

## OIL AND GAS REGIONAL OPERATOR AGREEMENT

THIS OIL AND GAS REGIONAL OPERATOR AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, (“Effective Date”) by and through Extraction Oil & Gas, Inc., with an address of 370 17th Street, Suite 5300, Denver, CO 80202 “Operator”, and the City of Commerce City, Colorado (the “City”), a Colorado municipal corporation with an address of 7887 E. 60th Avenue, Commerce City, Colorado 80022, which may be collectively referred to herein as the “Parties,” or individually as a “Party.”

### RECITALS

WHEREAS, Operator engages in the exploration, development, production and marketing of natural gas, oil and natural gas liquids, and plans to develop hydrocarbons in Commerce City, Colorado;

WHEREAS, by entering into this Agreement, Operator will be expending significant amounts of capital in order to implement the best management practices (“BMPs”) set forth herein to develop the oil, gas and other hydrocarbon resources and associated infrastructure within the City;

WHEREAS, the BMPs to be implemented are intended to be protective of health, welfare, safety and the environment;

WHEREAS, the City and Operator value a ~~balanced~~ approach to oil and gas development that is protective of public health, safety, and welfare, including the environment and wildlife resources. To that end, in order to achieve those goals in a cooperative manner, the City and the Operator enter into this Agreement pursuant to, *inter alia*, Sec. 21-5266 and Sec. 21-3216 of the City of Commerce City’s Revised Municipal Code (“Code”) allowing for this Agreement to adopt the best management practices (“BMPs”) set forth in Exhibit “B” for Operator’s Oil and Gas Well Operations (“Operations”) at the Well Sites set forth on Exhibit A;

WHEREAS, Operator identifies the Well Sites listed in Exhibit A as the Oil & Gas Locations it intends to develop under this Agreement within the City without impairing Operator’s ability, but not requirement, to add additional future Well Sites within the City at a later date under this Agreement implementing all terms and conditions of this Agreement including BMPs and the Commerce City Land Development Code;

WHEREAS, Operator agrees to limit the New Well count at the Well Sites as designated in Exhibit A for those Well Sites;

WHEREAS, in accordance with state law and this Agreement, Operator commits to plug and abandon certain older wells in the City that are described in Exhibit D;

WHEREAS, the Colorado Oil and Gas Conservation Act, C.R.S. § 34-60-101 *et. seq.* (the “Act”), authorizes the Colorado Oil and Gas Conservation Commission (“COGCC” or “Commission”) to adopt statewide rules and regulations and amend existing rules and regulations or promulgate new rules and regulations;

WHEREAS, the Act C.R.S § 34-60-131, authorizes local governments to enact local land use regulations which may be more restrictive than COGCC rules; and

WHEREAS, the Colorado Air Pollution Prevention and Control Act (“APPCA”), C.R.S. § 25-7-128, authorizes the Colorado Department of Public Health and the Environment (the “CDPHE”) to adopt emission control regulations for significant sources of air pollutants. CDPHE has promulgated specific emission control requirements for Oil and Gas Facilities (“Facilities”) and it is anticipated that CDPHE will propose and adopt revisions to these requirements over time;

WHEREAS, the APPCA, C.R.S. § 25-7-128, authorizes local governments to enact local air pollution resolutions or ordinances which may be the same as, or more restrictive than, state emission control regulations; and

WHEREAS, this Agreement is entered into pursuant to Sec. 21-3216(11) of the Code, which allows the City to enter into a Regional Operator Agreement to establish terms and conditions for the protection of the public health, safety, and welfare.

In consideration of the mutual obligations and benefits set forth in this Agreement, including the recitals, the City and Operator agree as follows:

## **AGREEMENT**

### **ARTICLE I – INCORPORATION OF RECITALS**

The Recitals to this Agreement and Exhibits A-H are incorporated herein and adopted as terms of this Agreement.

### **ARTICLE II - TERM OF AGREEMENT**

The term of this Agreement shall commence on the Effective Date noted above and shall remain in effect for a period of four years and for so long thereafter as any of Operator’s Oil and Gas Wells or Facilities permitted under this Agreement have not been permanently plugged, abandoned and removed from the lands in accordance with the Rules and Regulations of the COGCC or any Oil and Gas Permit (“OGP”) application submitted to the City is in process (the “Term”). During the Term ~~of initial four years~~, the Agreement may be terminated by either party with six-months’ notice.

After the ~~initial four years have expired~~ Term, this Agreement will continue automatically but ~~thereafter either party may be terminated immediately~~ terminate the Agreement by ~~either Party through written notice as to any Oil and Gas Facilities where the City has not yet received a complete OGP application.~~

In the event this Agreement expires or is otherwise terminated, except as set forth in Section 6.2, the requirements stated in this Agreement, including all incorporated exhibits, shall survive and remain enforceable against the City or Operator with respect to any Facilities that were

permitted by the City under the provisions of this Agreement or for which an OGP application was received and deemed complete by the City prior to termination.

Additionally, in the event this Agreement expires or is otherwise terminated, no re-permitting of approved wells shall be required solely as a result of the termination of this Agreement.

### ARTICLE III - DEFINED TERMS

- 3.1 The meaning of the terms used in this Agreement shall be the same as those in the Code, except where otherwise noted. Where terms are not defined, they shall have the meaning commonly attributed to them as defined by the Colorado Oil and Gas Conservation Commission (“COGCC” or “Commission”) and if not therein defined then as commonly used in the oil and gas industry.
- 3.2 Oil and Gas Facility (“Facility”) means equipment or improvements used or installed at an oil and gas location for exploration, production, withdrawal, treatment or processing of crude oil, condensate, E&P waste, or gas.
- 3.3 For the purposes of this Agreement, "Operator" shall also include any successors, agents, assigns, or receivers of the Operator.
- 3.4 “Applicable Code” for this Agreement shall be defined as the Commerce City Land Development Code – Chapter 21 (“LDC”), in effect on the date that asuch specific OGP application was deemed complete pursuant to Section 5.2 of this Agreement.
- 3.5 The “Code” for this Agreement shall be defined as the Commerce City Revised Municipal Code, including the LDC, as amended from time to time.
- 3.6 “Well Site” shall mean those Well Sites identified in Exhibit A, as may be amended. A Well Site includes the definable area where an Operator has disturbed or intends to disturb the land surface during the construction phase and exploration and production of crude oil, condensate, E&P waste, or gas. Treatment and processing will not occur at a Well Site. A Well Site includes the area of disturbance that may be subject to interim reclamation but only until such interim reclamation occurs. Well Site, as defined, excludes access roads and any improvements outside of the Well Site by the surface owners.
- 3.7 “New Well” shall mean any Operator-operated individual well on a Well Site for which an OGP has been applied for during the Term of this Agreement listed in Exhibit A as may be amended, including any production facilities directly associated with such well. New WellsWell does not include wells in existence at the time the Agreement is executed.
- 3.8 “Phases of Operations” at a Well Site for purposes of this Agreement, shall be defined as follows:

“Construction Phase” shall mean the conducting of civil and earth work in connection with the construction and installation of drilling well pads, visual mitigation measures, and access routes.

