



STANDARD MEMORANDUM OF UNDERSTANDING

This Standard Memorandum of Understanding ("MOU") is made and entered into this 15th day of June, 2014, by and between Elbert County, a Colorado County ("County") with an address of P. O. Box 7, 215 Comanche Street, Kiowa, Colorado 80117 and Agave Oil & Gas, LLC ("Operator"), with an address of 512 Main Street, Ste 600, Fort Worth, Texas 76102. The Operator and the County may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

- A. 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.
- B. The intent of this MOU is to provide the conditions under which Operator will develop and operate oil and gas facilities or newly expanded facilities in the unincorporated portions of the County, in order to foster the efficient and economic production of oil and gas resources, to protect human health, safety and welfare and to protect the environment and wildlife resources, while at the same time providing for a predictable and expeditious administrative process for obtaining County land use approvals and permits for oil and gas facilities. The terms "facility" or "facilities" are defined here as including oil and gas well sites, flow lines, tank batteries, compressor stations, pits/ponds, below-grade tanks, dehydration units, vapor recovery units (VRUs), and associated roads. 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 ("Commission") Rules.

NOW, THEREFORE, the Parties agree as follows:

1. **Intent to Supplement Commission 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"), the Commission regulates the development and production of oil and gas resources in Colorado, and the Act authorizes the Commission to adopt statewide rules and regulations. The provisions of this MOU are intended to supplement and add to the Commission's rules and regulations. To the extent that any of the provisions of this MOU are in conflict with the Act or COGCC rules and regulations, the stricter rules shall govern.
2. **Operator's Pit Practices within the County.** The Operator shall comply, at a minimum, with the following pit practices, after the date of this MOU:
 - a. **Closed-loop or Modified Closed-Loop Systems:** It is the intent of the County that operations utilize closed-loop or modified closed-loop systems for drilling and completion operations in order to minimize or eliminate the need for open or earthen pits.

- b. **Water Storage Pits to Contain Fresh Water:** Water stored in pits approved by the County and allowed under Commission Rules, must meet the definition of fresh water. Fresh water is defined as containing total dissolved solids (TDS) less than or equal to 5,000 milligrams/liter (mg/l). Upon closure of the fresh water pit, the Operator will ensure the protection of the public health and environment by following all Commission pit closure rules, including collecting analytical data to ensure compliance with state standards. As long as the fresh water pit is open and containing fluid, a representative water sample shall be taken every six months from the surface of the pit fluids, the first sample to be taken within 6 months of the pit becoming operational. The County will review water quality data provided by the Operator every six (6) months.
 - c. **Pits That Do Not Require County Approval:** Emergency Pits, Flare Pits and Plugging Pits, each as defined by the Commission, will not require County review or approval prior to construction (unless within ¼ mile of a residence as set forth below); however, the County will be copied on all notifications sent to the Commission in additional to any pit plans, remediation plans, or analytical results submitted to the Commission.
 - d. **Pit Setbacks:** All pit construction within ¼ mile of a residence or water well is generally discouraged by the County and may have additional County requirements. Such pits will be reviewed on a case-by-case basis by the County.
 - e. **Technological Advances:** The County may require additional measures, if new technological methods for pit construction or maintenance are developed pre- or post-construction and such methods are technologically sound, economically practical, and reasonably available to the Operator.
3. **Setbacks.** Operator's facilities shall adhere to the Commission's Rules, unless negotiated to a greater distance. A surface owner of property on which a facility is to be located may agree to a lesser setback, provided such agreement is not made in contravention of the Commission's rules.
4. **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. Inspection and maintenance record will be provided to the County upon request. Operator shall be responsible for maintaining the area within the berms free of vegetative growth.
5. **Regular Meetings to Monitor and Discuss MOU Issues.** The County and Operator agree to meet quarterly or as necessary, to monitor and discuss any pertinent issues associated with oil and gas facilities within the County.
6. **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 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 and in accordance with an executed Elbert County Master Road Use Agreement, 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.

