

Excerpt from
Regular Meeting of the Owego Town Board

January 18, 2011
7:00 p.m.
2354 State Route 434
Apalachin, NY

8. Road Use Agreement

Motion by Morgan, seconded by Moulton and unanimously carried, the generic road use agreement was approved:

SAMPLE

ROAD USE AGREEMENT

This Road Use Agreement ("Agreement") is entered into this day of ,2011 between Company and the Town of Owego ("Town").

RECITALS

WHEREAS, Company is a private corporation engaged in natural gas exploration and production, including, but not limited to, the drilling and completion of wells and pipeline construction;

WHEREAS, Company intends to engage in natural gas exploration, development and production, which may include, but is not necessarily limited to, the drilling and completion of natural gas wells (hereinafter, "Natural Gas Well") and/or the construction of natural gas production pipelines (hereinafter, "Natural Gas Line"), and/or ancillary activities (collectively, "Natural Gas Activities");

WHEREAS, Company intends to engage in Natural Gas Activities at various locations in the Town;

WHEREAS, Company will conduct all Natural Gas Activities pursuant to New York State Department of Environmental Conservation Permits to Drill, Deepen, Plug Back or Convert a Well, New York State Public Service Commission Certificates of Environmental Compatibility and Public Need Certificate, or, if below the jurisdictional thresholds of the Public Service Commission, pursuant to other permits and authorizations;

WHEREAS, as part of its Natural Gas Activities, Company will necessarily need to traverse Town highways, roads, bridges, culverts, and the related fee owned lands, rightsof- way or easements owned or maintained by the Town (collectively, "Road" or "Roads") with heavy machinery, including,

but not limited to trucks, construction machinery and equipment, and other related items;(hereinafter, "Road Use Activities");

WHEREAS Company will also necessarily need to conduct certain construction activities and locate Natural Gas Wells, Natural Gas Lines and/or related appurtenances within the Town, some of which may involve construction activities within Roads and Road rights-of-way (hereinafter, "Construction Activities");

WHEREAS, Town seeks guarantees and assurances from Company that Company will pay and/or otherwise indemnify the Town for any distress or damage to Roads caused by Road Use Activities and/or Construction Activities; and

WHEREAS, Company and Town have discussed this matter and come to a mutual understanding, which the parties desire to memorialize as set forth herein, which will provide for Company's responsibility for any damage to Roads caused by Road Use Activities and/or Construction Activities.

NOW THEREFORE, in consideration of these promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and the Town, each intending to be legally bound, agree as follows:

1. PERMISSIBLE ACTIVITIES. Company shall be permitted to engage in Road Use Activities and/or Construction Activities that will involve the use of Town Road(s).

2. COMPANY RESPONSIBILITIES.

- a. Company shall be responsible for obtaining any approval(s), permit(s) and/or order(s), including renewals thereof, which are or may be required by governing law. Until such approval(s), permit(s) and/or order(s) are obtained, Company shall not engage in any Road Use Activities and/or Construction Activities unless authorized by the Town.
- b. To the extent that Construction Activities involve the installation of permanent facilities below Roads, digging of open trenches or drilling of subsurface borings, Company shall be responsible for obtaining all consents, easements or rights-of-way from Town and/or appropriate property owners to authorize the installation of such facilities and activities prior to the commencement of said Construction Activities.
- c. Company agrees that it will be responsible for ensuring that all debris, garbage and waste on Roads related to Road Use Activities and/or Construction Activities are disposed of in accordance with governing law.

- d. Company shall be responsible for paying the cost of any necessary road improvements, maintenance and/or repair work as determined by and in accordance with the terms set forth in this Agreement.**
- e. Company shall obtain a 911 address for each and every Natural Gas Well and maintain each 911 address during the pendency of any Road Use Activities and/or Construction Activities associated with the Natural Gas Well.**
- f. Company's responsibilities as set forth herein shall extend to its employees, officers, directors, members, managers, partners and/or other principals along with Company's contractors, subcontractors, and independent haulers. A failure of any of Company's employees, officers, directors, members, manager's partners and/or other principals along with the Company's agents, licensees, vendors, contractors, subcontractors, and independent haulers to comply with the terms and conditions of this agreement shall constitute a default by Company regardless of any intent or knowledge on behalf of the Company and regardless of any defense Company may have at law, in contract or in equity against any such person or entity;**