“Drilling Phase” shall mean the period in which a drilling rig is utilized to penetrate the surface of the earth with a drill bit and the installation of well casing and cement at one or more wells.

“Completion Phase” shall mean the period of hydraulic fracturing, coiling, workover, installation of tubing and flowback of one or more wells.

“Production Phase” shall mean the period in which one or more wells is capable of producing hydrocarbons that flow through permanent separator facilities and into the pipeline gathering system. Interim reclamation is expected at the beginning of this phase.

#### ARTICLE IV - APPLICATION

- 4.1 This Agreement shall apply to lands within the boundaries of the City, as they exist as of the date of this Agreement. Moreover, in the event an Operator-owned or operated well pad site for which construction or dirt work has not been commenced is annexed into the City in the growth area west of Piccadilly Road, Operator agrees that it shall bring the annexed site into compliance with this Agreement and all aspects of the BMP's ~~reasonable and practicable~~ attached hereto that do not require material modifications to the physical infrastructure of the well site, as well as Articles VII, XII, and XIII in this Agreement in their entirety, within six (6) months of the effective date of the annexation and will operate that particular well site in conformity with this Agreement thereafter. This Agreement shall not be construed to limit the negotiation, imposition, or enforcement of any terms or conditions of the annexation, including any annexation agreement. Furthermore, Operator shall not affirmatively protest, request a hearing, oppose or object to any annexation into Commerce City. If a Well Site is added to this Agreement pursuant to this section or otherwise, the Parties agree to amend Exhibit A.
- 4.2 Nothing in this Agreement shall be construed to modify, waive, or except any provision of the Charter of the City of Commerce City or the Code or any other applicable law or regulation, except where such variance is specifically authorized by a law, regulation, or standard at issue. This Agreement is meant to provide protections and requirements where an OGP meets or exceeds the requirements in the Applicable Code and in COGCC regulations. In no case should any provision of this Agreement, BMP or OGP, provide fewer protections than those provided for in the Applicable Code or COGCC regulations. If there is a difference in the protections provided in the Agreement, the Applicable Code, or COGCC regulation, the standard more protective of public health, safety and welfare and the environment shall be applied. The Operator shall obtain all necessary permits and approvals and shall comply with all regularly applicable laws and policies.

- 4.3 Nothing in this Agreement shall be construed to be a waiver by the City of its police power or its legislative authority. Nothing herein shall bind the City to exercise its police power or legislative authority or in any way preclude the City from making any legislative determination in accordance with the powers granted to the City pursuant to the Constitution of the State of Colorado, the Charter of the City of Commerce City, and the Colorado Revised Statutes.

## ARTICLE V - PERMIT REQUIREMENTS

- 5.1 OGPs Required for Operations within the City. An Operator shall obtain an OGP for each Oil and Gas Location. Each OGP requires a site-specific Extraction Agreement as part of the OGP to allow the OGP holder to undertake Operations. Review of such an OGP application is intended to ensure compliance with the Applicable Code, this Agreement and any other applicable local, state or federal laws, rules or regulations.

- 5.2 Approval Process for an OGP. Permit applications will be reviewed in accordance with the Applicable Code and this Agreement.

The Parties agree that Operator will enter into a site-specific Extraction Agreement as required by the Applicable Code which will be approved concurrently with the OGP. No site-specific conditions of approval shall be required that are more restrictive than the BMPs set forth in this Agreement without written approval by both parties unless required by Section 4.2 herein. Additional detail provided in an OGP or site-specific Extraction Agreement shall not be considered more restrictive based solely on the additional detail alone.

OGPs, similar to any other permits for development, will be first subject to a seven (7) business day completion review. If a permit application is deemed complete, and consistent with standard and established practices of the City, it will be forwarded for interagency and referral-agency review.

The current timeframe for development review is six weeks for initial review, five weeks for a secondary review, and four weeks for any additional review that may be necessary. All review times identified herein are intended as estimates and may vary depending on timely completion and accuracy of applicant submittals, staffing levels, the competing demands on City staff, and the timing of referral agencies. The ~~Parties~~City will make reasonable efforts to complete process an OGP application, including rendering a final disposition, within six months from submission, which will include the Operator working diligently to respond to the City's comments and requests. The City will not unreasonably withhold or delay the permitting process, including approval of an OGP or a site-specific Extraction Agreement.

- 5.3 Permit Term. The term of the OGP and any revocation, lapse, termination, or extension thereof shall be as provided in the Applicable Code. The OGP shall lapse if a building permit is not obtained and the spudding of a well is not commenced within two years of the issuance of the OGP, excepting the period of time during



which Operator's applications to the COGCC and applications to the CDPHE (with regard to air quality control) are pending (~~“~~“Toll Period”). In no event shall the Toll Period exceed eighteen (18) months with respect to a particular pending permit, approval or order. Operator will notify City of a Toll Period and include in the notice the copies of the pending COGCC and CDPHE applications. Extensions of the OGP and associated Commerce City local permits will not be unreasonably withheld, delayed or conditioned. This provision does not impair the ability of Operator to apply for other OGPs or COGCC permits and work through the City and the COGCC approval process concurrently.

- 5.4 Building Permits Required within the City. A building permit may be required in connection with an OGP pursuant to the requirements of the Code. So long as the requirements of this Agreement, the OGP, and the Code are met, the City will issue this permit without unreasonable delay. The term of a building permit and any revocation, lapse, termination, or extension thereof shall be as provided in the Code.
- 5.5 Permit Requirements. All subsequent plans listed below shall comply with the requirements set forth in the BMPs included on Exhibit B and the Applicable Code. The Parties agree that Operator has had substantial engagement with the City with respect to its development plans and the Operator will not be required to submit a comprehensive drilling plan. The Operator will submit the following items with each OGP application as part of the OGP process as required in the Applicable Code, unless the City determines that certain information has previously been provided by the Operator to the City and made a part of the public record or, during the City's processing of an OGP application or the City determines that an update of any of the plans below are reasonably required due to a change in circumstance since the initial submittal:
- a. **Schedule of Operations.** Operator shall provide estimated project schedules that may vary for all phases, including “construction phase” (including pipeline construction), “drilling phase,” “completion phase” (broken down into activity-based components including flowback), and “production phase” (including estimated timelines for interim reclamation and landscaping).
  - b. **List of all Permits.** List of all permits or approvals obtained or to be obtained from local, state, or federal agencies, including any exceptions or variances that are required.
  - c. **Electrification Plan.** Operator shall identify all sources of electricity that will be brought to or used at the Well Site during all phases, including drilling, completion and production.
  - d. **Noise Management Plan.** Operator shall prepare a plan to manage noise at or below the levels indicated in Exhibit B. The plan must include a baseline noise study as well as noise modeling of equipment proposed for the site for drilling and completions.

e. **Lighting Plan.** Operator shall prepare a lighting plan with the purpose of demonstrating how Operator will mitigate lighting impacts beyond the Well Site. The plan will include provisions for installation of down cast lighting or some other form of lighting that mitigates light pollution and reduces spill-over onto adjacent properties; provided, however, that the Operator may still use lighting that is necessary for public and occupational safety and lighting as necessary for drilling and completion operations.

