

## **SURFACE USE, ACCESS AND RIGHT-OF-WAY AGREEMENT**

THIS AGREEMENT, made and entered into on this 19<sup>th</sup> day of ~~June~~<sup>JULY</sup>, 2007, (the "Agreement") by and Franklin L. Haynie and Kimberley A. Haynie, as Joint Tenants, whose legal address is 3024 F ½ Road, Grand Junction, CO 81504 ("Grantor") and Delta Petroleum Corporation ("Delta"), whose address is 370 Seventeenth St., Suite 4300, Denver Colorado 80202.

WHEREAS, Grantor owns the surface to the following described property located in Mesa County, Colorado:

Mesa County Parcel Number 2661-242-00-295; also described as Parcel 9 Tranquility Ranches Survey recorded July 26, 2004 in Book 3702, Page 983, Reception No. 2204143 in the Mesa County Records, containing 35.01 acres, more or less, & located in the NE/4 of Section 23 & the NW/4 of Section 24, Township 9 South, Range 93 West.

(hereinafter called the "Property"); and

WHEREAS, Delta intends to drill multiple wells from one (1) surface location as agreed to by Grantor and Delta located on the Property.

WHEREAS, Grantor and Delta wish to memorialize their agreement concerning surface use and the payment for disturbance to the Property in connection with the drilling, construction, completion, recompletion, reworking, re-entry, production, maintenance and operation of the wells, access roads, and all pipelines, tank batteries and other facilities on the Property by Delta, its affiliates, successors or assigns.

THEREFORE, for and in consideration of the covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Delta agree as follows:

### **Article I: Wells and Wellpads:**

- A. Delta shall have surface location(s) on the Property, (hereinafter called "Wellpad(s)") as agreed to by Grantor.
- B. The surface disturbance for the Wellpad will be an area no larger than 450' by 450' totaling not more than 4.65 acres. Delta will furnish Grantor with a survey plat denoting the actual area of disturbance and shall pay Grantor in accordance with the terms of a separate unrecorded Letter Agreement. Delta may drill directionally from the Wellpad so that the bottom-hole location may be on fee or federal minerals on and/or outside the Property.
- C. Prior to the construction of the Wellpad, Delta shall remove the top six inches (6") of topsoil and stockpile such topsoil within the confines of the Wellpad for future reclamation.
- D. After interim reclamation, Delta shall install fencing around any reclaimed open pits.
- E. Delta will use reasonable efforts to centralize production equipment on the Wellpad and will use reasonable efforts to locate production and gathering facilities together with related pipelines and valves at the production equipment site. If necessary, Delta will install remote monitoring and control equipment in order to reduce vehicle traffic to and on the Wellpad.

## **Article II: Access Road Construction:**

Delta's access to the Property shall be consistent with the proposed access road (hereinafter the "Road") as agreed to by Grantor and Delta and as identified on Exhibit "A" attached hereto and made a part hereof or any such substitute access road as mutually agreed to by the parties.

A. All equipment, vehicles and personnel related to operations on the Property shall access such lands through the Road or any substitute access road mutually agreed upon by the parties.

B. The Road will be constructed in such a manner that damage from surface runoff will be minimized and Delta will construct adequate bar ditches and install culverts to be specified by Grantor. The Road will be graveled to conform to an all weather road.

C. In accordance with the terms of this Agreement, Grantor does hereby grant, bargain, convey and confirm unto Delta, a non-exclusive easement and right-of-way, as limited herein, to construct, maintain, and utilize the Road for ingress and egress across the Property to the Wellpad and adjoining property Owner.

## **Article III: Pipelines:**

Pipeline routes shall be mutually and reasonably selected by Grantor and Delta based on topography, surface use, reclamation, distance and configurations of the pipeline routes. Access across the Property to compressor sites, gas facilities and water disposal facilities located off the Property shall be selected by Grantor and Delta. Delta will endeavor to accommodate any reasonable concerns or issues that Grantor may have with the placement and/or operation of any pipelines; however, Grantor's consent to any pipeline route shall not be unreasonably withheld. Delta shall be authorized to transport gas and water produced from other land through the pipelines located on the Property.

