

## **SURFACE USE AGREEMENT**

This Surface Use Agreement ("Agreement") is made effective this 9<sup>th</sup> day of April, 2012, by and between HCW Investments LLC, of 7785 Highland Meadows Parkway, Fort Collins, Colorado 80528, hereinafter jointly and severally referred to sometimes herein as "Owner"; and Great Western Oil and Gas Company, LLC, a Colorado Limited Liability Company, with offices at 1700 Broadway, Suite 650, Denver, Colorado 80290, hereinafter sometimes referred to as "Operator"; each of the foregoing sometimes referred to individually as a "Party," or collectively as the "Parties."

For and in consideration of the covenants and agreements contained herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by the Owner, the Parties agree as follows:

### **1. OWNERSHIP.**

Owner is the surface owner of certain lands, such lands and improvements thereon hereinafter sometimes referred to as the "Lands", located in Weld County, Colorado more specifically described as follows:

TOWNSHIP 6 NORTH, RANGE 66 WEST, 6<sup>TH</sup> P.M.  
Section 24: Part of SW/4  
Section 25: Part of NW/4

Operator, or its affiliates, owns a working interest in valid leases covering all or portions of the Lands or lands pooled or included in a spacing unit therewith (each a "Lease," collectively, the "Leases"). Additionally, Operator may have responsibilities under a Joint Operating Agreement ("JOA") with respect to the Lands.

### **2. OPERATOR'S OIL AND GAS OPERATIONS ON THE LANDS.**

Operator intends to drill or cause to be drilled oil and/or gas wells on the Lands, as depicted approximately on Exhibit "A" attached hereto ("Wells"). In order for Operator to drill, construct, complete, produce, maintain, and operate the Wells and all facilities associated therewith, including, but not limited to, access roads ("Access Roads"), pipelines, flow lines, separators, tank batteries, electric lines and any other facilities, or property necessary for Operator to conduct operations on the Wells (each a "Facility," collectively, the "Facilities"), it is necessary that Operator enter and utilize a portion of the surface of the Lands.

The Parties enter into this Agreement to evidence their entire agreement regarding the payment of surface damages, entry, surface use, and any other matters relating to Operator's use of the Lands.

### 3. LOCATION.

The approximate location of the Wells, the Access Roads to the well sites and certain other Facilities to be constructed on the Lands are depicted on Exhibit A, attached and incorporated into this instrument by this reference. Any material changes to the locations of the well sites, Access Roads and Facilities may be made by Operator with the consent of Owner, which shall not be unreasonably withheld.

### 4. CONDUCT OF OPERATIONS.

Operator's operations on the Lands shall be conducted pursuant to the terms of the Leases, this Agreement, the rules and regulations of the Colorado Oil & Gas Conservation Commission ("COGCC"), and applicable Colorado statutes and case law.

5. COMPENSATION. Operator agrees to pay owner the sum of \_\_\_\_\_ ("Amount") for the wells site pad containing the HCW FD 24-20D, HCW FD 24-36D and HCW 24-35D and Operator will pay Owner the sum of \_\_\_\_\_

\_\_\_\_\_ for the tank location prior to the commencement of drilling operations. This amount shall be deemed full and agreed consideration for all damages caused or created by reason of the reasonable and customary ingress, egress, rights-of-way, drilling, completion, production and maintenance operations associated with the well and facilities. Such damages will include, without limitation, damages to growing crops and crop land; the removal, transportation and care of any livestock; the re-seeding, construction and use of access roads; and the preparation and use of the wellsite areas. Owner agrees to execute any waiver or requirements deemed necessary by the COGCC. If the COGCC does not approve a location for any of the proposed wells, owner shall cooperate with Operator in finding a new location. Any subsequent major operations for said wells, (refrac, deepening, re-drilling, etc.) except in case of emergency, shall require ten (10) days prior notice to owner.

