

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made and entered into by and between the City of Brighton, a Colorado home-rule city (“City”) with an address of 500 S. 4th Ave., Brighton, CO 80601, and Petro Operating Company, LLC (“Operator”), with an address of 9033 East Easter Place, Suite 112, Centennial, Colorado 80112. Operator and the City 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 the City, 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 City.
- B. The development of the oil and gas leasehold and/or mineral interests within the City include construction of a pair of parallel pipelines to move the resource for processing.
- C. The intent of this MOU is to provide the conditions for a Conditional Use Permit, approved _____, under which Operator will design, construct, operate, and maintain the pipelines 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.

NOW, THEREFORE, in consideration of the recitals set forth above, together with other good and sufficient consideration, the Parties agree as follows:

- 1. Definitions.
 - a. “Facilities” shall mean all infrastructure allowed by the City to be constructed, including but not limited to publicly owned streets, water lines, stormwater lines, and waste water lines, as well as privately owned electrical lines, cable lines, and gas lines.
 - b. “ROW” shall mean right-of-way.
 - c. “Authorized Uses” shall mean permitted uses of the land that the City has formally allowed to take place.
- 2. Design.
 - a. The Pipelines shall be constructed with a Class 2 Design (0.60 Design Factor) for steel pipelines.
 - b. If the Pipelines are constructed of steel, Fusion Bond Epoxy (FBE) Coated Pipe (or equivalent) shall be used to protect pipe from corrosion.
 - c. The Pipelines shall utilize a cathodic protection system.
 - d. The Pipelines shall be hydrostatic tested to a minimum 1.25 times the Maximum Operating Pressure for four (4) hours for exposed pipe and eight (8) hours for buried pipe.

e. The Pipelines shall utilize In-Out measurement for Leak Detection at both the beginning and ending points of the Pipelines.

f. The Pipelines shall utilize pressure safety valves for over pressure protection and low pressure detection that shuts-in the pipe in order for Operator to investigate pipeline pressure irregularities.

3. Construction.

a. The Operator agrees that the construction permitted hereunder shall proceed with reasonable diligence from the initiation of such construction to its completion. The installation of the Pipelines shall be completed no later than one year from the Effective Date. If Operator fails to install the Pipelines within such time, this Permit shall be null and void and Operator shall release the Permit in the real property records of Weld County, Colorado.

b. The following inspections and technologies will be employed to verify the internal structure and integrity of the Pipelines.

- i. Operator will conduct X-ray on 100% of welds.
- ii. Operator will conduct survey and logging for every girth weld in place.
- iii. Operator will utilize jeeping (holiday detector) as well as visual inspection of coating. Once a jeep (damage) is detected, pipe coating shall be repaired and re-jeeped until damage is repaired and does not cause a jeep or detection.

c. All steps and or phases of construction shall be inspected by Operator's third-party inspectors.

d. Roads, creeks and other encumbrances shall be bored underneath at a safe depth

e. Within the public right-of-way, the Pipelines shall be placed a minimum of five (5) feet below the surface to ensure the Pipelines are a sufficient depth to allow for existing and future storm sewer, sanitary sewer, potable and non-potable water lines within the Pipeline route. Operator will be responsible for contacting the City to identify any possible utility conflicts with the proposed Pipeline alignment.

f. The Pipelines shall be placed a minimum of ten (10) feet, measured horizontally, from any existing storm sewer, sanitary sewer, potable and non-potable water lines. Operator will be responsible for contacting the City to identify any possible utility conflicts with the proposed Pipeline alignment.

g. Operator shall notify the City thirty (30) days prior to beginning construction of the Pipelines, unless otherwise agreed to by the Parties.

h. Operator shall contact the Utility Notification Center of Colorado (1-800-922-1987) for location of underground utilities.

i. Operator shall apply for, obtain, and pay for, permits required by the City and any other applicable jurisdictions prior to commencing any work along the Pipeline Route.