A. In accordance with the terms and limitations of this Agreement, Grantor does hereby grant, bargain, convey and confirm unto Delta a non-exclusive easement and right-of-way to lay, construct, maintain, operate, repair, replace, and remove pipelines, together with all necessary valves, connections and fittings for the transportation of oil, gas, and produced water and to erect, maintain and remove cathodic protection equipment on, over, under, through and across a strip of land fifty feet (50') in width (the "Right-of-Way"). The Right-of-Way shall revert to twenty-five (25') feet in width after initial construction (being twelve and one-half (12.5') feet on each side of the center line of the pipeline). All pipelines shall be buried at least 36 inches below the surface of the ground.

B. Upon completion of installation of the pipeline, Delta agrees to restore the ground by replacing any top soil that was removed during construction and adequately tamping and packing to a condition, as nearly as possible, as it existed prior to the installation of the pipeline(s). All rocks three inches (3") in diameter or greater will be removed and placed at a location designated by Grantor or hauled off the Property. Delta will mitigate any erosion problems that arise due to the construction of any pipeline(s). Delta agrees to re-seed any disturbed area, utilizing a weed free seed mixture, application rate, timing and reseeding method pre-approved by the Grantor. If vegetation comparable to the original condition of the disturbed area is not established, such re-seeding shall be continued until such vegetation is established. Final reclamation shall be completed to the reasonable satisfaction of the Grantor as soon as practical after installation (weather permitting).

#### **Article IV: Payments:**

Delta shall pay Grantor as compensation for the Wellpad, the Road and any pipeline rights of-way in those amounts and upon those payment terms as mutually agreed upon by the parties and memorialized in a separate Letter Agreement. Grantor warrants that he is the Owner of the entire surface subject to this Agreement and that no one who is not party to this Agreement is entitled to payment for normal damage to the surface of the Lands for which payment will be made pursuant to those payment terms as mutually agreed upon by the parties and memorialized in a separate Letter Agreement. The payments described in this Article shall constitute a one time payment in full by Delta and its affiliates for all normal damages, including, but not limited to, damages to growing crops associated with the drilling, construction, completion, recompletion, reworking, re-entry, production, operation and maintenance of the wells on the Wellpad. Normal usage includes, but is not limited to, reasonable and customary ingress, egress, rights-of-way, construction of the Road, preparation and use of the Wellpad, preparation and use of reserve pits, and construction, installation and maintenance of production equipment and facilities such as flowlines, gas pipelines, separators, tank batteries and other equipment or facilities necessary or convenient for the production, transportation and sale of oil and/or gas therefrom, to the extent such construction and use complies with the terms of this Agreement. If Delta replaces or installs an additional pipeline(s) in the pipeline right-of-way after reclamation of the right-of-way, Delta will compensate Grantor for loss of usage caused to growing crops.

#### **Article V: Interim Reclamation:**

The following areas shall be exempted from the interim reclamation requirements (except for weed control) set forth herein: i) the driving surface and bar ditches of the Road, and ii) the production area at the Wellpad. Each acre of surface disturbance which is not included in the exempted areas and is no longer necessary for drilling operations shall be restored as near to its original condition as practicable by Delta in the following manner:

- A. the disturbed area shall be ripped and recontoured to conform with existing grade and no recontoured slope shall exceed a grade of five linear feet to one foot in elevation;
- B. weed free topsoil shall be replaced on the disturbed area to a quality and depth which meet its original condition, as near as practicable;
- C. the disturbed area shall be revegetated utilizing a weed free seed mixture, application rate, timing and reseeding method pre-approved by the Grantor. If vegetation comparable to the original condition of the site is not established, such reseeding shall be continued until such vegetation is established;
- D. foreign substances and unnecessary equipment shall be removed from each disturbed area;
- E. erosion resulting from Delta's operations shall be adequately controlled and remediated;  
and
- F. noxious weeds shall be fully and adequately controlled on such disturbed areas of the Property.

No foreign soil or seed from off the Property shall be used on the Property unless such soil or seed is weed free. Such interim reclamation shall be commenced by Delta within one (1) year (weather permitting) of the final rig release from the Wellpad unless agreed to by Grantor and Delta,

**Article VI: Final Reclamation:**

A. Except as consented to in writing by Grantor, each well shall be plugged and abandoned by Delta in accordance with the applicable law upon permanent cessation of production. Weather permitting, within thirty (30) days following the plugging and abandonment of the last remaining well on the Wellpad, all surface equipment and surface appurtenances shall be removed by Delta from the Property and all unreclaimed and/or unrevegetated areas previously disturbed by Delta's operations shall be reclaimed by Delta in accordance with the standards set out in the Interim Reclamation Article above.