### 6. ADDITIONAL SURFACE USE PROVISIONS, ACCESS ROADS, FENCES AND FACILITIES.

With respect to its operations on the Lands, Operator shall comply with the following provisions:

#### A. Access Roads:

(i) Access Roads shall not exceed 20 feet in width during drilling, completion, deepening, refracing, recompletion, reworking, equipping and production operations. The permanent access roads to the wellhead and tank battery location shall be limited to 12 feet in width.

(ii) Operator will insure that all vehicles accessing the Lands on its behalf remain on the Access Road.

(iii) Operator shall back-slope all Access Roads.

(iv) Should Operator elect to permanently abandon any of the Access Roads, Operator shall provide Owner with a minimum of 10 days prior written notice before restoring the surface to the same. Following the Owner's receipt of such notice, Owner shall have 10 days to deliver a writing stating Owner's election to assume all liabilities for the condition of any particular Access Road then-existing and in the future, and upon such election Operator shall have no obligation to reclaim or restore the surface of the lands utilized as said Access Road, and shall be further relieved of any obligation to inspect, repair, maintain, or any other wise have any responsibility or liability for such Access Road and the use thereof by anyone, and such responsibility and liability shall thenceforth be solely and absolutely that of the Owner shall protect, defend and indemnify Operator from any claims, demands or actions regarding same. Should Owner fail to deliver such a writing to Operator in a timely manner, Operator shall be entitled to assume that it may proceed at any time with Operator's abandonment of said Access Road and its restoration of the surface thereof.

(v) Operator shall have the obligation to maintain each Access Road in good repair and condition, but only until Operator makes any abandonment and restoration, or release to Owner under the preceding subparagraph (v), if any.

#### B. Surface Restoration:

Upon permanent cessation of Operator's operations on the Lands, all areas thereof occupied or utilized by Operator shall be restored by Operator to their contour as existing immediately prior to the Agreement, as nearly as is reasonably practicable, and re-seeded if so requested by Owner; subject to the provisions of Paragraph 7(A)(v) herein.

#### C. Other:

(i) Operator shall install culverts on the Lands as may be reasonably necessary to prevent damage by Operator to the Owner's drainage and irrigation facilities and systems. Damage, if any, to such facilities and systems which is the direct result of be promptly repaired to the condition in which such facilities and systems existed at the time immediately prior to the time Operator may have caused such damage, during such activities.

(ii) If by reason of the activities of the Operator, including, but not limited to, drilling, completing, equipping, and operating of the Wells, there is damage to personal property of the Owner, including, but not limited to, irrigation wells, fences, culverts, bridges, pipelines, ditches, or irrigation systems, for which Owner has not been previously compensated pursuant to Paragraph 5, and upon Owner's notification to Operator, Operator shall repair or replace such items after consultation with and to the reasonable

satisfaction of the Owner, which repair or replacement shall be accomplished by Operator within fifteen (15) days after final consultation with Owner.

(iii) Operator agrees that all trash, refuse pipe, equipment, liquids, chemicals, or other materials brought on the Lands that are not necessary for continued operations of the Wells shall be removed and disposed away from the Lands by Operator no later than 30 days after the completion of the Wells. No such items shall be burned or buried on the Lands by Operator.

(iv) Operator shall keep the wellpad free and clear of noxious weeds and trash during operations.

(v) Operator shall remove all guy line anchors for drilling and completion rigs promptly after Operator's rig use is completed.

(vi) Fencing: if reasonably requested by Owner, Operator shall fence off the perimeter of the wellpad site shall present a hazard to persons and/or livestock, if requested by Owner. If Owner runs cattle on the Lands at the time of the operations, Operator shall also install cattle on the Lands where necessary. Operator may at any time, and from time to time, install such fencing in its discretion as it deems necessary and convenient to secure and protect the wellpad site and Facilities. Owner's fences when damaged by Operator's activities on the Lands shall be restored in reasonable and timely manner as nearly as may be reasonably possible to the condition in which such damaged fence portion existed immediately prior to such damage, or at Operator's election, to a better condition.

(vii) All drilling and refract activity shall be conducted in the off season for growing crops. Specifically, the off season for corn is October to March. Operator must not conduct drilling or refract operations on the Lands while crops are growing or the land is being prepared for planting.