j. Operator shall not conduct, nor permit, any blasting above, underneath or near the Pipeline Route without prior written permission from the City. Any blasting allowed shall be done in the presence of a representative of the City and in accordance with directions such representative may give for the protection or safety of Facilities in the City's ROW.

k. The City has and will continue to allow Facilities to be constructed within City ROW including without limitation natural gas gathering, storage, transmission, and distribution. Such natural gas Facilities may now transport and may continue to transport natural gas at significant pressures. Operator accepts any associated risks and shall advise its employees, agents, contractors, and other persons who enter upon the City ROW, pursuant to the provisions of this Permit, of the existence and nature of those risks.

l. The City has and will continue to allow electric transmission and distribution through Facilities within City ROW. Such electric Facilities may now transmit and may continue to transmit electric current at significant voltages and the conductors on electric lines may not be insulated. Operator accepts any associated risks and shall advise its employees, agents, contractors, and other persons who enter upon the City ROW, pursuant to the provisions of this Permit, of the existence and nature of those risks.

4. Operation & Maintenance. The following inspections and technologies will be employed to find leaks and/or verify the internal structure and integrity of the Pipelines.

a. Operator will conduct regular pigging on the Pipelines at least once a year.

b. To detect anomalies such as internal and external corrosion or denting, Operator will conduct smart pigging in accordance with U.S. Department of Transportation regulations, including any requirements based upon changed surface conditions.

c. Operator will conduct leak detection, including aerial surveys at least two times per year.

d. Operator will conduct annual pressure testing in accordance with U.S. Department of Transportation regulations.

e. In the event of a leak detection, Operator will immediately shutdown the Pipelines.

f. The City will be informed as soon as possible if pigging or pressure testing detects any issues requiring maintenance or repair.

g. The City or its representative may inspect the installation or repairs of the pipelines during the construction as it deems necessary.

h. At a minimum, one lane of traffic shall be maintained on Weld County Road 4 at all times during construction, maintenance and operation. If a lane closure or work within the right of way is planned for Weld County Road 4, either during construction or while the pipelines are in operation, a traffic control plan shall be submitted to the City for approval a minimum of 10 business days in advance of the planned closure.

5. Reclamation and Weed Control Within Public Rights of Way.

a. If there is any disturbance within public rights of way, Operator shall submit a reclamation and weed control plan for the City's review and approval. Operator will comply with reclamation and weed provisions contained in agreements with each surface owner on lands owned by that surface owner.

b. Operator shall remove and store the topsoil separately for the full width of the pipe trench and replace the topsoil on the top of the backfill over the pipe trench to the extent possible as part of the initial Pipelines construction procedures. Topsoil shall be replaced and re-seeded in cultivated and agricultural areas.

c. Operator shall immediately restore, at its sole cost and expense, the surface along the entire length of the Pipeline Route, to its prior condition and contour, as nearly as practical and permissible, following any disturbance occasioned by the rights granted Operator in this Permit.

d. For a period of one year following disturbance of the surface of the Pipeline Route, the Operator will maintain the surface elevation and quality of the soil by correcting any erosion, settling or subsidence that may occur as a result of the work done by the Operator.

e. Operator shall, at its sole cost and expense, immediately repair any damage to property along the Pipeline Route or to the City's roads or other Facilities within or outside the City ROW, resulting from any Authorized Uses or other activities related to the Pipelines. Repairs shall be made in accordance with current City rules, regulations, and ordinances.

6. Abandonment. For abandonment, Operator must permanently remove the Pipelines from service by physically separating it from all sources of hydrocarbons. At the sole discretion of the City, the Operator shall comply with one of the following:

a. **Abandonment in place.** Operator shall:

- i. Purge the Pipelines of any liquids;
- ii. Deplete the Pipelines to atmospheric pressure;
- iii. Cut the Pipelines' risers to three (3) feet below grade or to the depth of the Pipelines, whichever is shallower;
- iv. Seal the ends of the Pipelines below grade; and
- v. Remove above-ground cathodic protection and equipment associated with the riser.

b. **Removal.** Operator shall remove the Pipelines and its risers, the riser associated with cathodic protection, and above-ground equipment.