3. ROAD ROUTES.

a. For each Natural Gas Activity, prior to the commencement of Road Use Activities and/or Construction Activities, Company will provide the Town with a proposed traffic route, including a list of the Roads and Bridges that will be traversed as part of Road Use Activities and/or Construction Activities.

b. As soon as practicable thereafter, but prior to the commencement of any Road Use Activities and/or Construction Activities, the Town shall notify Company of any objections to Company's proposed traffic route and list of Roads and Bridges.

c. Factors that may be used in evaluating a proposed traffic route include:

- i. The condition of each proposed road to be traversed.**
- ii. The condition of any bridge to be crossed.**
- iii. The population potentially impacted by the route.**
- iv. Company's operational needs, taking into consideration surface rights for ingress and egress from Natural Gas Activities.**

d. If the Parties cannot resolve said objections, the Parties shall meet to resolve any dispute and if they are unable to do so, the final decision regarding the traffic route shall be that of the Town Highway Superintendent.

e. The final traffic route and list of Road(s) and Bridge(s) for each Natural Gas Activity will be deemed a supplemental exhibit to this Agreement, incorporated herein and made a part hereof as Exhibit A (hereinafter,

"Traffic Route"), and shall serve as the basis for the required bonding set forth herein.

f. In the event that Company deviates from a final Traffic Route without prior written consent from the Town, the Town may request and upon such request, the Company shall cease and desist from such deviation. Notwithstanding the foregoing, Company reserves the right to deviate solely as necessary in an emergency situation and for only so long as necessitated by the emergency situation. However, the Company shall continue to be obligated to immediately notify the Town of such emergency situation and the Company shall be liable for any and all damages to the Town for the repair of the roads and bridges used during the emergency situation in accordance with this agreement.

4. ROAD SURVEYS.

- a. Immediately prior to the commencement of Road Use Activities and/or Construction Activities for a particular Natural Gas Activity, Company will provide pre-activity road borings at a frequency of bores per mile and will prepare or cause to be prepared a pre-activity video road and bridge survey of the Road(s) identified in the Traffic Route, including any amended traffic route. A copy of the preactivity video road and bridge survey shall be made available to the Town and the borings shall be delivered to and preserved by the Town to be analyzed at Company's cost in the event a dispute arises pursuant to paragraph 6 herein.
- b. Company shall have the option to conduct a seismic analysis of the Traffic Route, including any amended Traffic Route, in lieu of pre-activity road borings. If Company opts to conduct pre-activity seismic analysis, a copy of the data generated pursuant to such analysis shall be provided to the Town.
- c. Immediately following the completion of all Road Activities and/or Construction Activities for a particular Natural Gas Activity, Company will notify the Town that the Road Activities and/or Construction Activities have been completed, and at the same time, prepare or cause to be prepared a post-activity video road and bridge survey of the Road(s) identified in the Traffic Route, including any amended Traffic Route, and make a copy of the post-activity video road and bridge survey available to the Town.
- d. Company shall bear the costs of all road and bridge surveys, borings or seismic analyses as required under this Paragraph.

5. ROAD IMPROVEMENTS

- a. If, upon receipt of the pre-activity road survey required in accordance with Paragraph 4 herein or at any other time during the pendency of this Agreement, the Town determines that a proposed Road Route includes roads and bridges which cannot, due to their

- condition, (including but not limited to seasonal or dirt roads) withstand Road Use Activities and/or Construction Activities, the Town shall immediately notify Company of its determination in accordance with Paragraph 11 of this Agreement. If the Town makes such determination, any costs associated with the Town's employment of a structural engineer(s) shall be borne by the Company.
- b. If the Town, in its discretion, determines that a Road or Bridge cannot, due to its condition, withstand Road Use Activities and/or Construction Activities, Company shall have the option of (1) modifying its Traffic Route, or (2) causing any necessary improvements to be made to the Road and/or Bridge by either reimbursing the Town the costs and expenses of the necessary improvement(s) or directly subcontracting with a contractor approved by the Town to perform Road and/or Bridge improvements.
 - c. Should Company elect to have the Town make or cause to be made any necessary improvement(s) to a Road and/or Bridge, the Town shall submit a written invoice to Company detailing the costs, fees and/or expenses incurred or to be incurred by the Town to perform the necessary improvement(s) (hereinafter, "Improvement Invoice").
 - d. Company agrees to pay the associated costs of any necessary Road and/or Bridge improvement(s) incurred within thirty (30) days upon receipt of an Improvement Invoice unless Company reasonably disputes the Improvement Invoice. Where Company disputes only a portion of an Improvement Invoice, Company agrees to pay the undisputed amount within thirty (30) days upon receipt of an Improvement Invoice.
 - e. If Company disputes the Improvement Invoice, then Company shall notify the Town in writing that a dispute exists (hereinafter, "Improvement Dispute"). The Parties shall then engage in dispute resolution as set forth in Paragraph 8 herein.