(viii) Special care will be taken by Operator to not cause any damage to Owner's pivot irrigation system.

(ix) No brackish water of any type will be put on the surface without it being contained within a pit or similar lined area, all evidence of which is to be removed.

(x) No production compressor shall be audible from the inside of an existing residence.

(xi) Lands shall not be pooled with lands outside of the Owner's lands without prior written permission. Said permission shall not be unreasonably withheld.

#### **7. DEFAULT AND RIGHT TO CURE.**

In the event of alleged default by Operator in the payment of any of the sums hereinabove provided to be made, in obligations to be performed, or any other terms, conditions or covenants of this Agreement, Owner shall notify Operator of such alleged

default in full and complete detail, in a writing delivered to Operator by certified mail, return receipt requested. Operator shall have thirty (30) days from its actual receipt of the written notification in which to pay, in the event of alleged non-payment, or to commence and diligently pursue a cure of any other alleged default, and upon such lapse of time, should such alleged default still remain in effect, then and only then shall Owner have the right and option to declare a default under this Agreement.

**8. WAIVER.**

Except as otherwise agreed in a subsequent writing subscribed to by both parties, no waiver by owner of any breach by the Operator of any of its obligations, agreements, or covenants hereunder shall be deemed to be a waiver of any subsequent or continuing breach of the same, nor shall any forbearance by Owner to seek a remedy for any particular alleged or actionable breach by the Operator be deemed to be a waiver by Owner of its rights or remedies with respect to any other alleged or actionable breach; however in no event shall Operator be liable for consequential damages.

**9. INDEMNITY/RELEASE.**

Owner hereby releases and agrees to hold harmless Operator from any and all liability and further payment, other than what has been provided herein, for damages on the Lands which arise from, out of or in connection with the Operator's operations on the Lands, but only as to those operations which are described in and permitted by this Agreement, and for those operations which the Amount has been paid and received by Owner pursuant to this Agreement. Operator agrees to indemnify and hold Owner harmless from any and all claims, damages and causes of action arising out of and caused by Operator's operations on the Lands that may be asserted by any of Operator's agents, employees, subcontractors, contractors or persons entering upon the premises at the request of Operator.

**10. WAIVER OF 30-DAY NOTICE.**

Owner hereby waives the minimum 30-day written notice requirement for operations to begin and any other and/or future notice or consultation requirements of the COGCC, including without limitation the provisions and allowed waivers under COGCC Rules 305 and 306.

**11. NOTICE FOR ADDITIONAL OPERATIONS.**

Operator shall comply with COGCC rules and regulations requiring that advance notice be provided to Owner for subsequent operations on the Wells, including, but not limited to, reworking operations thereto.

**12. NOTICES.**

Notice by either Party shall be timely given, orally if possible (with the exception of notices described in Paragraphs 6(C)(ii) and 7 above), with additional and immediate subsequent written confirmation sent by United States mail, postage prepaid and

addressed to either Party at the address as designated below; or to such other place as either Party may from time to time designate by written notice delivered in the way described in this paragraph to the other:

Owner:

Operator:

HCW Investments LLC  
ATTN: Sheri C. Welch  
7785 Highland Meadows Parkway  
Fort Collins, Colorado 80528  
Phone: 970-223-3151  
Facsimile: 970-223-3191  
swelch@connellresources.com

Great Western Oil and Gas Company, LLC  
ATTN: Royce Allen, Land Manager  
1700 Broadway, Suite 1170  
Denver, Colorado 80290  
Phone: 303-398-0362  
Facsimile: 866-776-1059  
rallen@gwogco.com

**13. BINDING EFFECT.**

The covenants and conditions herein contained and all of the provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto, and their respective heirs, representatives, successors and assigns. Owner agrees to notify any and all tenants of Lands and any other third parties utilizing the surface of the Lands who may be affected by Operator's activities on the Lands. It shall be Owner's sole responsibility to advise such third parties of the existence of this Agreement and Operator's right to utilize the surface of the Lands pursuant to this Agreement; and payment of consideration, if any, which may be due any such third party from Owner as a result of Operator's actions on the Land under this Agreement shall be the sole obligation of Owner, and Owner shall protect, defend and indemnify Operator from any and all claims and demands from such third parties as a result of Operator's actions under this agreement.