7. Emergency Response Plan. An Emergency Response Plan for the Pipelines must be submitted which is in compliance with the applicable Fire Code. The plan shall be filed with the City and the appropriate Fire District within thirty (30) days after as-builts are completed. The Emergency

Response Plan may need to be updated at any time at the discretion of the City or Fire District. The Emergency Response Plan shall consist of at least the following information to be submitted to the City for review and approval:

- a. Name, address and phone number, including twenty-four (24) hour emergency numbers for at least two persons responsible for emergency field operations; and
- b. A diagram depicting the planned Pipelines route. Following construction of the Pipelines, the Operator shall submit as-built drawings in AutoCAD format, or another format acceptable to the City, that is compatible with the City's current adopted coordinate system. The as-built drawings shall depict the locations and type of above and below ground facilities including sizes, and depths below grade of the Pipelines and associated equipment, isolation valves, surface operations and their functions. The information concerning isolation valves shall be held confidentially by the City and shall only be disclosed in the event of an emergency or to emergency responders; and
- c. Detailed information addressing each reasonably potential emergency that may be associated with the operation. This may include any or all of the following: explosions, fires, pipeline leaks or ruptures; and
- d. Detailed information identifying access or evacuation routes, and health care facilities anticipated to be used.

8. Recording. Operator shall record the Pipelines' "as-built" legal description and map of the location with the Clerk and Recorder of Weld County within thirty (30) days of completion of construction and shall provide the same to the City.

9. Risk, Liability, Indemnity.

a. By virtue of entering into this MOU, the City: (1) assumes no liability for use, operation, or existence of the Operator's engineering, preparation, installation, maintenance or repair; and (2) assumes no additional responsibilities or obligations related to the Operator's future or additional activities along the Pipeline Route, except for those activities associated with the routine operation and maintenance activities within City ROW.

b. The Operator agrees to indemnify, defend and hold harmless the City, its officials, officers, agents, employees and contractors, from and against any and all claims and liability for damages or injury to property or persons arising from, alleged to arise from, or related to or caused directly or indirectly by (i) the Operator's Authorized Uses, (ii) the placement or operation of the Pipelines within the City, (iii) any defect or failure of the engineering, preparation, construction, installation, maintenance, operation or repair of the Pipelines, and/or (iv) Operator's actions or omissions under the provisions of this Permit. This obligation does not extend to any negligent act, omission, error, mistake or accident of the City.

10. Insurance.

a. Operator shall purchase and maintain insurance as specified below covering the Conditional Use Permit, all the work and services to be performed and all obligations assumed

under it, from the Effective Date with insurance companies reasonably acceptable in the industry:

- i. **Workers' Compensation and Employers Liability Insurance** providing workers' compensation benefits mandated under applicable state law and employer's liability insurance subject to minimum limits of not less than \$1,000,000 for each accident for bodily injury by accident; \$1,000,000 for each employee for bodily injury by disease, and \$1,000,000 policy limit for bodily injury by disease.
 - ii. **Commercial General Liability Insurance** written on an occurrence basis subject to limit of \$1,000,000 each occurrence for bodily injury, property damage, personal injury, libel and/or slander with an annual aggregate limit of no less than \$2,000,000. Policy coverage is to be based on usual Insurance Services Office ("ISO") policy forms to include, but not be limited to: Operations and Premises Liability, Completed Operations and Products Liability Personal Injury Liability and Contractual Liability insurance.
 - iii. **Business Automobile Liability Insurance** subject to a minimum limit of \$1,000,000 each accident for bodily injury and property damage. Policy coverage shall be based on ISO policy forms referred to as Business Automobile Policy ("BAP") to cover motor vehicles owned, leased, rented, hired or used on behalf of Operator.
 - iv. **Umbrella Liability Insurance** written on an occurrence basis subject to a limit of \$10,000,000 each occurrence for bodily injury, property damage, personal injury and libel and/or slander. Policy coverage is to be at least as broad as primary coverages and include, but not be limited to, Operations and Premises Liability Completed Operations and Products Liability, Personal Injury Liability and Contractual Liability insurance. Completed Operations coverage is to be maintained for a period of not less than three (3) years after the termination of this Permit.
- b. All insurance required of Operator shall include the City, its officers, officials, agents, and employees as additional insured and include wording which states that the insurance shall be primary and not excess over or contributory with any insurance carried by the City.
- c. All insurance shall provide a minimum of thirty (30) days advance written notice of insurer's intent to cancel or otherwise terminate policy coverage to the City.
- d. All policies shall be written on an occurrence basis. If Operator cannot obtain an occurrence based policy for any required coverage, policies may be written on a claims made

