

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made and entered into this day _____ of _____, 20____, by and between Elbert County, a Colorado County ("County") with an address of 215 Comanche Street, Kiowa, Colorado 80117 and _____ ("Operator"). The Operator and the County may be referred to individually as "Party" or collectively as "Parties."

Operator is the owner or lessee of oil and gas leasehold and/or mineral interests within unincorporated parts of the County, and, as of the time of the execution of this MOU, has the right and intent to further develop its oil and gas leasehold and/or mineral interests within said portion of the County.

The intent of this MOU is to document the terms and conditions under which Operator will develop and operate oil and gas facilities in the unincorporated portions of the County. The terms "facility" or "facilities" are defined as including oil and gas wellsites, flowlines, tank batteries, compressor stations, pits/ponds, below-grade tanks, dehydration units, vapor recovery units (VRUs), and associated roads. Locations with more than one of the above mentioned types of equipment will also be considered to be one facility. Unless indicated otherwise, the definitions of terms used in the MOU shall be the same as in the Colorado Oil and Gas Conservation Commission's ("COGCC") Rules.

NOW, THEREFORE, the Parties agree as follows:

1. Intent to Supplement COGCC Rules and Regulations. The Parties recognize that pursuant to the Colorado Oil and Gas Conservation Act, C.R.S. §§ 34-60-101, et seq. ("Act"), COGCC regulates the development and production of oil and gas resources in Colorado, and the Act authorizes COGCC to adopt statewide rules and regulations. The provisions of this MOU are intended to supplement and add to COGCC's rules and regulations. An approval of an Administrative Use by Special Review for an Oil and Gas Facility shall automatically include, as conditions of approval, all provisions of this MOU. To the extent any provisions of this MOU are in conflict with the Act or COGCC rules and regulations, the stricter standards shall govern.
2. Operator's Pit Practices within the County. Operator shall use closed-loop or modified closed-loop systems, as defined in Exhibit A, for drilling and completions under this MOU.
3. Berms. Berms shall be inspected by Operator on a weekly basis for evidence of discharge. Berms shall be inspected within 48 hours of a precipitation event.
4. Regular Meetings to Monitor and Discuss MOU Issues. The County and Operator agree to meet at minimum quarterly or more if necessary, to monitor and discuss any pertinent issues associated with oil and gas facilities within the County.
5. Water Supply and Quality. In an effort to reduce truck traffic, where feasible, the Operator will identify a water source lawfully available for industrial use, including oil and gas development, close to the facility location, to be utilized by Operator and its suppliers. Operator

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will comply with the Colorado Department of Public Health and Environment (“CDPHE”) requirements concerning water quality. Where feasible, temporary surface water lines are encouraged and will be utilized. Operator may be permitted to utilize County Road Right-of-Way, and County drainage culverts, where practical, for the laying and operation of temporary water lines on the surface. If necessary, Operator will bury temporary water lines at existing driveway and gravel road crossings, or utilize existing culverts, if available.

6. Baseline Water Quality Testing. Operator agrees to comply with the COGCC’s Statewide Groundwater Baseline Sampling and Monitoring Rule 609, as adopted or modified, in addition to any requirements provided herein. Facilities subject to the requirements of this section are oil and gas wellsites, tank batteries, compressor stations, pits/ponds, below-grade tanks and dehydration units. To the extent the requirements of Rule 609 and the requirements provided herein are in conflict, Operator shall comply with the stricter standard. Operator will make such test results available for posting on the County web site.

- a. Criteria and Protocol: Using the COGCC's criteria and protocol for sample analyses, types, orientation, and number, Operator will test up to four available water sources within a one half (½) mile radius of a new oil and gas facility.
- b. No available water sources within one half mile: If there are no available water sources located within a ½ mile radius of a new oil and gas facility, Operator will test the nearest downgradient available water source that is within a one-mile radius of the oil and gas facility.
- c. Private Water Well Owner Request: Operator agrees to conduct a baseline test of any water well requested by the owner, on a one-time basis, if such well is within one-half mile radius of a new oil and gas well or facility, or if such well is determined to be the closest downgradient well that is within a one-mile radius of the oil and gas facility. The requirement to test a well upon request does not apply if the water well has already been tested by any Operator.