6. ROAD DAMAGE.

- a. Damage may include but not necessarily be limited to accelerated deterioration, cracking, imprinting, pitting, tracking, buckling of asphalt and road base, (regardless of its type) damage to culverts, bridges and/or drainage facilities (hereinafter, "Damage").
- b. Within thirty (30) days following the completion of Road Use Activities and/or Construction Activities and notification to the Town by Company, the Town must notify Company in accordance with Paragraph 11 of this Agreement if they believe that Damage has occurred to the Roads and/or Bridges listed on the Traffic Route Exhibit as a direct result of Company's Road Use Activities and/or Construction Activities.

- c. Within fifteen (15) days of receipt of a claim of Damage from the Town, Company will notify the Town in writing of its agreement or disagreement with the claim.
- d. If Company agrees that Damage has occurred as a result of Road Use Activities and/or Construction Activities, Company shall have the option of causing any necessary repairs to be made by either (1) reimbursing the Town the costs and expenses of the necessary repair(s), or (2) directly subcontracting with a contractor approved by the Town to perform Road and/or bridge repair(s).
- e. Should Company elect to have the Town make or cause to be made any necessary repair(s) to a Road and/or Bridge, the Town shall submit a written invoice to Company detailing the costs, fees and/or expenses incurred or to be incurred by the Town to perform the necessary repair(s) (hereinafter, "Damage Invoice").
- f. Company agrees to pay the associated costs of any necessary Road repair(s) incurred within thirty (30) days upon receipt of a Damage Invoice unless Company reasonably disputes the Damage Invoice. Where Company disputes only a portion of a Damage Invoice, Company agrees to pay the undisputed amount within thirty (30) days upon receipt of a Damage Invoice.
- g. If Company does not agree that all or part of the Damage alleged by the Town occurred as a result of Road Use Activities and/or Construction Activities or disputes the Damage Invoice, then Company shall notify the Town in writing that a dispute exists (hereinafter, "Damage Dispute"). In that event Company shall, within seven (7) days of the Town's receipt of written dispute notice, provide post activity road borings at a frequency of bores per mile on the roads in dispute and also cause to be analyzed the preactivity borings preserved by the Town as set forth in paragraph 4 and the post activity borings as set forth herein. Company shall have the option to conduct seismic analysis of the Traffic Route, including any amended Traffic Route, in lieu of post activity road borings. If Company opts to conduct post-activity seismic analysis, a copy of the data generated pursuant to such analysis shall be provided to the Town.
- h. Company shall bear the cost of all borings and analyses under this paragraph.
- i. If after review of either the pre and post boring analyses or seismic analyses Company continues to dispute that all or part of the damage alleged by the Town occurred as a result of Road Use Activities and/or Construction Activities, and continues to dispute the Damage Invoice, the Parties shall then engage in dispute resolution as set forth in Paragraph 8 herein.

7. EMERGENCY ROAD DAMAGE.

- a. If the Town, in its discretion determines that a Road and/or Bridge has been damaged during the pendency of Road Use Activities and/or Construction Activities and that such Damage is a danger to the public (hereinafter, "Emergency Damage Dispute"), then the Town shall immediately notify Company of its determination in accordance with Paragraph 11 of this Agreement. If the Town makes such determination, any costs associated with the Town's employment of a structural engineer(s) shall be borne by Company.
- b. Within forty-eight (48) hours of receipt of an allegation of Emergency Damage from the Town, Company will notify the Town in writing of its agreement or disagreement with the claim.
- c. If Company agrees that Emergency Damage has occurred as a result of its Road Use Activities and/or Construction Activities, Company shall have the option of causing any necessary repairs to be made by either (1) reimbursing the Town the costs and expenses of the necessary repair(s), or (2) directly subcontracting with a contractor approved by the Town to perform Road and/or Bridge repair(s).
- d. Should Company elect to have the Town make or cause to be made any necessary repair(s) to a Road and/or Bridge, the Town shall submit a written invoice to Company detailing the costs, fees and/or expenses incurred or to be incurred by the Town to perform the necessary Road repair(s) (hereinafter, "Emergency Damage Invoice").
- e. Company agrees to pay the associated costs of any necessary Road and/or Bridge repairs incurred within thirty (30) days upon receipt of an Emergency Damage Invoice unless Company reasonably disputes the Emergency Damage Invoice. Where Company disputes only a portion of an Emergency Damage Invoice, Company agrees to pay the undisputed amount within thirty (30) days upon receipt of an Emergency Damage Invoice.
- f. If Company does not agree that all or part of the Emergency Damage alleged by the Town occurred as a result of Road Use Activities and/or Construction Activities or disputes the Emergency Damage Invoice, then Company shall notify the Town in writing that a dispute exists (hereinafter, "Emergency Damage Dispute"). The Parties shall then engage in dispute resolution as set forth in Paragraph 8 herein.

