

# Fire Protection and Safety Agreement Regarding Oil and Gas Operations in Elbert County

This Fire Protection and Safety Agreement Regarding Oil and Gas Operations in Elbert County ("**Agreement**"), effective this \_\_\_ day of \_\_\_\_\_, 20\_\_ ("**Effective Date**") is entered into by and between the Kiowa Fire Protection District ("**Fire District**") and \_\_\_\_\_ ("**Operator**"). The Fire District and the Operator are referred to collectively as the "**Parties**" and individually as a "**Party**".

## I. Recitals

**A.** The Operator currently owns, and in the future may own additional, oil and gas leaseholds and/or mineral interests within the boundaries of Elbert County and the Fire District. The Operator desires to drill wells, construct facilities and take other actions to develop such current and future oil and gas leaseholds and/or mineral interests; and,

**B.** The Parties desire to enter into this Agreement to provide for a balanced, cooperative approach to the Operator's oil and gas development that is protective of human health, safety and welfare, as well as the environment and property.

**NOW THEREFORE**, in consideration of the mutual promises, covenants and agreements contained herein, the Parties agree as follows:

## II. Agreement

**1. Emergency Response and Spill Protection/Clean-Up Plan.** At least 30 calendar days before commencing construction of any facilities or commencing drilling of any well, whichever is earlier, the Operator shall provide the Fire District with an Emergency Response and Spill Protection/Clean-Up Plan ("**Plan**"), which shall, at a minimum, contain:

a. The name, address, and phone number (including 24-hour emergency numbers) for at least two persons responsible for Operator's emergency field operations;

b. A written response plan for any potential emergencies that may be associated with the construction, drilling, completion, or operation of the facilities. The response plan shall include, but not be limited to: explosions; fires; gas; chemicals; water pipeline leaks or ruptures; spills; hydrogen sulfide or other toxic gas emissions; or, hazardous material vehicle accidents;

c. An as-built facilities map showing the name, location, and description of all minor facilities, including the size, type, and contents of all pipelines and tanks. The Fire District shall maintain the as-built facilities map as confidential information pursuant to C.R.S. § 24-72-204(3)(a)(IV), and shall not disclose it to the public, except as required by law or as necessary in an emergency;

d. A provision for the Operator to provide training, equipment and materials for the Fire District's fire and medical personnel; and,

e. Copies of all applicable State and Federal permits (or applications in process for the same) needed for the proposed facilities, including Colorado Oil and Gas Conservation Commission Forms 1, 2 & 2A, as may be amended.

## **2. Operational Permitting Requirements (2006 International Fire Code, Section 105).**

a. Where flammable and combustible liquids are produced, processed, transported, stored, dispensed, or used, an annual operational permit shall be obtained from the Fire District in accordance with the International Fire Code then in force within the Fire District and Elbert County. This permit includes a Hazardous Material Management Plan (HMMP) and Hazardous Material Inventory Statement (HMIS). Operator acknowledges that separate operational permit shall be obtained from each fire protection district within which the Operator intends to drill a well(s) and that operational permit fees may vary by fire protection district. The Operator shall be responsible for applying to the appropriate fire protection district(s) for the necessary operational permit(s).

b. If a special use permit is required, the Fire District shall be a referral agency. The provisions of this Agreement shall be included in the conditions of any special use permit issued.

## **3. Access Requirements (2006 International Fire Code, Section 503.2.1).**

a. An unobstructed twenty (20) foot all weather surface to the tank batteries. The access road shall be constructed and maintained in a manner to permit the ingress and egress for fire and emergency response.

b. Limited apparatus access as approved by the Fire District to well heads, well pads, combustion equipment, and pits.

c. Where the well head/tank battery is in excess of one hundred fifty feet from the ingress point to the access road, the access road to the well head/tank battery shall be constructed of a durable surface that will support any Fire District equipment reasonably expected to access the well head/tank battery. The durable surface may be composed of gravel, crushed stone, crushed concrete, slag crushed brick, asphalt, concrete or other material, as approved by the Fire District.

d. Where the access road is in excess of one hundred fifty feet in length, turnaround areas shall be located as practical based on the existing site conditions (topography, land use, forest cover, and natural drainage -perennial/intermittent streams). Turnarounds may be required before any natural drainage area not having a constructed crossing sufficient to handle Fire District equipment reasonably expected to access the site.

**4. Safety and Security Requirements (NFPA 30, Section 21.7.2.2).** If deemed necessary by the Fire District due to the facility location, security fencing around permanent tank battery and site facilities will be required. Truck loading area and valves may be located outside of the fence. When required, security fencing shall be six foot in height, constructed of chain link, and topped by three strands of barbed wire, or the equivalent, as approved by the Fire District.