7. Spill and Release Management. Any spill or release that is reportable to the COGCC shall be simultaneously reported to the County.

8. Weed Control and Management. Operator will be responsible for noxious weed control on any well pad, facility, or disturbed area, from the drilling or installation phase to the closure of the well or facility. Operator shall keep the area inside any berm area free of vegetative growth.

9. Noise. Operator shall provide and post 24-hour, 7 days per week contact information to respond all noise complaints arising from Operator's oil and gas facilities.

10. Emergency Response and Safety Plan. Operator will provide the County with an Emergency Response and Safety Plan (ERSP) to address all potential emergencies and safety hazards that may be associated with an oil and gas facility. Operator shall also provide a copy of such plan to all emergency service providers that would respond to such emergencies. A “will-

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serve” letter must be obtained from the appropriate emergency provider(s). The ERSP must be agreed upon by the Operator, the jurisdictional fire protection district and the Community and Development Services Director (“CDS Director”).

11. Erosion Control. When required, Operator agrees to apply for and obtain a Road Use and Maintenance Agreement through the Public Works Department, and satisfy all the terms and conditions of such Road Use and Maintenance Agreement, including any posting of bonds or other forms security acceptable to the County.

12. Private Roads. Operator agrees to construct (unless already constructed) and maintain an access road as Elbert County Road Standards and in consultation with Elbert County Public Works. Operator and County agree that spot inspections of access roads may be done by the County and/or appropriate emergency response agency, at such County or agency's sole risk and expense, to insure that emergency access in accordance with this section is maintained.

13. Public Roads. Operator agrees to apply for and obtain access permits for its oil and gas facilities and obtain a Road Use and Maintenance Agreement through the Public Works Department, and satisfy all the terms and conditions of such Road Use and Maintenance Agreement, including any posting of bonds.

14. Floodplain. Any disturbance within a floodplain will require the Operator to obtain a Floodplain Development Permit from the County and to comply with all the County’s legally adopted floodplain regulations.

15. Painting of Oil and Gas Facilities. Except for such facilities that must be painted a certain color for safety reasons, Operator agrees to paint all new (post-MOU) production facilities with uniform, non-contrasting, non-reflective color tones and with colors matched to, but slightly darker, than surrounding landscapes.

16. Lighting. All permanent lighting of oil and gas facilities shall be directed downward and internally. Temporary lighting shall conform to the COGCC’s Rules and Regulations.

17. County Inspections. Operator agrees to allow County access to all oil and gas facilities for inspection, provided County personnel are equipped with all appropriate personal protection equipment (PPE), the personnel comply with the Operator's other and customary safety rules and, except to the extent allowed by law, the County is responsible for all costs and expenses of such inspections. The County shall use its best efforts to provide advance notice to the Operator prior to an inspection; however, the County reserves the right in its discretion to make spot inspections or to inspect without notice in the event of an issue potentially involving an immediate risk to public safety, health or welfare or damage to the property of another. The County also reserves the right to contact the appropriate COGCC area inspector if non-compliance issues are suspected or identified as a result of construction plan reviews, reclamation plan review, field inspections, or if non-compliance issues are not resolved as soon as possible.

18. County Land Use Approvals. Operator understands and agrees that prior to the

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development or operation of any oil and gas facility in unincorporated portions of the County, that Operator must first obtain approval from the County pursuant to any validly adopted provisions in the Elbert County Zoning Regulations. Operator agrees and consents that the provisions of this MOU are to be included among any conditions of approval for the issuance of any land use approval or permit issued by the County unless, and to the extent, waived or modified in writing by the CDS Director, or waived or modified on the record at a public hearing before the Elbert County Board of County Commissioners (“BOCC”); further, the Operator understands and agrees that the provisions of this MOU shall remain conditions of such land use approval or permit regardless of the subsequent sale or other transfer of any oil and gas facilities, or interest therein, by the Operator.