8. DISPUTE RESOLUTION.

- a. In the event of an Improvement, Damage or Emergency Damage Dispute (hereinafter, collectively "Dispute"), Company and the Town agree to submit to non-binding mediation with a neutral mediator approved by all parties to the Dispute during which each party will have their authorized representatives attempt to negotiate a resolution of the Dispute for a period of thirty (30) days or seven (7) days if expedited.

- b. Should the Dispute not be resolved by the mediation, in order to limit the cost and time involved in resolving the Dispute, Company and the Town agree that the Dispute will be settled by binding arbitration administered by the American Arbitration Association in accordance with its applicable rules pertaining to the resolution of commercial disputes.
- c. In the event arbitration is necessary, a panel of arbitrators will hear and decide the dispute. Each party to the Dispute will select an arbitrator and the arbitrators selected by the parties will, within 14 days of their appointment, select an additional, neutral arbitrator. If the arbitrators selected by the parties are unable or fail to agree upon an additional arbitrator, the American Arbitration Association shall select the additional arbitrator. The panel of arbitrators shall consist of individuals with no significant relationship with any of the parties.
- d. Arbitration proceedings and submittals shall be held In Tioga County unless otherwise agreed upon by the parties.

9. FINANCIAL SECURITY. Prior to the commencement of any road and/or bridge use, Company shall obtain and deliver to the Town a Bond in the amount of \$_____, which amount is calculated based upon the truck route calculated by the mileage and types of roads and bridges set forth in Exhibit _____. Such Bond shall be executed by a reliable bonding or insurance institution authorized to do business in the State of New York and acceptable to the Town and shall be attached to this agreement as Addendum _____.

OR

- a. **Irrevocable Standby Letter of Credit.** Prior to the commencement of any activity under this agreement, Company shall obtain and deliver to the Town an irrevocable standby letter of credit (hereinafter "LC") in the amount of \$_____ drawn on a financial institution authorized to do business in New York State, agreeable to the Town and acceptable as to form by the Town Attorney of the Town. In the event the LC contains a stated termination date, then Company shall renew or obtain a new LC in the agreed upon amount no later than 30 days prior to the stated termination date. It is the intention of the parties that an LC for the stated amount remain in effect throughout the term of this agreement. In addition, should Company convey any or all of its interest in this agreement, then the new owner will obtain a standby letter of credit to comply with this agreement. In the event the Town draws on the letter of credit such that its value falls below \$_____, then Company shall immediately renew the LC to bring it back up to \$_____. The LC is to guarantee reimbursement to the Town for all labor, material and equipment expenses the Town may incur in repairing any road damage arising from or related to natural gas activities and/or road construction if Company fails to

comply with its duties and responsibilities set forth in this agreement. Such LC shall be attached to this agreement as Addendum _____.

- b. The bond shall be effective prior to any road use activities and shall remain in full force and effect for at least a period of six (6) months following the termination of road use activities.
- c. Company shall be listed as principal with the instrument benefiting the Town, as obligee, and shall be conditioned that the Company will comply with the terms and conditions of this agreement. The original bond shall be delivered to the Town Supervisor.
- d. The Town shall be authorized to demand payment from and against any bond to recover any amounts due from the Company for repairs to the roads and/or bridges. Upon receipt of the monies, the Town will proceed with completing the required reparations. If the Issuer of the bond refuses to honor any draft by the Town, then Company shall cease all operations until such time as it has complied or abated the default. Nothing in this subparagraph will prevent the Town from proceeding by way of civil action to obtain compliance and abate the default.
- e. In the event the Bond contains a stated termination date, then Company shall renew or obtain a new Bond in the agreed upon amount no later than thirty (30) days prior to the stated termination date. It is the intention of the parties that the Bond for the stated amount remain in effect throughout the term of this agreement. In addition, should Company convey any or all of its interest in this agreement, then the new owner will obtain a Bond to comply with this agreement.
- f. The Bond is to guarantee reimbursement to the Town for all labor, material and equipment expenses the Town may incur in repairing any road or bridge damage arising from or related to natural gas activities and/or road construction if Company fails to comply with its duties and responsibilities set forth in this agreement.
- g. The cancellation of any bond will not release Company from its obligation to meet all the requirements of this agreement.
- h. In the event the cost of any such reparation is less than \$25,000, such amount may be deposited by Company in an escrow account for the Town to draw upon to complete repairs.