f. **Traffic Control Plan.** Operator shall prepare a plan showing public and private roads that traverse and/or provide access to the proposed operation and a plan showing the estimated number of vehicle trips per day for each type of vehicle, proposed haul routes to and from the site, and measures to mitigate adverse impacts to traffic patterns and safety caused by the proposed operation.

g. **Traffic Impact Study.** A vendor selected by Operator from a list of vendors that is pre-approved by the City shall prepare a Traffic Impact Study (not to be confused with a Traffic Impact Fee Study) which shall clearly identify and distinguish impacts to City roads and bridges related to Facility construction, operations and ongoing new traffic generation. Traffic impact studies shall be prepared in accordance with City standards and requirements ~~or~~and other guidelines found in the Applicable Code. The study shall include a traffic mitigation plan addressing transportation impacts that will typically include, but not be limited to, a plan for traffic control, the receipt of all necessary permits, ongoing roadway maintenance and improving or reconstructing City roads, including providing financial assurance.

h. **Air Quality Mitigation Plan.** Operator shall prepare an Air Quality Mitigation Plan ~~which includes baseline air quality testing~~ and a modeling assessment of air quality impacts of a related project per BMP 1C(iii) and a plan and schedule to maintain air quality, including a plan to minimize VOC emissions in compliance with the BMPs.

i. **Emergency Response Plan.** Operator shall prepare an Emergency Response Plan. In preparation of the Emergency Response Plan, Operator shall engage with emergency responders and prepare a plan that includes, without limitation, documentation of the communications and coordination with the City and nearby schools related to evacuation of the nearby schools and all persons residing within a one-half (1/2) mile radius from the edge of disturbance. The Emergency Response Plan must detail all criteria for persons to be notified in the event of an emergency and training for first responders.

j. **Waste Management Plan.** Operator shall prepare a Waste Management Plan that identifies the projected waste from the site and plans for disposal of such waste.

k. **Hazardous Materials Management Plan.** Operator shall prepare a Hazardous Materials Management Plan that identifies all hazardous materials that

will be brought on site, how they will be transported and used, and measures to prevent any release of those materials.

l. **Temporary Sanitary Facilities Plan.** Operator shall prepare a plan describing the sanitary facilities that will be provided for employees that comply with the Applicable Code and COGCC regulations.

m. **Water Quality Monitoring Plan.** Operator shall prepare a plan that describes the steps it will take to comply with the water quality monitoring described in Exhibit B.

n. **Spill Prevention, Control, and Countermeasure Plan (SPCC).** Operator shall prepare a plan which describes spill prevention and mitigation practices as provided in Exhibit B.

o. **Stormwater Pollution Prevention and Erosion Control Plan.** Operator shall prepare a plan to minimize impacts to surface waters from erosion, sediment, and other sources of non-point pollution. The stormwater control plan required by COGCC Rule 1002(f) may be provided to establish compliance with this provision.

p. **Interim Reclamation Plan** (also called a “Revegetation Plan” in the Code). Operator shall prepare a plan, including a written description of the species, character and density of existing vegetation on the Well Site, a Revegetation Analysis as defined in the Applicable Code, a summary of the potential impacts to vegetation as a result of the proposed oil and gas operations, and proposed replanting and mitigation to address these impacts. The plan shall include any COGCC required interim reclamation procedures and shall include the means by which vegetation will be watered and maintained.

q. **Weed Control Plan.** Operator shall prepare a plan which must comply with City standards, requirements, and other guidelines found in the Applicable Code.

r. **Dust Mitigation Plan.** Operator shall prepare a plan to control dust in an effort to minimize visible dust emissions from roadways or from completion operations.

s. **Wetlands Protection Plan.** Operator shall prepare a plan, if applicable, demonstrating the oil and gas operations shall, ~~to the maximum extent practicable, avoid causing not cause~~ degradation to wetlands within the City.

t. **Floodplains and Floodways.** Oil and Gas Facilities are prohibited in the floodway. A **Floodplain Permit** is required if any Operations are within the floodplain.

u. **Visual Mitigation Plan.** Operator shall prepare a plan that will consider fencing materials, berming, and use of existing vegetation and natural contours to



the maximum extent practicable. The visual mitigation plan shall require photographic simulations.

v. **Landscaping Plan.** Operator shall prepare a plan that shall be coordinated with the City and the surface owner and, depending on access to water, may be staged to accommodate surface development. Landscaping plans should use drought tolerant species that are native and less desirable to wildlife and suitable for the climate and soil conditions of the area. An irrigation plan may be required where buffering is accomplished with vegetation.

w. **Site Security Plan.** Operator shall prepare a plan for each Well Site. Each plan for a Well Site shall be reviewed by Operator on a yearly basis and will be updated, as necessary. Commerce City may request a review and update of the plan, at its sole discretion.

x. **Risk Management Plan.** Operator shall prepare a plan consistent with Exhibit B.

y. **Wildlife Mitigation Plan.** Operator shall prepare a Wildlife Mitigation Plan for surface operations that will be located within or "adjacent" (as defined in the Applicable Code) to a Wildlife Mitigation Area or Park Property.

z. **Alternative Location Analysis.** Operator shall prepare an ~~analysis~~Alternative Location Analysis for any proposed site not within an Agricultural or Industrial zone district or Planned Unit Development zone district where Oil and Gas Wells are specifically listed as an allowed or permitted use, to demonstrate the absence of any other reasonable alternative to access oil and gas mineral interests, consistent with the Applicable Code.

aa. **Resource Mobilization/Cache Plan.** Operator shall provide a plan to ensure emergency responders have available the equipment necessary to respond to any emergency identified in the emergency response plan and such plan shall provide that the equipment be stationed in locations as to be readily available for any oil and gas emergency within Commerce City.

## **ARTICLE VI – New Wells, Well Sites and Facilities.**

6.1 Operations on Well Sites. The Parties agree that the New Wells and the Well Sites will be subject to the terms of this Agreement.

~~As long as Operator is in compliance with this Agreement,~~ Operator may perform all surface and downhole well maintenance on the New Wells and Well Sites that the Operator deems prudent and necessary- so long as Operator is in compliance with this Agreement and all relevant state permits and regulations. Notwithstanding the foregoing, Operator may perform all maintenance reasonably necessary to prevent a significant risk to public health, safety, and the environment. For purposes of this Agreement, a New Well shall not include the re-completion of an existing well but would include any re-entry that would require a new COGCC drilling

permit. Operator has provided a list of all well locations currently planned within the City, attached hereto as Exhibit A and incorporated herein by reference, setting forth location name, legal location description, and maximum well counts. The Operator will not drill more oil and gas wells at each location than is listed in the Exhibit A.