**5. Labeling and Signage (2006 International Fire Code, Section 3403.5).** Warning Signs shall be of durable material and affixed to fencing around battery tank sites. Signs warning of the hazard of flammable liquids shall have white lettering on a red background and shall read: "DANGER – FLAMMABLE LIQUIDS". Letters shall not be less than 3 inches in height and ½ inch in stroke.

**6. Fire Safety and Protection.**

a. If the facilities are located in a wildfire hazard area, the fire mitigation plan shall include detailed information as to fuel location, hazardous materials and proposed methods of fire suppression, including the use of foam. The Operator shall comply with the Fire District's requirements (if any) to mitigate any fire hazards at the facilities.

b. The Operator shall comply with any state and local fire restrictions applicable to the property upon which the facilities are located. If there is an Elbert County burn ban, the Operator shall have no open flames without the Fire District's prior written approval.

c. The Operator shall reimburse the Fire District and any Mutual Aid Districts, at their current rates, for all costs of responding to and fighting any fire and/or emergency situation requiring the presence of the Fire District and/or a Mutual Aid District(s).

**7. Modifications; Alternative Materials and Methods.** If the Operator establishes to the Fire District's satisfaction that practical difficulties prevent the Operator from complying with a specific requirement of this Agreement, or if the Operator proposes an alternative material or method of construction, and the Fire District determines that a proposed modification, or alternative material or method of construction, will meet the intent and purpose of this Agreement and the International Fire Code then in force within the Fire District and Elbert County, the Fire District may authorize the modification, or alternative material or method of construction; provided that any such authorized modification, or alternative material or method of construction, shall be in writing and signed by the Fire District and the Operator.

**8. Applicability.** This Agreement applies to all facilities and wells for which the Operator commences construction or drilling after the Effective Date, except that this Agreement shall also apply to modifications are made to an existing facility or well in accordance with Elbert County Zoning Regulations.

**9. Term.** This Agreement is effective upon the Effective Date and shall remain in effect so long as operations are conducted and through well abandonment.

**10. Definitions.** Except as defined herein, all terms shall be interpreted according to the International Fire Code.

**11. Notices.** All notices and other correspondence related to this Agreement shall be in writing and shall be delivered by certified mail with return receipt. A Party may change its designated representative for notice purposes at any time by sending written notice to the other Party in accordance with this paragraph. The Parties' initial representatives are as follows:

Fire District Information:  Kiowa Fire Protection District   
Physical Address:  403 County Road 45   
Mailing Address:  PO Box 321   
City, State, Zip:  Kiowa, CO 80117   
Attn:  Gerry Lamansky, Fire Chief   
Phone:  (303) 621-2233  Fax:  (303) 621-2690  Email:  g.lamansky@kiowafire.com

Operator Information: \_\_\_\_\_  
Physical Address: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

**12. Default.** If a Party defaults in the performance under this Agreement, the defaulting Party shall have thirty (30) 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) day period and diligently pursues its completion. If the defaulting Party fails to cure the default within the applicable cure period, then the non-defaulting Party shall have the right to immediately terminate this Agreement upon written notice to the defaulting Party. If the Agreement is terminated, due to failure to cure the default, the Fire District shall report such default to Elbert County for their review of their Agreement with the Operator. Such a default may, at the discretion of Elbert County, cause revocation of the Operator's permit.

**13. Recording.** The Operator shall cause a copy of this Agreement to be filed in the real property records of the Elbert County Clerk and Recorder and shall submit a recorded copy of this Agreement to the Fire District within 30 calendar days of the Effective Date.

**14. Additional Terms.** Colorado law governs this Agreement. Jurisdiction and venue lie exclusively in the Elbert County District Court. This Agreement constitutes the entire Agreement between the Parties, and supersedes all prior and contemporaneous conversations, negotiations, possible alleged agreements, representations, covenants, and warranties concerning the subject matter hereof. This Agreement may be amended only by a document signed by the Parties. Course of performance, no matter how long it may continue, shall not be construed as an amendment of this Agreement. If any provision of this Agreement is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties and their legal representatives, successors, and permitted assigns. This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a party to this Agreement. In any dispute arising from or relating to this Agreement, the prevailing Party shall be awarded its reasonable attorneys' fees, costs, and expenses, including any attorneys' fees,

costs, and expenses incurred in collecting upon any judgment, order, or award. This Agreement may be executed in several counterparts and by original signature, or facsimile or electronic PDF copy, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

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

Fire District:

Operator:

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(signature)

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_