

**MODEL ROADWAY USE AND MAINTENANCE AGREEMENT**  
**FOR HORIZONTAL DRILLING PROJECTS AND INFRASTRUCTURE**

**THIS AGREEMENT** is entered into at \_\_\_\_\_, Ohio, by and between \_\_\_\_\_ COUNTY / TOWNSHIP \_\_\_\_\_, a political subdivision, whose mailing address is \_\_\_\_\_ (hereafter "Authority"), and \_\_\_\_\_, whose address is \_\_\_\_\_ (Hereafter "Operator"), and shall be as follows:

**RECITALS**

**WHEREAS**, Authority has control of the several county/township roads within \_\_\_\_\_ Township, in \_\_\_\_\_ County, Ohio and is required by law to keep such roads in good repair; and

**WHEREAS**, Operator is the operator of certain oil and gas leasehold, and intends to develop and operate the [DEVELOPMENT SITE NAME], including the equipment, facilities, impoundments, and pipelines necessary for the operation of the [DEVELOPMENT SITE NAME] (hereafter collectively referred to as "oil and gas development site") located in \_\_\_\_\_ Township, in \_\_\_\_\_ County, Ohio; and

**WHEREAS**, Operator intends to commence use of \_\_\_\_\_ miles of CR/TR ( \_\_\_\_\_ ) and \_\_\_\_\_ miles of CR/TR ( \_\_\_\_\_ ) for the purpose of ingress to and egress from the [DEVELOPMENT SITE NAME], for traffic necessary for the purpose of constructing sites and drilling horizontal oil and gas wells, and completion operations at the [DEVELOPMENT SITE NAME] (hereinafter referred to collectively as "Drilling Activity"); and

**WHEREAS**, Authority and Operator desire to enter into an agreement, providing for the repair and maintenance of said roads and bridges thereon as a result of such Drilling Activity; and

**WHEREAS**, if any county or township roads contemplated herein contain any railroad crossings, Section 4 below shall apply;

**NOW THEREFORE**, in consideration of the good faith performance by each party of the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Operator agrees to the maintenance and repair of said roads and bridges, to their pre-Drilling Activity condition or as modified pursuant to Appendix A, thereon for any damages thereto, as a result of Drilling Activity related to such sites.

**FURTHER**, Operator shall also provide for the strengthening and upgrading of the roads and bridges if mutually agreed to be necessary, prior to or during any Drilling Activity. The areas and structures required to be strengthened and/or upgraded shall be determined by an engineer provided by the Operator with the approval of the County Engineer to be provided within thirty (30) days of a written request submitted by the Operator. Operator's engineer shall provide a written report to the County detailing the condition of the roads and appurtenances covered under this Agreement along with any recommendations, if necessary.

**BOTH PARTIES FURTHER AGREE** to the following additional terms and conditions:

1. The portion of CR \_\_\_\_\_, to be utilized by Operator hereunder, is that exclusive portion beginning at \_\_\_\_\_ *(route description here ending at the intersection of CR/TR)*. It is understood and agreed that the Operator shall not utilize any of the remainder of CR/TR ( \_\_\_\_\_ ) for any of its Drilling Activities hereunder.
  
2. The portion of CR/TR ( \_\_\_\_\_ ), to be utilized by Operator hereunder, is that exclusive portion beginning at \_\_\_\_\_ *(the intersection of CR/TR ending at the oil and gas development site)* wherein Operator's site are to be constructed herein. It is understood and agreed that the Operator shall not utilize any of the remainder of CR/TR ( \_\_\_\_\_ ) for any of its Drilling Activities hereunder.
  