B. At least 30 days prior to reclamation of the Road or any portion thereof, Delta shall provide Grantor written notice of such roadway reclamation, which shall include a plat of the portion of the Road to be reclaimed. During the period prior to reclamation, Grantor may elect to retain any such portion of the Road for ranch use by giving written notice to Delta. Upon receipt of Grantor's election to retain such portion of the Road, Delta shall blade the Road into good and passable condition, and shall thereafter be relieved of its obligation to maintain and/or reclaim such portion of the Road.

**Article VII: Use and Enjoyment:**

Delta's surface use pursuant to this Agreement shall be non-exclusive. Grantor shall have the right to use the surface of the Property in any manner which does not unreasonably interfere with Delta's operations, including without limitation, construction, installation and use of roads, utilities, ditches, irrigation and water impoundment structures, trails, fences and buildings. Grantor retains the exclusive right to grant hunting and fishing rights. Grantor agrees not to construct water impoundments or structures which would interfere with Delta's actual surface use.

**Article VIII: Gates and Fences:**

- A. Delta shall promptly restore all fences which may have been damaged by Delta's operations on the Property to as good a condition as such fences were prior to such operation. When any fence upon the Property is required to be opened, such opening shall not be left unattended without a good and sufficient gate, fence or cattle guard capable of turning domestic livestock.
- B. Delta agrees to install either a cattle guard and/or a gate at each point where fences cross roads and to construct fences adequate to prevent driving around such gates. The foregoing requirement shall be applicable only in those instances where Delta utilizes such roads for its operations.
- C. Delta will fence the access road on both sides through the hay meadows with 4 strand barb wire with one cedar post and three steel posts spaced 12 feet apart and will install gates specified by Grantor to allow access into the hay meadows.

**Article IX: Prohibited Non Oil and Gas Activities:**

Delta shall not permit its agents, employees, contractors, subcontractors, or service company personnel to possess or use drugs or alcohol or carry firearms, or to bring dogs or other animals on the Property.

**ARTICLE X: Notice of Delta Operations:**

Delta will provide Grantor a twenty-four hour/seven day a week emergency contact number. Delta agrees not to permit nor authorize entry onto the Property by any person who is not required to conduct its oil and gas operations on the Property. For purposes of this Agreement, Notice by either Party shall be promptly given, orally if possible, and/or immediately mailed as noted below:

**Grantor**

Franklin L. Haynie  
Kimberley A. Haynie  
3024 F ½ Road  
Grand Junction, CO 81504  
(970) 523-4559

**Delta**

Delta Petroleum Corporation  
Attention: Operations Manager  
370 17<sup>th</sup> Street, Suite 4300  
Denver, Colorado 80202  
(303) 293-9133

**ARTICLE XI: Personal Property:**

Any real or personal property usage limitations incurred by Grantor as a result of Delta's operations on said Property, other than those uses previously covered by the payments specified herein, and excepting any such usage limitations which are attributable to Grantor's actions, shall be remedied or compensated, subject to Delta receiving and approving justifiable documentation from Grantor, within sixty (60) days after receipt of written notice from Grantor specifying the damage.

**ARTICLE XII: Indemnification:**

Without limiting Grantor's rights or Delta's obligations herein, Delta agrees to defend, indemnify and hold Grantor harmless against any and all loss, damage, claims or liabilities arising directly from Delta's operations or the operations of Delta's agents, contractors or subcontractors hereunder.

**ARTICLE XIII: Compliance with Laws and Construction:**

Delta shall conduct its operations in a manner which fully complies with applicable federal, state or local statutes, laws, ordinances, rules, regulations and shall comply with the lease terms and stipulations set forth in the oil and gas lease covering the property. This Agreement shall be construed in accordance and subject to the laws of the State of Colorado and subject to the jurisdiction of the Colorado Courts.

**ARTICLE XIV: Integration:**

The matters set forth herein comprise the complete agreement between the parties. All verbal discussions and prior writings between the parties related to the negotiation of this Agreement shall be merged herein.

The terms, conditions and provisions hereof shall extend to and be binding upon the heirs,

executors, administrators, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREAS, the parties have executed this Agreement effective as of this 19<sup>th</sup> day of ~~June~~<sup>July</sup>, 2007 (the "Effective Date").