10. INDEMNIFICATION AND INSURANCE. Company, at its own cost and expense, agrees to the insurance, indemnification and general terms and conditions set forth herein.

a. **Certificates of Insurance.** Company shall present to the Town Certificates of Insurance evidencing the acquisition of liability insurance coverage naming the Town as additional insured, on a primary non-contributory basis, in the amount of at least: Death/Bodily Injury: \$1,000,000 per person; \$2,000,000 aggregate. Property Damage: \$1,000,000

- b. Said insurance shall be maintained throughout the term of the agreement and the aforementioned certificate shall provide for thirty (30) days notice to the Town prior to cancellation of coverage.
- c. To the extent permitted by law, Company agrees to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town and its officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, any and all claims arising out of this road use agreement. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees and expert witness fees are included in those costs that are recoverable by the Town.

11. NOTICE.

- a. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given (1) upon hand delivery, or (2) upon the third day following mailing via the U.S. Postal Service, or (3) on the first day following mailing via a nationally registered United States overnight courier service, or (4) on the day when sent by electronic mail or facsimile transmission if additional notice is also given under (1), (2), or (3) above within three (3) business days thereafter.
- b. For purposes of this Agreement only, any notice to the Parties shall be directed to the Party as set forth below:
For Company:
[INSERT]
For Town:
[INSERT]

12. CAPTIONS AND HEADINGS. Captions and headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the scope or intent of this Agreement nor in any way affect this Agreement.

13. MODIFICATIONS. This Agreement cannot be changed orally, but only by agreement in writing signed by the party against whom enforcement of the change, modification or discharge is sought or by its duly authorized agent.

14. SEVERABILITY; NO WAIVER. If any provision of this Agreement, or any portion of any provision of this Agreement, is declared null and void, such provision or such portion of a provision shall be considered separate and

apart from the remainder of this Agreement, which shall remain in full force and effect. The waiver by any party hereto of a breach or violation of any term or provision of this agreement shall not operate or be construed as a waiver of any subsequent breach or violation.

15. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the State of New York.

16. BINDING EFFECT. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns.

17. ASSIGNMENT. The rights of either Party under this Agreement may be assigned or conveyed in whole or in part from time to time with prior written consent of the other Parties, which shall not be unreasonably delayed, conditioned or withheld. All assignments and conveyances shall be subject to this Agreement.

18. ENTIRE AGREEMENT. The entire agreement of the Parties is contained in this Agreement. No promises, inducements or considerations have been offered or accepted except as herein set forth. This Agreement supersedes any prior oral or written agreements, understandings, discussions, negotiations, offers of judgment or statements concerning the subject matter thereof. The parties hereto agree to execute and deliver such other documents and to perform such other acts as may, from time to time, be reasonably required to give full force and effect to the intent and purpose of this agreement.

19. COUNTERPARTS. This Agreement may be entered in counterparts, each of which will be considered an original, and all of said counterparts shall together constitute one and the same instrument which may be sufficiently evidenced by one counterpart.

20. AUTHORITY OF PARTIES. The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this Agreement. The individuals who have executed this Agreement shall provide proof of said authorization from their respective governing boards (ie. Town Board for Town and Board of Directors for Company) to all other Parties.

21. TERMINATION. This agreement may be terminated by the Town upon thirty (30) days written notice to Company upon the occurrence of any default of this agreement and/or the filing of a petition in bankruptcy by Company or by its creditors or the appointment of a receiver of all or substantially all of the assets of the Company.

22. ASSIGNMENT. Company is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this agreement or of its right, title, or interest therein, or its power to execute such agreement, to any other person or corporation.

IN WITNESS WHEREOF, Company and the Town have caused their respective, duly authorized officers to execute this Agreement under seal as of the day and year first above written.

Company

By:

Title:

Town

By:

Title: