision itself.
14. SEVERABILITY. If any provisions of this Agreement are held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.
15. MERGER AND INTERGRATION; ASSIGNMENT. This Agreement and the Exhibits attached hereto, if any, constitute the entire Agreement between the parties and may not be modified or amended except in writing signed by both parties. Neither party may transfer or assign its rights and obligations hereunder without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the Company shall have the right to assign or transfer this Agreement to any entity affiliated with the Company, or pursuant to the sale or financing of the Company's business and/or assets, in which case the Township's consent shall not be required. CHOICE OF LAW AND FORUM. This Agreement shall be interpreted under the laws of the Commonwealth of Pennsylvania, without regard to its conflicts of law rules. Any litigation under this Agreement shall be resolved in the trial courts of the Commonwealth of Pennsylvania.

-SIGNATURE PAGE TO FOLLOW-

IN WITNESS WHEREOF with the intent to be legally bound hereby, the parties hereto have set their hands and seals the day and year first above written.

ATTEST

By: _____

Name: _____

Title: _____

)

) SS:

COUNTY OF _____

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On this, the _____ day of _____, _____, before me, a Notary Public, the _____ undersigned officer, _____ personally appeared _____ as _____ of _____ known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My Commission Expires:

EXHIBIT A
BONDED ROADWAYS
(COMPANY TO INCLUDE A LIST and/or MAP HIGHLIGHTING THE
PORTION(S) OF THE BONDED ROAD(S))

EXHIBIT B
COVERED CONTRACTORS/SUBCONTRACTORS
(COMPANY TO INCLUDE A LIST OF CONTRACTORS COVERED
UNDER THIS AGREEMENT)