**Grantor**

By: Franklin L. Haynie  
Franklin L. Haynie

By: Kimberley A. Haynie  
Kimberley A. Haynie

**Delta Petroleum Corporation**

By: Lyell A. Coe  
Lyell A. Coe  
Sr. Vice President of Land

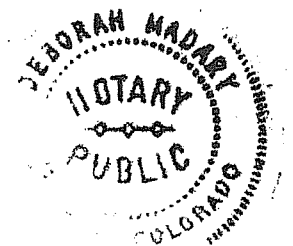
**ACKNOWLEDGMENTS**

STATE OF COLORADO                    }  
  }ss.  
COUNTY OF MESA                    )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of July, 2007 by Franklin L. Haynie & Kimberley A. Haynie personally appeared and are known to me to be the same individuals described in and who executed the within and foregoing instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

Deborah Madary  
Notary Public  
My commission expires: June 07, 2008



STATE OF COLORADO                    }  
  }ss.  
CITY AND COUNTY OF DENVER        )

On this 26 day of July, 2007 before me personally appeared Lyell A. Coe known by me to be the Senior Vice-President of Land of Delta Petroleum Corporation, the corporation that executed the within instrument, and

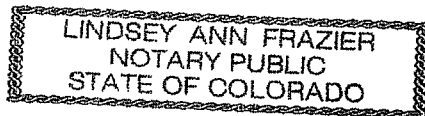
acknowledged to me that such corporation executed it for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My commission expires: 6/5/2010

[S E A L]

Lindsey Ann Frazier  
Notary Public State of Colorado  
Address: 370 17th Street #4300, Denver Co 80202



MY COMMISSION EXPIRES 6/5/2010

## LETTER AGREEMENT

THIS LETTER AGREEMENT ("Agreement") dated effective this 19<sup>th</sup> day of July, 2007, is made by and between Franklin L. Haynie and Kimberley A. Haynie, as Joint Tenants, whose legal address is 3024 F 1/2 Road, Grand Junction, CO 81504, hereinafter referred to as "Grantor," and Delta Petroleum Corporation, whose legal address is 370 Seventeenth St., Suite 4300, Denver, Colorado 80202, hereinafter referred to as "Delta."

WHEREAS, Grantor owns the surface to the following described property located in Mesa County, Colorado:

Mesa County Parcel Number 2661-242-00-295; also described as Parcel 9 Tranquility Ranches Survey recorded July 26, 2004 in Book 3702, Page 983, Reception No. 2204143 in the Mesa County Records, containing 35.01 acres, more or less, & located in the NE/4 of Section 23 & the NW/4 of Section 24-9S-93W.

(hereinafter called the "Property"); and

WHEREAS, Grantor has agreed to let Delta build, construct and lay pipelines and road access right-of-way across said Property and build a surface well pad on the Property.

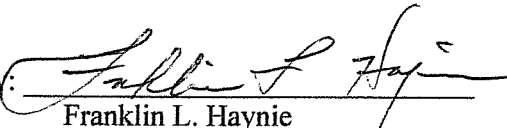
WHEREAS, Delta has agreed to pay Grantor certain surface damages for the surface well pad location, pipeline and road access right-of-way.

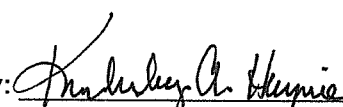
NOW THEREFORE, for and in consideration of the covenants and agreement herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

In compliance with the terms and conditions of that certain Surface Use, Access and Right of Way Agreement by and between Grantor and Delta dated July 19<sup>th</sup> 2007, Delta agrees to pay Grantor for damages and inconvenience resulting from Delta's use of 4.65 acres for the construction of the surface well pad location, pipeline and road access right-of-way, along with the drilling and operating of multiple wells, a payment of Five Thousand and 00/100 Dollars (\$5,000.00) per well due Grantor not less than 15 days prior to the commencement of the drilling of each well.

After completion of construction, Delta will survey the surface location, pipeline and road access right-of-way to determine the total acres of disturbance for payment purposes. Delta shall pay Grantor an additional sum of Three Thousand Three Hundred Seventy-Five Dollars (\$3,375.00) per acre of disturbance for each acre of surface location, pipeline and road access right-of-way in excess of 4.65 acres. This payment will be made by Delta within thirty (30) days after completion of construction.


IN WITNESS WHEREOF, the parties hereto have executed this Letter Agreement this      the day of June 2007  
GRANTOR:

By:   
Franklin L. Haynie

By:   
Kimberley A. Haynie



DELTA PETROLEUM CORPORATION

By:   
Lyell A. Coe, Sr. Vice President of Land