- 6.2 Well Site Approval. Operator agrees and acknowledges that the Well Sites proposed by Applicant and listed in Exhibit A have not been approved by the City and are subject to the approval criteria as set forth in the Applicable Code. City agrees and acknowledges that the proposed Well Sites listed in Exhibit A are not final and are subject to change or modification as Operator may deem proper for its operations at Operator's sole discretion. Notwithstanding the foregoing, in the event that the City does not approve an OGP for each of the Well Sites and New Wells listed on Exhibit A, Operator shall be permitted to immediately terminate this Agreement with respect to any of the Well Sites for which ~~no New Wells have been drilled~~construction has not commenced as of the date of ~~such~~ termination and any OGPs that have been approved for other Well Sites may be ~~canceled~~immediately withdrawn by the Operator at its election. Pending OGP applications will be deemed immediately withdrawn.
- 6.3 Plugging and Abandonment of Existing Wells. In accordance with state law and this Agreement, Operator shall plug and abandon all of the wells shown on Exhibit D ("P&A Wells"), attached hereto and incorporated herein by reference. The Operator shall properly drain, plug and decommission in accordance with City and COGCC rules and regulations all flowlines and pipelines associated with the P&A Well(s) and shall remove all facilities related to the P&A Wells taking into consideration the terms of the governing surface use agreement. If a waiver or variance is required by the COGCC for Operator's planned reclamation, Operator will also obtain a waiver or variance from the City. The plugging and abandoning of a particular P&A Well shall commence within one hundred and twenty (120) days following the commencement of production from a New Well located in each of the COGCC drilling and spacing units encompassing the leasehold originally drilled by such P&A Well. Operator agrees that any well that Operator plugs and abandons, either before or after the Effective Date, may not be re-entered by Operator.
- 6.4 GWA Drilling Windows. The Operator agrees that it will not utilize COGCC 318A.a "GWA Windows" for New Wells without a Surface Use Agreement or ownership of the surface acreage.
- 6.5 Schedule of Operations. Phasing of the Operations Plan and schedule for Well Site development are attached as Exhibit F. The Well Sites will not be expanded for additional wells. The Operator shall provide the City with an updated Schedule of Operations when there are any material changes or in any event at least bi-annually.

For the avoidance of doubt, it is possible for multiple phases of operation to be occurring at the same time with respect to a single Well Site. Notwithstanding the

foregoing, when a Well Site is less than 1,320 feet from the nearest residential building unit, Operator agrees that it will not conduct hydraulic fracturing and drilling operations simultaneously at a single Well Site.

## **ARTICLE VII - PERFORMANCE STANDARDS AND BEST MANAGEMENT PRACTICES**

- 7.1 Best Management Practices. The Operator shall comply with the performance standards and BMPs set forth in Exhibit B of this Agreement.
- 7.2 New Technologies. Notwithstanding the conditions outlined in Exhibit B, the City may propose to Operator, in writing, new technologies reasonably believed to have a material benefit for public health, safety, welfare, and the environment within the City limits. Such proposal will describe in sufficient detail: (i) the technology to be considered; (ii) the performance objective(s) in the BMP(s) that are addressed by the technology; and (iii) support for why the technology will be materially beneficial.

Operator will consider the proposal in good faith and provide the City with a written response as soon as reasonably practicable within 30 days stating whether and where Operator will employ the proposed technology within the City limits or provide a brief explanation for why Operator will or will not employ the proposed technology. If the City has proposed the use of new technology and Operator agrees to the modification or change in the plan, the City will not require hearing for approval.

Operator will notify the City in writing of any new technology that it seeks to implement that would have a material benefit to public health, safety, welfare, and the environment and will seek written approval from the City to modify one or more of the conditions set forth in the applicable OGP as necessary to employ the proposed technology at a particular identified Well Site.

Any dispute arising as to the use of a proposed new technology will be resolved by a third-party expert mutually agreed upon by the Parties. If available for this purpose, parties agree to utilize the COGCC Technical Review Board. If unavailable, the parties shall equally share the costs and fees of any third-party expert retained for this purpose. The Parties agree to review the BMPs for the potential of implementing new technologies at least every five (5) years. The application of new technology shall be considered a Minor Change pursuant to Section 15.4.

## **ARTICLE VIII - OPERATIONAL CONFLICTS**

- 8.1 Provided the City is not adjudged by a court of competent jurisdiction in a final unappealable order to not be in compliance with this Agreement, Operator agrees that (a) it will not exert jurisdictional or preemption arguments as to any

obligations, terms, and provisions in the Agreement, the Code, or the Applicable Code or cause any group or trade association to do the same; and (b) it will not protest, oppose, or object to changes and amendments the City may make to its Code in the future or cause any group or trade association to do the same. Notwithstanding the foregoing, the City acknowledges that Operator is a member of various trade associations and may not be able to prevent such trade associations from protesting, opposing or objecting to proposed changes to the City's Code. If the COGCC does not include the BMPs attached hereto as Exhibit B to an approval, Operator agrees that the BMPs will continue to apply to Operator's Well Sites.

## **ARTICLE IX - REQUIRED REGULATORY PERMITS, COGCC ORDERS, APPROVALS OR APDs**

9.1 There has been substantial engagement between the Parties in entering this Agreement. Therefore, provided the Operator complies with the terms of this Agreement, and provided the application complies with federal, state, and local law and regulations: (a) the City agrees that it shall not protest, request a hearing, oppose or object to COGCC or CDPHE permits, orders, and approvals that Operator is required by law to seek from these regulatory agencies; and (b) the City also agrees to not protest, request a hearing, oppose or object to the approval process for any gathering facility or pipelines outside the City's jurisdiction, that are not inconsistent with the City's alignment of approved pipeline, as necessary to implement the BMPs listed in Exhibit B. ~~interest~~ Nothing in this provision is intended to limit or impair the City's ability to defend an action against it related to this Agreement or Operator's Project. The City may provide official comment on any permit for which the City has jurisdiction or a right to comment through a referral process.

9.2 The Operator agrees, unless otherwise instructed by the COGCC in writing, to include the BMPs, in the form attached hereto as Exhibit E, as conditions of approval on all Applications for Permit-to-Drill, Form 2 ("Form 2"), and all Oil and Gas Location Assessments, Form 2A ("Form 2A"), submitted to the COGCC for any New Wells or Well Sites. Operator, unless instructed otherwise by the COGCC, agrees to ensure (through the filing of a Sundry Notice or otherwise) the BMPs contained on Exhibit E are submitted as proposed conditions of approval on any New Wells for which Operator has already filed COGCC Forms 2 with the COGCC.

If there are any BMPs that exceed COGCC rules and regulations which the COGCC declines to add to a Form 2 or Form 2A as conditions of approval, Operator will not be required to list such provisions in the Form 2 or Form 2A but will still be required to comply with the provision pursuant to this Agreement.

## **ARTICLE X - DEVELOPMENT SCHEDULE**

- 10.1 The Operator agrees to provide 48 hours' notice, excluding weekends and holidays, of any planned move-in or rig up and will comply with the COGCC notice requirements regarding the same.
- 10.2 The Operator and City agree that Operator shall not be permitted to commence drilling operations at any Well Site later than December 31, 2024. If drilling operations have commenced by December 31, 2024, Operator will drill and complete all remaining wells on that Well Site within eight (8) months and proceed to the production phase ~~within eight months~~ immediately thereafter. This provision can be amended under mutual agreement if necessary and reasonable, in accordance with the Code.