19. State Oil and Gas Permit Approvals. Operator agrees to include the contents of Exhibit A of this MOU in all Forms 2 and 2A that it submits to the COGCC and consents to the inclusion of the contents of Exhibit A of this MOU as conditions of the issuance of any permit or other form of approval by the COGCC with regard to the location, development or operation of an oil and gas facility in unincorporated portions of the County, unless, and to the extent, waived or modified in writing by the CDS Director, or waived or modified on the record at a public hearing before the BOCC; further, Operator understands and agrees that the provisions of this MOU shall remain conditions of permit or other form of approval regardless of the subsequent sale or other transfer of any oil and gas facilities, or interest therein, by Operator. The County, through the LGD process described in the COGCC Rules, may request that the COGCC impose site specific conditions as part of the state permit process that are in addition to the Operator's practices or procedures agreed upon herein and the Operator may respond to same as set forth in the COGCC's Rules. If the state permit has already been approved and the County and Operator are in agreement as to any subsequent, additional conditions to be placed on the state permit, the Operator agrees to apply to the COGCC to modify the state permit by allowing such subsequent, additional conditions to be placed on the state permit.

20. Applicability. This MOU shall only apply to oil and gas facilities for which Operator has applied for permits as of the date of this MOU and to any facilities with respect to which Operator receives COGCC approval after the date of this MOU. This MOU shall not be construed to apply to oil and gas Facilities for which another operator applies for a permit even though the Operator may have an interest but is not the Operator, and does not apply to wells drilled by the Operator prior to the date of this MOU. Additional facilities may be exempted from some or all of the terms of this MOU, but only if in approved in writing by the CDS Director, or approved on the record at a public hearing before the BOCC.

21. Term. This MOU is effective upon the execution by both Parties and shall remain in effect so long as Operator, its subsidiaries, successors or assigns, are engaged in the development or operation of oil and gas facilities within the unincorporated portions of the County; provided, however, this MOU may be terminated by either Party with thirty (30) days prior written notice to the other Party. If there is a new development in state law, rules or judicial decisions that substantially affect any provision of this MOU, the Parties agree to negotiate in an attempt to update this MOU in light of same by a written amendment executed by both Parties. In the event this MOU expires or is otherwise terminated, the substantive requirements stated in this MOU shall survive and remain enforceable against the owner or operator of any oil and gas facilities

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that were permitted or otherwise approved during the term of this MOU, except to the extent waived or modified pursuant to the provisions of this MOU. Additionally, in the event this MOU expires or is otherwise terminated, no re-permitting of the wells shall be required solely as a result of the termination of this MOU.

22. Obligation of Funds. Nothing in this MOU shall commit either Party to obligate or transfer any funds to the other.

23. Force Majeure. Neither Party shall be liable for any delay or failure in performing under this MOU in the event and to the extent that the delay or failure arises out of causes beyond a Party's reasonable control, including, without limitation, war, civil commotion, act of God, strike or other stoppage (whether partial or total) of labor, or any law, decree, regulation or order of any government or governmental body (including any court or tribunal).

24. Authority to Execute MOU. Each Party represents that it has the full right and authority to enter into this MOU.

25. Governing Law. This MOU shall be governed and construed in accordance with the laws of the State of Colorado without reference to its conflict of law provisions.

26. Entire Agreement. Except as expressly set forth herein, this MOU embodies the complete agreement between the Parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements, or representations by or between the Parties, written or oral, which may have related to the subject matter hereof. No amendment to this MOU shall be effective unless in writing, signed by the Parties.

27. Third Party Beneficiaries. Except as specifically state herein, this MOU is not intended to, and does not, create any right, benefit, responsibility or obligation that may be enforced by any non-party.

28. Notices. All notices and other correspondence related to this MOU shall be in writing and shall be delivered by: (i) certified mail with return receipt, (ii) hand delivery with signature or delivery receipt provided by a third party courier service (FedEx, UPS, etc.), (iii) facsimile transmission of verification of receipt is obtained, or (iv) electronic mail (email) with return receipt, to the designated representative of the Party as indicated below. A Party may change its designated representative for notice purposes at any time by written notice to the other Party. The initial representatives of the Parties are as follows:

County: Elbert County Government
Attn: Kyle Fenner, CDS Director
P.O. Box 7
215 Comanche Street
Kiowa, Colorado 80117
Fax: 303-621-3165
kyle.fenner@elbertcounty-co.gov

Operator: (insert information)

29. Subsidiaries/Successors. The provisions of this MOU shall apply to all subsidiaries and successors-in-interest of the Operator with respect to any oil and gas facilities permitted or otherwise approved during the term of this MOU.