3. Those portions of said roads and bridges and their appurtenances to be used by Operator hereunder and mutually agreed to require necessary strengthening and/or upgrading by the Operator's Engineer in conjunction with the County Engineer, shall be strengthened and/or upgraded to a condition sufficient and adequate to sustain the anticipated Drilling Activity by Operator, at Operator's sole expense, and with the advice and approval of the County Engineer as detailed in Appendix A. Thereafter, such roads shall be maintained by Operator for damages caused by Operator's Drilling Activity, at Operator's sole expense, throughout the term of this Agreement, to a level consistent with the condition of such roads at the commencement of its use by the Operator hereunder or as modified pursuant to Appendix A, as determined by the Operator's engineer and the \_\_\_\_\_ County Engineer. The maintenance of aforementioned roads includes the use of a commercially recognized dust palliative to control the airborne dust created and/or contributed to by the Operator or the Operator's contractors and or agents.
  
4. With respect to all repairs to and maintenance of roads and bridges undertaken pursuant to this Agreement with the Authority, Operator shall itself and shall require all its contractors and subcontractors to (a) pay prevailing wages, in amounts determined according to Ohio's Prevailing Wage Law, R.C. 4115.03 through 4115.16 and O.A.C. 4101:9-4-02 through 4101:9-4-23; (b) generate and submit certified payroll reports under R.C. 4115.071(C) to the Authority's Prevailing Wage Coordinator; and (c) provide all employees with wage notification forms under R.C. 4115.05 and submit executed copies to the Authority's Prevailing Wage Coordinator; and (d) otherwise strictly comply with Ohio's Prevailing Wage Law, R.C. 4115.03 through 4115.16 and O.A.C. 4101:9-4-02 through 4101:9-4-23. To the extent the foregoing provision is deemed unlawful or unenforceable by a court of law, then with respect to all repairs to and maintenance of roads and bridges undertaken pursuant to this Agreement with the Authority, Operator shall itself and shall require all its contractors and subcontractors to pay the hourly rates of the applicable trades as established in local collective bargaining agreements; certify each has paid said rates; and indicate weekly in writing to the Authority for each payroll period: the hourly rate paid to each employee, the total amount paid to each employee, any fringe contributions paid to (or on behalf of) employees (in addition to wages), and any deductions made from employees' wages.
  
5. The Operator shall give notice to the railroad at least thirty (30) days prior to any known Drilling Activity utilizing a railroad crossing so that a joint inspection can determine the condition of the crossing. Additionally, the Operator shall coordinate all work needing to be performed at a railroad crossing with the railroad company at least thirty (30) days prior to starting work on a railroad crossing. If the railroad company fails to respond to the Operator's notice of work needing to be performed at a railroad crossing within thirty (30) days of receipt of such notice, then the railroad waives all rights it has under this agreement with respect to the work specified in the notice. Work performed at a railroad crossing may include a separate agreement at the railroad's discretion. The Authority shall not be liable for any incidents arising out of or related to work performed at any railroad

crossing pursuant to this Agreement or any separate Agreement between the Operator and the railroad company, or lack of notification by Operator.

6. Either the Operator or the Authority may terminate this Agreement with just cause following at least thirty (30) days written notice to the other of its intent to terminate. As soon as possible after receipt of such notice, the Authority and the Operator shall inspect said roads and bridges and their appurtenances. Following final inspection, the parties shall meet, and all restoration resulting from Operator's Drilling Activity shall be identified and thereafter completed by the Operator, at Operator's sole expense. Following completion of all restoration work, this Agreement shall be terminated and of no further force or effect.

7. Unless excepted for the reasons provided below, prior to the Drilling Activity on the Route, Operator shall post a bond or other surety in a form satisfactory to the Authority to cover the costs of any damage caused by the Drilling Activity on the Route by Operator. The amount of the bond or surety shall be in an amount no greater than \_\_\_\_\_ & 00/100 DOLLARS (\$\_\_\_\_\_.00) per mile. However, no such bond or surety shall be required of Operator, if any of the following conditions are satisfied:

- a. A geotechnical analysis of the Route provided by the Operator and mutually accepted by the Authority and Operator exhibits that the Route's condition is sufficient for the expected traffic necessary for the development of the oil and gas development site.
- b. The Operator provides a geotechnical analysis of the Route, mutually accepted by the Authority and Operator, and based on that analysis, an Operator and Authority-approved maintenance plan for the Route or an Operator and Authority-approved preventative repair plan of the Route is attached to the Agreement as an addendum.
- c. The Operator has provided a sufficient bond or surety, mutually accepted by the Authority and Operator, in favor of the Authority for road usage by the Operator within the Authority's oversight.