7. **Base Line Water Testing.** Operator agrees to comply with the Commission's Statewide Groundwater Baseline Sampling and Monitoring Rule 609, as adopted or modified, in addition to the 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 will comply with the stricter standard.
 - a. **Criteria and Protocol:** Using the Commission's criteria and protocol for sample analyses, types, orientation, and number, Operator will test up to four available water sources within a one half ($\frac{1}{2}$) 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 $\frac{1}{2}$ mile radius of a new oil and gas facility, the 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 a half ($\frac{1}{2}$) 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 cost and expenses for such baseline test is the responsibility of the requesting owner. The requirement to test a well upon request does not apply if the water well has already been tested by any Operator.
8. **Spill and Release Management.** Any spill or release that is reportable to the Commission shall be simultaneously reported to the County.
9. **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.
10. **Stormwater Management.** Operator will provide the County copies of their Stormwater Management Plan and Post Construction Stormwater Program as requires by the Commission. Operator shall include Best Management Practices as required by the Commission on their Form 2A.
11. **Noise.** Operator shall provide and post 24-hour, 7 days per week contact information to deal with all noise complaints arising from Operator's facilities.



12. **Fire Protection and Safety Agreement.** Operator will provide the County with a Fire Protection and Safety Agreement (FPSA) that has been developed with the jurisdictional fire district to address all potential emergencies 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-serve" letter must be obtained from the appropriate emergency provider(s).
13. **Elbert County Master Road Use Agreement.** The Operator shall enter into a Elbert County Master Road Use Agreement through the Elbert County Public Works Department, and satisfy all terms and conditions of such Elbert County Master Road Use Agreement, including any posting of bonds.
14. **Private Roads.** The Operator agrees to construct (unless already constructed) and maintain an access road designed to accommodate emergency response vehicles such as, but not limited to, law enforcement, emergency command vehicles (cars/SUVs), ambulances, hazardous materials response vehicles, water tenders, and fire apparatus during construction and operation of new tank batteries (post MOU), new drilling activity and reworks or recompletions of existing wells, unless a local fire department or fire district agrees to a different or lesser standard or waived by the County. With respect to new roads to new tank batteries, the Operator agrees to construct access roads in accordance with the Elbert County Driveway Standards. Best efforts will be made to improve inadequate access to existing tank battery sites identified by the fire district or County, based on service calls and demonstrated problems of accessing the site. 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.
15. **Dust Mitigation.** Fresh water, as defined by the Commission, may be applied to roads and land surfaces for purpose of dust mitigation. Absolutely no other liquid or substance generated from the production of the Operator's facility, including but not limited to Exploration and Production Waste (as defined by the Commission) shall be permitted to be applied to roads and land surfaces.
16. **Floodplain.** There shall be no disturbance within a floodplain.
17. **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.
18. **Lighting.** All permanent lighting of oil and gas well sites shall be directed downward and internally. Temporary lighting shall conform to the Commission's Rules and Regulations.
19. **County Inspections.** Operator agrees to allow County access to all 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 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 Commission 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.

20. **County Land Use Approvals.** The Operator understands and agrees that prior to the 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. The Operator agrees and consents that the provisions of this MOU are to be included among any conditions for the issuance of any land use approval or permit issued by the County under its Zoning Regulations, unless, and to the extent, waived or modified on the record at a public hearing before the Elbert County Board of County Commissioners; 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.
21. **State Oil and Gas Permit Approvals.** The Operator agrees to include the contents of Exhibit A of this MOU in all Forms 2 and 2A that it submits to the Commission 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 Commission with regard to the location, development or operation of a facility in unincorporated portions of the County, unless, and to the extent, waived or modified on the record at a public hearing before the Elbert County Board of County Commissioners; 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 facilities, or interest therein, by Operator. The County through the LGD process described in the Commission's Rules may request that the Commission 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 Commission'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 Commission to modify the state permit by allowing such subsequent, additional conditions to be placed on the state permit.
22. **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 Commission 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 approved on the record at a public hearing before the Elbert County Board of County Commissioners.

23. **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 such decisions 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 facilities 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.
24. **Obligation of Funds.** Nothing in this MOU shall commit either Party to obligate or transfer any funds to the other.
25. **Force Majeure.** Neither Party will 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).
26. **Authority to Execute MOU.** Each Party represents that it has the full right and authority to enter into this MOU.
27. **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.
28. **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.
29. **Third Party Beneficiaries.** Except as specifically stated 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.
30. **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 (such as FedEx, UPS, etc.), (iii) fax transmission if verification of receipt is obtained, or (iv) 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: _____

Operator: Mr. Richard Henninger
Agave Oil & Gas, LLC
512 Main Street, Ste 600
Fort Worth, Texas 76102
(817) 870-0026

31. **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. The County will be copied on all transfer documents and forms submitted to the Commission.
32. **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.
33. **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.