basis. If any policies providing the required coverage(s) are written on a claims-made basis, the following is applicable:

- i. The retroactive date shall be prior to the Effective Date of this Permit.
- ii. Operator shall maintain such policies on a continuous basis.
- iii. If there is a change in insurance companies or the policies are canceled or not renewed, Operator shall purchase an extended reporting period of not less than three (3) years after the Permit termination date.

e. Operator shall file with City on or before the Effective Date a valid Certificate of Insurance for all required insurance policies. Each Certificate shall identify the City as additional insured as required and state that the City will receive a minimum of thirty (30) days advance written notice of insurer's intent to cancel, reduce or otherwise terminate policy coverage. Prior to expiration of such insurance, Operator shall supply an updated Certificate of Insurance that clearly evidences the continuation of all coverage in the same manner, limits of protection, and scope of coverage, as was provided by the original Certificates.

f. Operator hereby waives all rights of subrogation against the City and other required parties as noted above, for damages to the extent covered by insurance, all insurance policies of Operator shall allow that any release from liability or waiver of claim for recovery from any other party entered into in writing by Operator prior to any loss or damage shall not affect the validity of said policy(ies) or the right of the insured or insureds to recover under them.

g. In the event that any work under this MOU is to be performed by a private contractor, said contractor shall provide evidence of insurance coverage specified in this Permit.

11. Required Notifications.

- a. Operator must notify the City at least ten days before conducting a pressure test.
- b. If a lane closure or work within the right of way is planned for Weld County Road 4, either during construction or while the pipelines are in operation, a traffic control plan shall be submitted to the City for approval a minimum of 10 business days in advance of the planned closure.
- c. Operator must submit reports of failed pressure tests to the City within 24 hours after conducting the test.
- d. Except in an emergency, the Operator shall notify the City at least ten days preceding the date of commencing any work on or relating to the installation or repair of the Pipelines permitted hereunder.

e. In the event of an emergency, Operator shall attempt to notify the City's engineer prior to performing emergency repairs. The City Manager shall also be notified as soon as possible.

f. Operator will submit to City all records required to be submitted to U.S. *Pipeline and Hazardous Materials Safety Administration* or the Colorado Public Utilities Commission including those related to inspections, pressure testing, pipeline accidents and other safety incidents.

12. Assignment. This Permit is not transferable or assignable without prior written permission from the City.

13. 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:

City:	City of Brighton	Developer:	Petro Operating Company, LLC
	City Manager		Roger Parker
	500 S. 4 th Avenue		9033 East Easter Place
	Brighton, Colorado 80601		Suite 112
	Fax No.		Centennial, CO
	E-mail:		Fax No. 720-362-7116
			E-Mail: rogeraparker9@aol.com
	With a copy to:		
	Margaret R. Brubaker, Esq.		
	Mehaffy Brubaker & Ernst, LLC		
	City Attorney		
	500 South 4 th Avenue		
	Brighton, Colorado 80601		
	Fax No.		
	E-mail:		

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

[Signatures Begin on Next Page]

CITY OF BRIGHTON, COLORADO

ATTEST:

By: _____
Philip Rodriguez, City Manager

By: _____
Natalie Hoel, City Clerk