**14. CONFIDENTIALITY.**

In addition to any other confidentiality requirements provided for herein, Owner agrees to keep the terms and conditions of this agreement confidential and shall not disclose such matters to any third party, unless owner is ordered to do so by specific order of the court in a legal proceeding. Notwithstanding the foregoing, owner may disclose terms to owner's legal advisors, and payment terms to owner's official tax advisors and appropriate government taxing authorities. While the specific terms hereof are to be held in strict confidence by Owner, Operator may at its option record a memorandum of this agreement in Weld County, Colorado and with any other appropriate agency of government.

**15. ENTIRE AGREEMENT.**

This instrument contains the entire agreement between the Parties and all prior negotiations and representations are merged within this instrument, and the terms of such may not be modified orally or in any other manner other than by agreement in writing signed by all Parties or their respective heirs, representatives, successors or assigns.

**16. TERMINATION.**

This Agreement shall remain in effect unless and until specifically abandoned by Operator in a writing delivered to Owner, or filed by Operator in the records of Weld County, Colorado. All rights to indemnification and requirements for reclamation and provisions relating thereto shall survive termination of this Agreement.

**17. COUNTERPARTS.**

This Agreement shall be executed in duplicate originals, each party to retain one such original. This Agreement shall be binding if properly signed and fully executed and sent by facsimile transmitted to the other Parties. Without affecting the validity of the foregoing manner of execution, the Parties agree to follow-up such facsimile executions with standard paper originals signed by the parties as soon as may be practical.

**18. GOVERNING LAW AND VENUE.**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the state of Colorado; and Weld County, Colorado, shall be the forum for resolution of all disputes under this Agreement.

**19. FORCE MAJEURE.**

The passage of any deadline or time relevant under this instrument shall be deemed tolled, and nonperformance of any required obligation that Operator may have under this instrument shall be excused without penalty to Operator as to any time period, in which Operator is prevented or hindered from performing due to any governmental action or inaction, and any force majeure which shall include without limitation any act, circumstance, event or condition beyond the control of Operator which shall include without limitation any act, warning or threat of terrorism, war, revolution, rebellion, insurrection, riot, civil commotion, blockade, embargo, shortage of necessary expertise, and shortage or lack of transportation and delivery of necessary tools, equipment, material and supplies due to market conditions, act or restraint of government, strike, lockout, picketing, boycott, or damage by earthquake, fire, hurricane, tornado, flood, wind, storm, temperature extreme or other weather instability, disaster or condition, or by reason of any other circumstance or combination of same beyond Operator's control.

**20. ATTORNEY'S FEES AND COSTS.**

The Parties agree that in any action, claim or controversy resulting from a claimed breach of this Agreement, each party shall bears its own costs, expenses and attorney fees. The provisions of this paragraph do not apply to any actions other than breach, or a claim thereof, including without limitation indemnification provisions.

**21. AUTHORITY OF SIGNATORIES.**

The signatories below declare, warrant and represent that they have the authority to enter into this Agreement on behalf of their respective principals, if any.

22. **BINDING EFFECT.**

This Agreement constitutes a covenant running with the Lands and shall be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective successors, affiliates, administrators, trustees, authorized representatives, executors and assigns.