## ARTICLE XI – CITY PROPERTY USE

- 11.1 At this time, other than with respect to crossings, use of City property is not contemplated by Operator. Any use of City property, including but not limited to use of City property for pipelines or seismic surveys, will be subject to a separate approval process as set forth in the Code or applicable policy. Notwithstanding the foregoing, the City resolves to provide Operator with reasonable assistance when Operator seeks to obtain any easement, license, or similar right, to access City-owned land, rights-of-way or cross such land or rights-of-way as may be necessary to implement the BMPs on land owned by the City or within City right of way. Such assistance shall include providing GIS data to Operator as may be reasonably necessary to identify such lands.

## ARTICLE XII – FINANCIAL ASSURANCES

- 12.1 Insurance. The Operator agrees to provide liability ~~and~~ insurance under the conditions, and in the amounts, set forth on Exhibit C.
- 12.2 Cost Reimbursement Agreement. The Parties agree that there may be a cost reimbursement agreement entered for any reasonable emergency response costs. Those terms will be handled in a separate agreement with the participation of the applicable emergency service providers.
- 12.3 Financial Assurance. Prior to the commencement of any work, including well pad construction at any permitted Well Site, Operator shall provide the City with a single surety applicable for all Well Sites in the form of a letter of credit or bond in the amount of three-million dollars (\$3,000,000.00) to insure the immediate availability of finances for any costs incurred by the City following a Financial Setback of the Operator. Financial Setback shall be defined as the Operator filing for protection under the bankruptcy laws, making an assignment for the benefit of creditors, appointing or suffering appointment of a receiver or trustee over its property, filing a petition under any bankruptcy or insolvency act or having any such petition filed against it which is not discharged within ninety (90) days of the filing thereof. Operator shall notify the City of the existence of a Financial Setback with five (5) business days of the Financial Setback. The letter of credit or bond



shall remain in effect until all drilling operations at all New Wells have been completed, and all Well Sites for which work has commenced are in the production phase, without exception. Upon the occurrence of a Financial Setback, the City may call upon the surety effective immediately upon written notice to the Operator for the purpose associated with the need to secure Well Sites, associated Well Site lands and infrastructure or as a demonstrated need to protect the public welfare and safety. This financial assurance provision in a form accepted by the City is not a substitute for any bonding required by the state regulatory agencies for plugging and abandoning wells. The Operator shall comply with all state regulatory agencies bonding requirements. The City shall not be liable to the Operator or any surety, guarantor, or financial institution for consequential damages arising from the City's exercise of its rights under this section, including without limitation a claim for impairment of bonding capacity.

The bond or letter of credit shall be released within ten (10) business days of Operator's written request following completion of the last Well Site and the wells have been turned to production.

12.4 The Operator's provision of insurance and financial assurances shall not limit the Operator's liability, or the City's right to any recovery.

### **ARTICLE XIII – INSPECTION AND OPERATOR CONTRIBUTION**

13.1 Right to Enter. All Operations may be inspected by a City-approved inspector at any time to ensure compliance with the requirements of the OGP. The City reserves the right in its discretion to make spot inspections or to inspect without notice in the event of any issue potentially involving an immediate risk to public health, safety, welfare, the environment, or wildlife, or damage to the property of another. For routine inspections, the City will utilize best efforts to provide reasonable ~~advanced~~advance notice to the Operator before entering onto the Well Site. Operator may escort inspectors onto the Well Site if Operator Staff is available. The City will provide Operator with a list of all certified inspectors it may use. Inspectors will provide identification at the time of inspection, if requested. Inspectors shall follow recognized safety procedures while on location. Certified inspectors shall not be required to be escorted and their inspection efforts shall not be delayed for lack of escort availability.

13.2 Operator Contact for Inspections. The Operator shall provide the telephone number (which may be different than the telephone numbers in case of emergency) of a contact person who may be reached 24 hours a day/7 days a week for purposes of being notified of providing reasonable ~~advanced~~advance notice of any proposed City inspection under this Section or in case of emergency. Operator will be responsible for updating the City of a change to this advance notice telephone number and updating the contact information which will be included as part of the OGP application.



- 13.3 Inspection Fees. Operator ~~agrees to will~~ reimburse the City for all inspection costs reasonably incurred to inspect the Well Sites to determine compliance with this Agreement and any OGP. Such fees shall include actual costs incurred by the City, including employee time, employee supervision, necessary equipment rental, and overhead. The Parties agree that this fee shall be \$500 annually per individual New Well drilled. This per New Well fee shall initially be paid at the time of spudding of each well and then on January 1<sup>st</sup> of each year thereafter. This amount will be adjusted each year by the increase or decrease in the Consumer Price Index issued by the United States Bureau of Labor Statistics for the Denver metropolitan area. The fee will be reduced to \$250 annually 10 years after any individual New Well has been drilled. This amount will be adjusted each year by the increase or decrease in the Consumer Price Index issued by the United States Bureau of Labor Statistics for the Denver metropolitan area. Where a well is plugged and abandoned, no fees will be imposed thereafter. For the avoidance of doubt, this fee is based on the individual wells and not on the Well Site.
- 13.4 Operator Ambient Air Sampling Payment. Operator will provide the City ~~\$250 per New Well constructed under the Agreement annually towards air quality sampling with fees as provided in Exhibit H.~~ The City may use these funds for air sampling within its discretion. ~~Extraction will provide initial funds prior to the Construction Phase of each Well Site.~~ Such amount shall be adjusted each year by the increase or decrease in the Consumer Price Index issued by the United States Bureau of Labor Statistics for the Denver — Boulder metropolitan area. —In addition, the City may require the Operator to conduct additional air monitoring as needed to respond to events such as spills, process upsets, or accidental releases.
- 13.5 Operator Transportation Impact Fee Payment. Operator agrees to pay ~~reasonable transportation impact fees that result from the Traffic Impact Fee (TIF) Study that is currently being conducted. It is understood by both parties that the Impact Fee may be applied retroactively in the event an OGP is filed prior to the completion of the TIF study and the enactment of the impact fee ordinance.~~ transportation impact fees in accordance with the Applicable Code.
- 13.6 Purchase of Essential Emergency Response Equipment and Training. The Parties have agreed to the terms and conditions as set forth in Exhibit H, incorporated by reference herein, with regard to Operator's obligation to provide equipment and training.