30. Default. If a Party defaults in the performance of an obligation under this MOU, the defaulting Party shall have ten (10) days to cure the default after receipt of written notice of such default from the non-defaulting Party, provided the defaulting Party shall be entitled to a longer cure period if the default cannot reasonably be cured within thirty (30) days and the defaulting Party commences the cure within such ten (10) day period and diligently pursues its completion; however, in the event that the default involves an issue that could have an immediate impact on public health, safety or welfare, or cause damage to property of another, the defaulting party shall immediately begin action to cure the default. Each alleged default shall be treated separately under this paragraph and notice of an alleged default shall not affect the processing of permit applications while the notice is being evaluated, contested or corrected. In the event of a default, the Parties shall be entitled to seek specific performance as well as any other available remedies.

31. Jurisdiction: Waiver of Rights. The parties acknowledge, understand and agree that this agreement shall not be used as evidence that either party has waived any rights to assert its claims concerning the validity or extent of the County's land use jurisdiction. Nothing in this agreement shall be construed as an admission regarding the existence of proper jurisdictional authority or waiver by either party of any legal right or obligation, nor shall anything be construed as a bar to either party to seek any legal remedy available to it. The Operator agrees, however, that it will not exert jurisdictional or preemption arguments with respect to the specific performance obligations contained in this MOU.

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IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by a duly authorized representative on the day and year indicated below.

Operator: (Company Name)

By: _____
Signature

Print Name

Date: _____, 20____

(Insert information for notary)

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Board of County Commissioners of Elbert County

By: _____
Signature

Print Name

Date: _____, 20____

(Insert information for notary)

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EXHIBIT A
To Be Edited for Site Specifics if Necessary

The following conditions will apply to all of Operator's newly permitted wells and facilities within unincorporated Elbert County, as of the effective date of the fully executed MOU between Elbert County and Operator. Site-specific conditions may be incorporated into the COGCC permit approval process through the LGD process as described in the COGCC's Rules, or by Sundry notice (COGCC Form 4) if there is agreement between Operator and Elbert County

1. Operator's Pit Practices within the County. Operator shall use closed-loop or modified closed-loop systems, as defined below, for drilling and completions.
 - a. Pits may ONLY be allowed if approved by the COGCC and if approval is also obtained from the County through the Special Use by Review process for permitting major oil & gas facility. This approval, if obtained, shall include an alternative risk analysis, a contingency plan with test-based thresholds and identification of site-specific impacts.
 - b. Flare, emergency, plugging, and work-over pits that are approved by COGCC are allowed without prior County approval if constructed and operated in compliance with the COGCC Rules and if located more than ¼ mile from any occupied building.
 - c. Modified closed-loop systems include oil and gas wells where air or fresh water is used to drill through the surface casing interval, defined as fifty (50) feet below the depth of the deepest aquifer, and a closed loop system is used for the remainder of the drilling and/or completion or recompletion procedures.
2. Operator will provide a Waste Water Management Plan for handling and disposing of produced water.
3. Berms. Operator will inspect berms on a weekly basis for evidence of discharge and within 48 hours of a precipitation event. Inspection and maintenance records shall be provided to the County upon request.
4. Water Supply and Quality. To reduce truck traffic, where feasible, temporary surface water lines are encouraged and will be utilized. If necessary, operator will bury temporary water lines at existing driveway and gravel road crossings, or utilize existing culverts, if available.
5. Floodplain. Any disturbance within a floodplain shall require the Operator to obtain a Floodplain Development Permit from the County and to comply with all the County's legally adopted floodplain regulations.
6. Baseline Water Quality Testing. Operator shall comply with the COGCC Statewide Groundwater Baseline Sampling and Monitoring Rule 609 and ~~as~~ thereafter as adopted or modified, in addition to any requirements provided herein. Facilities subject to the

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requirements of this section are oil and gas wellsites, tank batteries, compressor stations, pits/ponds, below-grade tanks, and dehydration units. All water quality data will be made available for posting on the County web site.