DONE effective the date first written above, by the Parties:

OWNER:  
HCW Investments LLC

OPERATOR:  
Great Western Oil and Gas Company, LLC

By:   
Richard Connell, Manager

By:   
Tom W. Rand, Vice President  
Of Operations

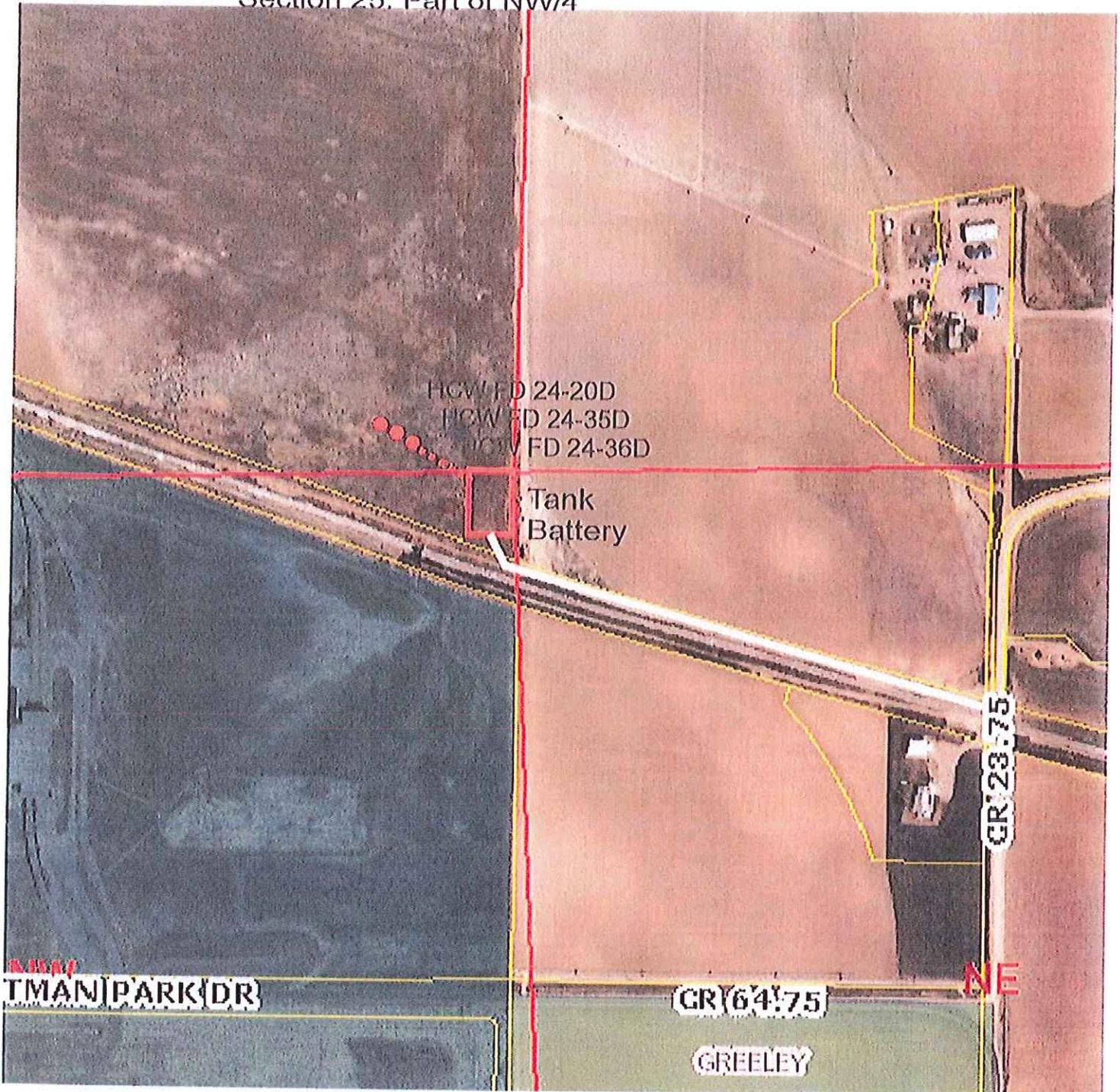
# EXHIBIT "A"

This Exhibit "A" is attached to that Surface Use Agreement between HCW Investments, LLC, as "Owners" and Great Western Oil and Gas Company, LLC, as "Operator", dated April 9th, 2012.

TOWNSHIP 6 NORTH, RANGE 66 WEST, 6th P.M.

Section 24: Part of SW/4

Section 25: Part of NW/4



Access Road  Flow Line 