#### **ARTICLE XIV – FRAMEWORK FOR ENFORCEMENT OF BEST MANAGEMENT PRACTICES**

- 14.1 The Parties to this Agreement acknowledge and agree that Operator's compliance with the BMPs is integral and essential to this Agreement; enforcement of the BMPs through traditional contractual remedies can be costly, slow, and inefficient;

presently, the City's Code ~~does not contemplate~~contemplates enforcement of contract provisions such as the BMPs attached to this Agreement; ~~and as permit conditions; however,~~ the Parties desire to establish a non-exclusive administrative enforcement mechanism with respect to the BMPs in addition to any other remedy available at law or equity. Therefore, the Parties agree to the provisions of this Section with respect to the City's enforcement of the Operator's adherence to the BMPs set forth in Exhibit B.

a. **Accountability.** Operator shall be legally accountable as principal for a violation of any BMP contained in this Agreement.

b. **Enforcement.** Operator shall be subject to a civil penalty in the form of a fine for the violation of any BMP. All fines shall be consistent with the fines and penalties schedule utilized by the Neighborhood Services Division of the City, as may be amended from time to time, but subject to the limits set forth in C.R.S. § 13-10-113. Additionally, Operator shall be responsible for all costs, direct and indirect, which the City incurred in connection with the enforcement action, including, without limitation, the costs of any hearing and the cost of abating any BMP violation, exclusive of City attorney fees.

c. **Enforcement Procedure.**

i. **Notice of Violation.** Upon the discovery of a violation of a BMP, the city-approved inspector may issue a notice of violation (NOV) to the Operator at the site of the violation by providing a copy to an on-site manager, foreman, or supervisor. The NOV must identify the alleged violation, the date, time and place that the alleged violation occurred, and options with regard to payment or the opportunity to request a hearing to contest the violation. If no manager, foreman, or supervisor is present, the City shall serve the NOV consistent with Article 15.7.

ii. **Payment.**

A. Operator may accept responsibility for the violation by abatement of the violation and payment of the required fine within ten (10) business days of receipt of the NOV, excluding the day of issuance. Such payment and abatement will be deemed to be an admission of the violation.

B. If the NOV is sustained after a hearing, Operator fails to appear at a requested hearing, or Operator fails to accept responsibility for a violation but does not request a hearing, Operator will pay all fines, costs, and fees within thirty (30) days unless otherwise directed by the adjudicator, which time will be suspended while a hearing or decision is pending.

~~C.~~ Any fine, cost, or fee not timely paid will be subject to late fees and collection ~~consistent with City practices, including the assessment of interest as provided in the Code for civil violations, including without limitation the recordation of such fine, cost, or fee as a lien against the subject property.~~

Operator's failure to pay any amounts owed pursuant to this Article, or failure to abate any violation, when Operator agrees to do so or is ordered to do so after a hearing, shall be deemed a breach of this Agreement. The City may decline to issue any OGP or any other permit related to any operation during the period where a violation is not abated or any amounts owed under this Article remain unpaid.

iii. Hearing. If Operator wishes to contest the NOV, Operator may request a hearing by submitting a written request for a hearing on the form provided with the NOV and paying the required docket fee within ten (10) business days of receipt of the NOV, excluding the day of issuance. In such event, the Director of Community Development, or their designee, shall act as an independent and impartial adjudicator of the NOV. An advisement of the hearing date, time, and location shall be issued to the Operator at least 48 hours prior to the hearing. A continuance for the hearing will be permitted upon a finding of good cause. The NOV shall serve as prima facie evidence of the alleged violation. The burden shall be on the City to prove the existence of the violation by a preponderance of the evidence. The Director of Community Development, or their designee, may issue rules for procedure and the handling of evidence prior to any hearing and may impose fines and costs and require abatement in accordance with this Article.

iv. Assessment. If the Operator fails to request a hearing, fails to voluntarily pay any fine before a hearing, fails to pay any required docket fee, or fails to appear at a requested hearing, a default judgment will be entered against the Operator and the City will assess the Operator the applicable fine and all costs of abatement plus an administrative fee equal to 15% of the cost of abatement.

14.2 Each Day of Violation Constitutes a New Violation. Each day on which a violation is in existence shall constitute a separate violation for the purpose of enforcement and fines. Any subsequent NOV issued prior to a contested hearing for the same alleged violation on a different day, shall merge with the originally contested violation at the hearing but will be treated as a separate incident for the purposes of a finding as to the existence of the violation and any associated fine.

14.3 Accumulation of Violations. The accumulation of a total of fifteen (15) NOVs wherein Operator failed to appear, did not contest the violation, or contested the

violation but was found liable, within any six (6) month period at one Well Site shall be deemed a public nuisance and a stop work order shall be issued to the Operator for that Well Site. The Operator will then be required to cease without exception, regardless of the phase of operation or the cost to the Operator, pending the submittal of a remediation plan (Remediation Plan) to the City identifying the corrective actions the Operator will take to prevent future violations from occurring. If a stop work order is issued, the Operator may be excused from the immediate cessation of operations upon reasonable showing that stoppage of work at that time would present a significant risk to public health, safety or welfare, and provided that Operator shall stop work as soon as it is safe to do so. In determining whether it is safe to stop operations during drilling, Operator will be allowed to finish drilling, run casing, cement the current hole section of the current well and verify the safety and integrity of the wellbore before ceasing operations but would not be allowed to commence drilling a new hole section in the current well or to initiate drilling of a new well at the same location. In determining whether it is safe to stop operations during the completions phase, Operator will be allowed to finish completion operations on wells actively being completed on the well site well site and to verify the safety and integrity of the wellbore before ceasing operations, but would not be allowed to start completion operations on a New Well on the Well Site. Upon City approval of Remediation Plan, the Operator will be permitted to immediately resume all Operations.

- 14.4 Enforcement Mechanism Not Exclusive. Notwithstanding the foregoing, the City retains the authority to issue citations, summonses, and notices of violation for other violations of the Code as set forth in the Code and to seek to enforce this Agreement and any BMP or to seek any remedy through a civil action at law or equity. This enforcement mechanism shall not be considered to be a precondition to or limitation on, any other action, rights, or remedy available at law or equity or pursuant to this Agreement. Any NOV, or any decision issued under this section, may be used as evidence in any litigation but shall not be deemed to be conclusive. The resolution of any BMP violation under this section shall not preclude the City from seeking any other remedy or instituting any other action with respect to such violation.
- 14.5 Violation of a BMP Not a Criminal Violation. A violation of a BMP cannot, by itself, be pursued by the City as a criminal violation because the BMPs are a contractual obligation of the Operator. Notwithstanding the foregoing, nothing in this provision shall limit the City from enforcing separate criminal violations arising under any applicable law or regulation.
- 14.6 Self-Audits. "Self-Audit" means an Operator initiated review of its operations and practices performed pursuant to systematic, documented, and objective criteria designed to assess compliance with this Agreement, COGCC rules and regulations, and any federal, state, or local law. To promote self-audits, the City shall waive all enforcement or civil infraction fines and fees on the Operator if the Operator

conducts a self-audit process and through that process identifies a potential violation of a BMP that it self-reports to the City ~~in writing before the City issues an NOV as soon as practicable (but not to exceed five business days) after identifying the potential violation and also before the City issues an NOV.~~ For the purposes of this agreement, a waiver of fees following a self-audit shall only apply if the Operator discloses the existence of a violation to the City as soon as practicable after discovery and only if the Operator discovered the violation during a routine self-inspection and not as a result of a government request, inspection, or inquiry, or a complaint, accident or any other governmental action. The waiver of fines associated with a self-audit shall not apply if there is a continuing violation or if Operator delayed the report to the City.