- a. Using COGCC criteria and protocol for sample analyses, types, orientation, and number, Operator shall test up to four available water sources within one half (½) mile radius of a new oil and gas facility .
 - b. If there are no available water sources located within a ½ mile radius of a new oil and gas facility, Operator shall test the nearest downgradient available water source that is within a one-mile of the oil and gas facility.
 - c. To the extent requested by an owner, Operator shall conduct a baseline test of any water sources, on a one-time basis, within one half mile radius of a new oil and gas well or facility. The requirement to test a water source upon request does not apply if the water source has already been tested.
 - d. For a location that will include only facilities where Rule 609 does not require Baseline Sampling (flow lines, tank batteries, compressor stations, pits/ponds, below grade tanks, dehydration units, and vapor recovery units) the Form 2A will refer to the MOU requirement for Baseline Sampling.
7. Spill and Release Management. Operator will submit copies of any Form 19 filed with the COGCC to the County LGD.
 8. Weed Control and Management. Operator shall be responsible for noxious weed control on any disturbed area, from the construction phase to the closure of the well or facility.
 9. Noise. Operator shall provide to the LGD 24-hour, 7 days per week contact information to respond to all noise complaints arising from Operator's oil and gas facilities. Operator will post this information on a sign at the entrance to the access road.
 10. Private Roads. Operator agrees to construct (unless already constructed) and maintain an access road according to Elbert County Road Standards and in consultation with Elbert County Public Works. Operator and County agree that spot inspections of access roads may be done by the County and/or appropriate emergency response agency, at such County or agency's sole risk and expense, to insure that emergency access in accordance with this section is maintained.
 11. Public Roads.
 - a. Requirements for the access permit may include but are not limited to the following:
 - i. Access location providing for a safe entrance/exit and utilization of main roadways to minimize impacts and conflicts with residents on local roadways;

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- ii. Haul route and traffic data;
 - iii. Pre- and Post- inspection of roadways used by Operator;
 - iv. Collateral or bond to insure that road damage caused by Operator is repaired;
 - v. Dust control (material used for dust control must be pre-approved by the County);
 - vi. Road Use and Maintenance Agreement during drilling phase; and
 - vii. Payment of all applicable filing fees.
- b. Operator also agrees to exercise reasonable efforts to minimize heavy truck traffic on local roads within residential neighborhoods between the hours of 9 p.m. and 6 a.m. and further agrees to work with the applicable school district(s) to minimize traffic conflicts with school buses.
- c. Operator agrees to obtain any legally valid and applicable oversize and/or over weight moving permit from the Public Works Department for all vehicles that exceed legal vehicle dimensions or weights as specified by the Colorado Department of Transportation.
12. Painting of Oil and Gas Facilities. Except for such facilities that must be painted a certain color for safety reasons, Operator shall paint all new production facilities with uniform, non-contrasting, non-reflective color tones and with colors matched to, but slightly darker, than surrounding landscapes.
13. Lighting. All permanent lighting of oil and gas well sites shall be directed downward and internally.
14. County Inspections. Operator agrees to allow County access to all oil and gas facilities for inspection, provided County personnel are equipped with all appropriate personal protection equipment (PPE), the personnel comply with the Operator's other and customary safety rules and the County is responsible for all costs and expenses of such inspections. The County shall use its best efforts to provide advance notice to the Operator prior to an inspection; however, the County reserves the right in its discretion to make spot inspections or to inspect without notice in the event of an issue potentially involving an immediate risk to public safety, health or welfare or damage to the property of another. The County reserves the right to inspect pit locations prior to construction, during construction, and after construction. The County also reserves the right to contact the appropriate COGCC area inspector if non-compliance issues are suspected or identified as a result of construction plan reviews, reclamation plan review, field inspections, or if non-compliance issues are not resolved as soon as possible.