AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Acknowledgment of County Manager Signature; Access

Action Requested: County Manager Signature

Parties to the Agreement: BKEP Operating, LLC and BOCC

Term Begins: asap **Term Ends:** **Grant Contract #:**

Summary:

This Access Agreement is for Public Works to be able to pick up oil at the owner's property asap.

Fiscal Impact:

Submitted by: Office of the County Attorney **Submitter's Email Address:** rmagruder@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:
ok db 6/1/16

Reveiwed by: Discharge Date: 6/2/2016 Certificate of Insurance Required Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 6/2/2016

◉ Consent Agenda ○ Regular Agenda ○ Worksession Time Allotted: 0

Agenda Date: 6/7/2016

Revised April 2015

ACCESS AGREEMENT

This **ACCESS AGREEMENT** ("Agreement") effective this 2nd day of June, 2016, by and between:

(i) **BKEP Operating, L.L.C.,** and its affiliates, having places of business at 6060 American Plaza, Suite 600, Tulsa, Oklahoma 74135 (such companies being collectively referred to herein as "Company"); and

(ii) Board of County Commissioners of the County of Gunnison, Colorado ("Entering Party"), having a place of business at 200 E. Virginia, Gunnison, CO 81230.

Company owns/leases and/or operates various lots, rights of way, assets, properties and facilities located in various states (such lots, rights of way, assets, properties and facilities shall be referred to hereinafter as the "Facilities"). Entering Party desires permission to enter the Facilities at Grand Junction, Colorado for the purpose of purchasing and picking up a petroleum product ("Purpose").

Company hereby agrees to grant permission to Entering Party to enter the Facilities for the Purpose stated above, but only at times and in manners agreeable to Company, and pursuant to the terms of this Agreement. Such permission is revocable by Company upon notice to Entering Party. Entering Party acknowledges the valuable consideration extended by Company in granting such permission, and Entering Party does in return agree as follows:

1. **SAFETY**. Entering Party shall at all times strictly follow all reasonable requests and instructions given by Company regarding safety and health matters in or at the Facilities. Notwithstanding the preceding sentence, Entering Party shall at all times be responsible for the safety and health of its (and its contractors or subcontractors) employees and agents present at the Facilities or elsewhere in connection with this Agreement. Entering Party also warrants that when transporting any product that is classified as Hazardous Materials, under applicable law, Entering Party assumes full responsibility that its (and its contractors or subcontractors) employees have been screened to safely handle material while en route.

2. **CONDUCT OF ACTIVITIES**. Entering Party agrees that it and its contractors and subcontractors will conduct their activities hereunder in accordance with (i) all rules and regulations of Company with respect to the Facilities, (ii) all applicable governmental laws, rules, and regulations and good standard industry practices including, where applicable, compliance with the issuance of a Transportation Worker Identification Credential; and (iii) in a manner that does not interfere with the operations of others (Company or third parties) at the Facilities. Company makes no representation as to any conditions at the Facilities, and Entering Party shall rely solely on Entering Party's own examination and investigation of the conditions that may affect Entering Party's activities on the Facilities.

3. **TERM AND TERMINATION OF AGREEMENT AND CONTRACTS**. Except as set forth below, this Agreement shall commence on the Effective Date and unless renewed by the Parties shall terminate upon the third (3) year anniversary of the Agreement, provided, however, that this Agreement shall not terminate with respect to any Contract which has not yet been completed or paid.

This Agreement may be terminated by Company at any time for failure to comply with the provisions hereof.

4. **ASSIGNMENT, SUBCONTRACTORS, AMENDMENTS**. This Agreement may not be assigned in whole or in part by Entering Party without the prior written consent of Company, nor shall activities be performed under this agreement by a contractor or subcontractor of Entering Party without the prior written consent of Company. No amendment to this agreement shall be valid unless made in writing and signed by authorized representatives of both parties.

5. **INSURANCE**. Entering Party shall, at all times during the term of this Agreement, maintain the following insurance. Entering Party shall provide to Company a certificate of insurance evidencing such insurance prior to commencing activities hereunder, and periodically as needed thereafter to show continuing coverage. Failure by Company to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Company to identify a deficiency from evidence that is provided shall not be construed as a waiver of Entering Party's obligation to maintain such insurance.

A. Commercial General Liability Insurance written on an occurrence form with a minimum limit of $1,000,000 per occurrence for Bodily Injury and Property Damage, and with Products and Completed Operations, Contractual Liability,

Premises Liability, Independent Contractors, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract); and

B. Worker's Compensation as prescribed by applicable law and Employers' Liability Insurance with a minimum limit of $1,000,000 each accident, $1,000,000 disease policy limit, $1,000,000 each employee; and

C. Automobile Liability Insurance, covering all owned, non-owned, hired and leased vehicles used in the performance of this agreement with a minimum combined single limit for Bodily Injury and Property Damage of $1,000,000 per accident.

The above described insurance shall include a requirement that the insurer provide Company with thirty (30) days' written notice prior to the effective date of any cancellation or material change of the insurance, except that ten (10) days' notice shall be required for non-payment of premiums. Entering Party, on behalf of its insurers, waives any right of subrogation that such insurers may have against Company arising out of this Agreement.

6. **INCIDENT NOTIFICATION AND RESPONSE.** Entering Party shall notify Company (and provide details as requested by Company) as soon as reasonably possible in the event any accident or other event occurs during the course of Entering Party's activities hereunder that involves non-compliance by Entering Party or its subcontractors with this Agreement or any applicable laws, regulations, ordinances or rules. Entering Party shall be responsible for promptly repairing and remediating, at its expense, any damage to property or the environment that arises out of Entering Party's activities hereunder.

So agreed, executed on the dates indicated below, but effective as of the date first above written:

COMPANY	ENTERING PARTY
By _____	By _____
Printed Name _____	Printed Name Matthew Birnie
Title _____	Title County Manager
Date _____	Date 6/2/2016