- 14.7 Determining “Maximum Extent Practicable” or “Practicable.” Certain BMP requirements and other conditions, as set forth in this document, are required “to the maximum extent practicable” or if “practicable.” ~~If In the event of a dispute as to practicability, the Operator wishes to be excused from a condition within this BMP document on the basis agrees that compliance is not “practicable” or that a condition has been met to the “greatest extent practicable,” Operator shall note that in its written application materials or in a separate written request submitted to the Director of Planning after has the application has been approved, right to obtain an independent third party expert’s opinion as to practicability and Operator shall reimburse the City any reasonable costs associated with such third party’s opinion.~~

The non-exhaustive list of factors that the Director of Planning and third party expert may use to ~~determine if a BMP condition is not practicable~~ make a practicability determination includes the following:

- a. There is no technology commercially reasonably available ~~at a reasonable (including cost considerations)~~ to conduct the proposed oil and gas operations in compliance with the provision and waiver of the provision will not have a significant adverse effect on the public health, safety or welfare, or on the environment;
- b. An alternative approach not contemplated by the provision is demonstrated to provide a level of protection of the public health, safety and welfare and of the environment that would be at least equivalent to the applicable provision; or
- c. Application of the provision would create an undue ~~or unnecessary~~ operational or economic hardship because of unique physical circumstances or conditions existing on or near the site of the oil and gas facility, which may include, without limitation, topographical conditions, shape or dimension of the operation site, or inadequate public infrastructure to the site.



~~If Operator does not fully undertake any such action because the Operator informs the City it is not "practicable," the Operator agrees that the City has the right to obtain an independent third party expert's opinion as to practicability and Operator shall reimburse the City any reasonable costs associated with such third party's opinion.~~

~~Parties agree to be bound by third party expert's determination as to the practicability of an Operator's action or inaction.~~

## ARTICLE XV - GENERAL PROVISIONS

15.1 Integration Clause. Except as otherwise expressly set forth herein, this Agreement embodies the complete agreement and understanding 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 in any way specifically addressed in this Agreement.~~

15.2 Assignment. This Agreement may be assigned to another Operator only with the written consent of the City, not to be unreasonably withheld, and upon a showing that the new Operator can and will comply with all requirements, terms and conditions of the Applicable Code, this Agreement, and if approved, the Oil and Gas Permit and the Extraction Agreement as well as all applicable state, local and federal laws, rules and regulations. Such new Operator shall execute a written consent to assignment of the Agreement on a form approved by the City.

15.3 Successors and Assigns. The terms and conditions of this Agreement shall bind and extend to the City and the Operator, and the Operator's successors and assigns, and the Operator shall require any successor and assign, by written agreement, to adhere to all terms and conditions of this Agreement. Such assignment shall not relieve the assignor of any obligations that accrue during the period of operation of the assignor or otherwise arising out of the actions or inactions of the assignor during its period of operation.

~~15.2 Successors and Assigns.~~ Subject to the provisions of the Agreement, Operator shall have the right to transfer or sell any or part of its interest in its Facilities and operations through an assignment; provided, however, that in the event of any such transfer, ~~Operator's~~ transferees, sublessees, successors and assigns shall agree in writing to be bound by and shall comply with all terms of this Agreement, the Applicable ~~Codes, and Code(s),~~ the Operator's applicable OGP(s), any applicable Extraction

~~15.3 Transfers.~~ An OGP issued by the City, pursuant to this Agreement, ~~may be transferred consistent with the Applicable Code and all other federal, state and shall not be unreasonably withheld, conditioned, or delayed by the City. The transferee will be required to agree to follow all requirements, terms, and conditions of the OGP and this Agreement.~~ local laws. It shall be the obligation of ~~the~~ any transferee



or assignee to demonstrate to the City's reasonable satisfaction, that its operations will be protective of public health, safety, and welfare and it can and will comply with all the requirements, terms, and conditions contained in the OGP and this Agreement and the Applicable Code.

- 15.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which when taken together shall constitute a single agreement.
- 15.5 Amendments to Agreement. All covenants, representations and warranties contained herein and all other obligations, responsibilities and terms hereof shall continue to be fully binding and enforceable on the Parties until expressly superseded by written agreement of the Parties. No amendment to this Agreement shall be effective unless in writing, signed by all Parties who are then subject to this Agreement.

The Applicable Code provides procedures for the amendment of any permit, including an OGP.

Minor Changes:

Operator shall not be required to submit any Minor Changes to the OGP so long as the Operator provides written notice to the City and such Minor Changes comply with the requirements of this Agreement, the LDC, and COGCC rules and regulations. Any such change shall be effective three business days after it is received by the City in writing. In order to constitute a "Minor Change," the change must:

- (i) have no significant negative impacts on transportation, services and facilities of the City;
- (ii) have a minimal effect on the Operator's proposed plan;
- (iii) not impact the public, health, safety and general welfare of the people of the City; and
- (iv) the City has not opposed the proposed Minor Change.

For the avoidance of doubt, without limitation, any change that (i) increases the well counts at a Well Site, (ii) moves wells and equipment within Well Sites creating a setback distance of less than 1,320 ft. from the nearest Residential Building Unit at the time of the change, or (iii) removes or reduces the requirements of a particular BMP shall not qualify as a "Minor Change." Any change that does not satisfy the requirements for a Minor Change shall be treated as a new application or amendment subject to the applicable administrative approval procedures and approval criteria set forth in this Agreement. The Parties agree that no hearing will be required for a "Minor Change" unless required by the Applicable Code.

15.6 Waiver. No failure on the part of any Party hereto to exercise and no delay in exercising any right hereunder shall operate as a waiver of such right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law. No waiver of or failure to exercise any right hereunder shall operate to prevent future enforcement of such right.

15.7 Notices. Notices required by this Agreement shall be given by (i) certified mail with return receipt requested or (ii) hand delivery with signature or delivery receipt provided by a third-party courier service (such as FedEx, UPS, etc.) 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.

Notices shall be effective on receipt, provided, however, that confirmation of receipt shall be required in all instances. Notice to the respective Parties shall be given to:

To the City: Director of Community Development  
City of Commerce City  
7887 E. 60<sup>th</sup> Ave., Commerce City, CO 80022  
Telephone: 303-289-3600

Office of the City Attorney  
City of Commerce City  
7887 E. 60<sup>th</sup> Ave., Commerce City, CO 80022  
Telephone: 303-289-6300

To the Operator: Extraction Oil & Gas, Inc.  
370 17th Street, Suite 5300  
Denver, CO 80202  
Attn: Legal Department  
Telephone: 720-557-8300  
Email: [legalnotices@extractionog.com](mailto:legalnotices@extractionog.com)

or to any other addresses as either Party hereto may, from time to time, designate in writing and deliver in a like manner.

Such terms and conditions shall have no impact on any notice required under the Code.

15.8 Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions hereof.

15.9 Further Acts. Each of the Parties shall promptly and expeditiously execute and deliver any and all documents and perform any and all acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

15.10 No Partnership; or Third Party Beneficiaries. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Operator and the City. ~~No~~ With the exception of the local fire districts, no term or provision of this Agreement is intended to or shall be for the benefit of any person, firm, organization or corporation not a Party hereto and no other person, firm, organization or corporation shall have any right or cause of action hereunder.