8. All motor vehicles to be utilized by Operator hereunder, whether owned by Operator or others, shall comply with all legal size, load and weight limits in accordance with State Law, and all non-conforming vehicles shall require the proper local permit.

9. Operator shall furnish the Authority with a written Letter of Authority, setting forth all necessary contact information, including a twenty four (24) hour emergency contact number, for the authorized local representative of the Operator, and such information shall be maintained and kept current at all times concerned hereunder.

10. If Authority determines that any additional traffic signage is needed, or desired, as a result of this Agreement and in the interests of safety, then Operator shall provide for such signage at Operator's sole expense. In the event that any other safety concerns should arise during the course of this Agreement, Operator and Authority agree that they will mutually discuss such concerns and reach a resolution satisfactory to all concerned.

11. Operator shall protect, save, indemnify, and hold the Authority, its officials and employees harmless from any liability, claims, damages, penalties, charges, or costs which may arise or be claimed as a result of any violations of any laws or ordinances, or any loss, damage or expense, including injury or death to any person, from any cause or causes from Drilling Activity whatsoever.

12. Operator assumes all liability for subcontractors and or agents working on Operator's behalf.

13. This Agreement shall be binding upon Operator and Authority, and their respective successors and assigns.

14. In any event that any clause, provision or remedy in this Agreement shall, for any reason, be deemed invalid or unenforceable, the remaining clauses and provisions shall not be affected, impaired or invalidated and shall remain in full force and effect.

15. Agreement shall be governed by the laws of the State of Ohio.

16. This Agreement shall be in effect on \_\_\_\_\_, 201\_\_\_\_\_.

Executed in duplicate on the dates set forth below.

**Authority**

**Operator**

By: \_\_\_\_\_  
Commissioner/Trustee

By: \_\_\_\_\_

By: \_\_\_\_\_  
Commissioner/Trustee

Printed name: \_\_\_\_\_

By: \_\_\_\_\_  
Commissioner/Trustee

Company Name: \_\_\_\_\_

By: \_\_\_\_\_  
County Engineer

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to Form: \_\_\_\_\_  
County Prosecutor

# SAMPLE

## Appendix A

Operator shall be required to:

- 1) Provide for videotaping of the road prior to Drilling Activity.
- 2) Provide an engineering report detailing pavement thickness and composition, base thickness and composition, and subgrade composition, as and if reasonably determinable. Engineering report to also provide an analysis of conditions along with a recommendation, if mutually agreed to be necessary, for upgrading roadway to handle anticipated Drilling Activity.
- 3) Upgrade CR/TR in accordance with the attached plans and/or county standards, dated 10/10/11.
- 4) Maintain CR/TR during Drilling Activities for those damages caused by said Drilling Activities.
- 5) Reimburse the Authority for minor maintenance of the road during the hauling period (or provide for a contractor to perform minor maintenance on 24 hour notice) for damages caused by Drilling Activities.

Authority shall:

- 1) Provide for minor maintenance of the road during the Drilling Activity for damages not caused by said Drilling Activity. For any work that is to be reimbursed by the Operator to the Authority, Authority agrees to give 24 hour prior notice to the Operator (or agrees to notify Operator when maintenance is needed).
- 2) Provide for maintenance of the roadway and bridges for damages not caused by the Drilling Activity at the Authority's cost and expense, including snow/ice control, mowing, etc.

*The intent of this Appendix A is to include anything agreed to by the parties –If the Authority wants plans prior to construction, then include – etc., etc. If the Authority doesn't want anything in Appendix A, then that is their option.*

*The parties could also address the scenario where more than one Operator is involved on the same Route in this appendix.*