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: AGAVE OIL & GAS, LLC

By:
Signature
James A. Holcomb, Jr., Member

Date: June 18, 2014

County of Tarrant)
) ss.
State of Texas)

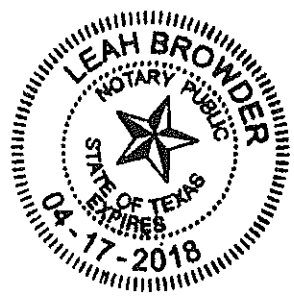
The foregoing instrument was acknowledged before me this 18th day of June, 2014, by James A. Holcomb, Jr., as Member of Agave Oil & Gas, LLC, a Texas Limited Liability Corporation.

My commission expires: 4/17/2018

Witness my hand and official seal.

Signature
Leah Browder
Name of Notary

500 Main St.
Ft. Worth, TX 76102
Address of Notary





Board of County Commissioners of Elbert County

By:

Kurt C Schlegel
Signature

KURT C SCHLEGEL
Print Name

Date:

29 SEPTEMBER 2014

County of _____)
) ss.
State of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____, as _____ of _____
_____, a _____.

My commission expires: _____

Witness my hand and official seal.

Signature

Name of Notary

Address of Notary

EXHIBIT A

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 Commission'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.**

- a. Operator shall use closed-loop or modified closed-loop systems, as defined below for drilling and completions; however fresh water pits are allowed if approved by the Commission in accordance with Commission Rules and if approved by the County, excepting that emergency, flare and plugging pits that are approved by the Commission in accordance with Commission Rules are allowed without prior County approval if constructed and operated in compliance with the Commission Rules and if located more than ¼ mile from any occupied building. Use of the aforementioned pits except emergency pits, within ¼ mile of an occupied building must be approved by the County.
 - b. Modified closed-loop systems include oil and gas well 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.
 - c. If operator indicated that a closed-loop system or modified closed-loop system will be used for drilling and completion, this section will not be applicable.
2. **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 will be provided to the County upon request.
3. **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 utilized existing culverts, if available.
4. **Baseline Water Quality Testing.** Operator shall comply with the Commission's Statewide Groundwater Baseline Sampling and Monitoring Rule 609 and thereafter with Rule 609 as adopted or modified, in addition to the 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 will comply with the stricter standard.



- a. Using the Commission'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. If there are no available water sources located within a ½ mile radius of a new oil and gas facility, the Operator will test the nearest downgradient available water source that is within a one-mile radius of the oil and gas facility.
 - c. To the extent requested by a private water well owner, Operator shall conduct a baseline test of any water sources, on a one-time basis, within a half (½) 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.
5. **Spill and Release Maintenance.** Operator will submit copies of any Form 19 filed with the Commission to the County LGD.
 6. **Weed Control and Maintenance.** Operator shall be responsible for noxious weed control on any disturbed area, from the construction phase to the closure of the well of facility.
 7. **Noise.** Operator shall provide to the LGD 24 hour, 7 days a 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.
 8. **Private Roads.** The Operator agrees to construct (unless already constructed) and maintain an access road designed to accommodate emergency response vehicles such as, but not limited to, law enforcement, emergency command vehicles (cars/SUVs), ambulances, hazardous materials response vehicles, water tenders, and fire apparatus during construction and operation of new tank batteries (post MOU), new drilling activity and reworks or recompletions of existing wells. With respect to new roads to new tank batteries, the Operator agrees to construct access roads in accordance with the Elbert County Driveway Standards. Best efforts will be made to improve inadequate access to existing tank battery sites identified by the local fire district or County, based on service calls and demonstrated problems of accessing the site. 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.
 9. **Dust Mitigation.** Operator shall use only fresh water (as defined by the Commission) on roads or land surfaces for dust mitigation.



10. **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.

11. **Lighting.** All permanent lighting of oil and gas well sites shall be directed downward and internally.