15.11 Severability.

~~The provisions of this Agreement are deemed material and non-severable.~~ If a Court of competent jurisdiction determines or declares any provision of this Agreement to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, and said provision is a material term to a party to this Agreement, then that party may terminate this Agreement immediately. However, that party shall first negotiate in good faith for an equivalent or substitute provision to account for the excised provision. ~~In the event a third party challenges any term of this Agreement, in an attempt to defeat the purpose and intent of this Agreement or invalidate the same, the parties hereto agree to cooperate in defending this Agreement and its terms and provisions, and to reform such terms and provisions where necessary to do so and if a substitute provision is agreed to by the Parties, the remainder of the Agreement shall be in full force and effect.~~

15.12 Enforcement, Default, Remedies, and Dispute Resolution. Except for violations for which the enforcement mechanism developed pursuant to Art. XIV may apply, if either Party notifies the other Party that it is in breach of the terms of this Agreement, including the attached Exhibits, such Party in alleged breach shall have a period of thirty (30) days from the date of such notice in which to remedy the alleged breach, to the extent such breach can be remedied. A material breach by Operator that cannot be remedied, or which the Operator chooses not to remedy, may be cause for the City to immediately terminate this agreement and any other remedies available at law or equity. If the alleged breach is of a nature that can be remedied but cannot be remedied within that 30-day period, such Party in alleged breach shall have commenced to remedy the breach and shall work diligently to complete the remedy. If (i) the Party in alleged breach fails to acknowledge that a breach has occurred or is occurring, (ii) following the process set forth in the previous two sentences the Party alleging breach believes that the other Party continues to be in breach of this Agreement, including the attached Exhibits, or (iii) any other kind of dispute arises under any provision of this Agreement that cannot be resolved by good faith negotiation between the Parties, the Party claiming that a breach of this Agreement has occurred or seeking resolution of any other dispute under this Agreement shall send written notice to the other Party, specifying its position in the matter and invoking the dispute resolution process in this section. Within fifteen (15) days of the date of

delivery of such notice, the Parties shall meet to resolve the matter described in the notice.

If either Party at any time believes that mediation would be advantageous in connection with such meeting, or if a resolution of the matter cannot be achieved at the meeting, both Parties agree to make a reasonable effort to work through and with a mutually acceptable mediator to attempt to resolve the dispute.

Notwithstanding the foregoing, if either Party believes that the dispute will not otherwise be resolved in a sufficiently prompt and effective manner or if either Party determines that action is necessary for the protection of health, safety, welfare or the environment, such Party may, at its discretion, take such legal action and seek such legal or equitable remedies as it determines to be appropriate or necessary to protect and enforce its rights under this Agreement. Such remedies may include, without limitation, an injunction to stop an alleged violation or an order requiring the performance by the other Party, or other remedies permitted under law or this Agreement.

- 15.13 Governing Law. This Agreement and all related documents including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Colorado, United States of America including its statutes of limitations, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Colorado.
- 15.14 Jurisdiction and Venue. For all claims arising out of or related to this Agreement, Operator consents to the exclusive jurisdiction of and venue in the state courts in the County of Adams, Colorado or federal courts in Colorado.
- 15.15 Governmental Immunity. No term or condition of this Agreement will be construed or interpreted as an express or implied waiver of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*
- 15.16 Acknowledgement of Open Records Act. Operator acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*, and this Agreement and any related documents are subject to public disclosure.
- 15.17 Conflicts. In the event that conflicts exist within the terms and conditions of this Agreement and the attached Exhibits, or reference to prior agreements, this Agreement shall control.
- 15.18 No Presumption. The Parties ~~to this Agreement~~ and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.

15.19 Force Majeure. Neither Party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party hereunder), when and to the extent such failure or delay is caused by or results from a “Force Majeure.” “Force Majeure” shall mean causes or conditions beyond a Party’s reasonable control, including war, invasion, civil unrest including protests, terrorist threats or acts, riot, act of God, flood, fire, earthquake, severe weather, unavailability of equipment or materials; (unavailability of equipment and materials shall not excuse performance unless such equipment and materials remained unavailable after reasonable, diligent, and timely efforts by Operator to obtain such equipment and materials or reasonable alternates), shortage of electrical power or transportation facilities, bans, moratoriums, strikes 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). Acts or omissions of Operator and its agents shall not be deemed a Force Majeure event. Without limitation, the Parties agree that no government action, order, or law of the City of Commerce City (including any official, employee, board, commission, or related authority), or court order involving the City of Commerce City, shall be a Force Majeure event.

If the Operator claims a Force Majeure for the inability to complete a BMP, the Operator will not be relieved of the obligation to provide the BMP protection, rather the Operator must present a reasonable alternative or solution to provide the same or similar protection as the BMP within 180 days from the notice of Force Majeure. The Parties will discuss the alternatives and an alternative will be subject to administrative review and approval by the City.

The Parties further agree that a City ban or moratorium on oil and gas development that directly affects Operator or on any activity that would directly impact such development will not be a Force Majeure event but will extend this Agreement at the election of the Operator and upon Operator’s written notice for the length of the ban or moratorium if the ban or moratorium is found applicable to the activities contemplated in this Agreement. However, if a City ban or moratorium enacted materially impedes this Agreement, Operator will be allowed to terminate immediately.

If either Party is rendered unable, wholly or in part, by Force Majeure event or a ban or moratorium to carry out its obligations under this Agreement, that Party shall give the other Party prompt written notice of the Force Majeure with reasonably full particulars concerning it; thereupon, the obligations of the Party giving the notice, so far as they are affected by the Force Majeure, ban or moratorium, shall be suspended during, but no longer than, the continuance of the Force Majeure, ban or moratorium. Both Parties shall use all reasonable diligence to remove the Force Majeure situation as quickly as practicable. Any such extension shall also apply to

any and all time periods ancillary to this Agreement, including but not limited to the expiration of any OGP, the expiration of any Conditional Use Permits, the expiration of any building, grading, access or other permit issued to the Operator or its affiliates by the City related to the Well Sites and the date set forth in Section 10.2 hereof.

15. ~~2019~~ Authority to Execute Agreement. Each Party represents that the undersigned individuals have the full right and authority to enter into this Agreement and bind the Parties to the terms and conditions contained herein. This Agreement may be amended only by an instrument executed by both Parties.

DRAFT



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by a duly authorized representative on the day and year first written above.

APPROVED AS TO FORM:

THE CITY:

THE OPERATOR:

ATTEST

DRAFT

## List of Exhibits

Exhibit A – List of Well Sites  
Exhibit B – Best Management Practices  
Exhibit C – Insurance Requirements  
Exhibit D – P&A Wells  
Exhibit E – BMP Document for COGCC  
Exhibit F – Draft Schedule of Operations  
Exhibit G – Purchase of Essential Emergency Response Equipment and Training.  
Exhibit H – Air Quality Monitoring Fees

DRAFT