

**TOWN OF MEAD, COLORADO
RESOLUTION NO. 20-R-2021**

**A RESOLUTION OF THE TOWN OF MEAD, COLORADO,
APPROVING THE FIRST AMENDMENT TO ROAD REPAIR AGREEMENT
WITH CUB CREEK ENERGY, LLC**

WHEREAS, the Town of Mead and Cub Creek Energy, LLC (“Operator”) entered into that certain Road Repair Agreement dated July 25, 2016 (the “Agreement”); and

WHEREAS, the Agreement memorializes Operator’s obligation to repair road damage caused by the Operator (or its contractors) associated with the use of Town roads for oil/gas drilling activities; and

WHEREAS, Operator made a one-time payment of fifty thousand dollars (\$50,000.00) to the Town (the “Deposit”) to be held by the Town as security for the performance of Operator’s repair obligations under the Agreement; and

WHEREAS, the Town and Operator desire to amend the Agreement to document that the Town will be assuming Operator’s repair work (and associated warranty obligations) in exchange for the Town retaining \$15,000 of the \$50,000 Deposit; and

WHEREAS, the amendments/modifications to the Agreement are set forth in that certain First Amendment to the Road Repair Agreement (the “First Amendment”), a copy of which is attached to this Resolution as **Exhibit 1** and is incorporated herein by reference; and

WHEREAS, the Board of Trustees desires to approve the First Amendment and further desires to authorize the Mayor to execute the First Amendment on behalf of the Town,

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the Town of Mead, Weld County, Colorado, that:

Section 1. The foregoing recitals and findings are incorporated herein as findings and conclusions of the Board of Trustees.

Section 2. The Board of Trustees hereby: (a) approves the First Amendment in substantially the same form as is attached hereto as **Exhibit 1**; (b) authorizes the Town Attorney in cooperation with the Town Manager to make non-material changes to the First Amendment that do not increase the Town’s obligations; and (c) authorizes the Mayor to execute the First Amendment on behalf of the Town.

Section 3. Following the execution of the First Amendment by both the Town and Operator, the Town Treasurer shall be authorized to: (a) return \$35,000 of the Deposit (currently held in Town Account/Budget Line Item 01-02-2600 (Warranty Fund Account)) to Operator within the timeframe required by the First Amendment; and (b) retain \$15,000 to cover the estimated costs of the road repairs (to be performed by the Town) and to move the \$15,000 to the proper Town fund(s).


Section 4. Effective Date. This resolution shall be effective immediately upon adoption.


Section 5. Repealer. All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

Section 6. Certification. The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 26th DAY OF APRIL, 2021.

ATTEST:

By 
Mary E. Strutt, MMC, Town Clerk



TOWN OF MEAD

By 
Colleen G. Whitlow, Mayor

Attachment(s):

Exhibit 1 - First Amendment to Road Repair Agreement (Cub Creek Energy, LLC)

**FIRST AMENDMENT TO
ROAD REPAIR AGREEMENT
BETWEEN THE TOWN OF MEAD AND CUB CREEK ENERGY, LLC**

THIS FIRST AMENDMENT TO ROAD REPAIR AGREEMENT (“First Amendment”) amends the Road Repair Agreement between the **TOWN OF MEAD** (the “Town”) and **CUB CREEK ENERGY, LLC**, a Delaware limited liability company having an address of 200 Plaza Drive, Suite 100, Highlands Ranch, CO 80129 (the “Operator”). The Town and Operator may be collectively referred to herein as the “Parties” or individually as “Party.” This First Amendment is effective as of the date of mutual execution by the Parties (“Effective Date”).

RECITALS

WHEREAS, the Parties entered into that certain Road Repair Agreement dated July 25, 2016 (the “Agreement”); and

WHEREAS, the Agreement memorializes Operator’s obligation to repair road damage caused by the Operator or its contractors associated with the use of Town roads for oil/gas drilling activities; and

WHEREAS, pursuant to Article 4.a. of the Agreement, Operator made a one-time payment of fifty thousand dollars (\$50,000.00) to the Town (the “Deposit”) to be held by the Town as security for the performance of Operator’s repair obligations under the Agreement; and

WHEREAS, pursuant to Article 4.b. of the Agreement, Operator also made a one-time \$5,025 cost deposit to cover consulting and legal fees incurred by the Town associated with Operator’s drilling permit and the Agreement (“Cost Deposit”); and

WHEREAS, the Parties acknowledge and agree that the Cost Deposit has been fully accounted for; and

WHEREAS, the Deposit is currently on deposit with the Town in Account/Budget Line Item 01-02-2600 (Warranty Fund Account); and

WHEREAS, the Parties desire to amend the Agreement in order to clarify that the Town will be assuming Operator’s repair work (and associated warranty obligations) in exchange for the Town retaining \$15,000 of the \$50,000 Deposit; and

WHEREAS, the Parties agree that the \$15,000 to be retained by the Town is a reasonable estimate of the road repairs necessitated by Operator’s use of Town roadways during the term of the Agreement; and

WHEREAS, specifically, the Town will complete the repair work as part of the Town’s annual roadway maintenance project and the Operator will be released from any and all repair and/or warranty obligations currently set forth in the Agreement; and

WHEREAS, Article 12 of the Agreement requires any amendment or modification of the Agreement to be in writing and executed by both Parties; and

WHEREAS, the Parties desire to amend the Agreement to clarify that the Agreement shall be terminated in its entirety upon the Town: (1) retaining \$15,000 of the Deposit to cover necessary road repairs, and (2) remitting the remaining \$35,000 of the Deposit back to Operator; and

NOW, THEREFORE, for the consideration herein expressed, it is hereby agreed by and between the Town and the Operator as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated into this First Amendment by this reference as though set forth in full.
2. **Original Terms and Conditions.** Except as amended herein, the original terms and conditions of the Agreement remain in full force and effect.
3. **Term.** Article 2 of the Agreement is hereby amended to read in full as follows:

ARTICLE 2. TERM OF AGREEMENT

- a. This Agreement shall commence upon the date indicated above and shall continue in full force and effect until: (1) the Town has retained \$15,000 of the Deposit to cover the estimated costs of road repairs to be undertaken and performed by the Town; and (2) the Town has remitted the remaining \$35,000 of the Deposit to the Operator at the address set forth in Article 8 below.
 - b. The \$35,000 shall be returned to Operator by Town check made payable to "Cub Creek Energy, LLC" which check shall be approved, executed and mailed to the Operator within thirty (30) days of the Effective Date of the First Amendment.
 - c. The Parties agree that Operator shall be released from any and all repair, warranty and/or other obligations upon the termination of this Agreement.
4. **Conflict.** This First Amendment is and shall be construed as part of the Agreement. In the case of any inconsistency between this First Amendment and the Agreement, the provisions containing such inconsistency shall be reconciled with one another to the maximum extent possible, and then to the extent of any remaining inconsistency, the terms of this First Amendment shall control.
 5. **Counterparts; Facsimile or Electronic Signature; Authority.** The Parties hereto agree that this First Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The Parties further agree that this First Amendment may be executed by electronic signature, and that any electronic signature shall be binding upon the party providing such signature as if it were the party's original signature.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to Road Repair Agreement, to be effective as of the Effective Date. By the signature of its representatives below, each Party affirms that it has taken all necessary action to authorize said representative to execute this First Amendment.


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SIGNATURE PAGE FOLLOWS


THIS FIRST AMENDMENT is executed and made effective as provided below.


TOWN OF MEAD, COLORADO:

ATTEST:



Mary E. Strutt, MMC, Town Clerk



By: 

Colleen G. Whitlow, Mayor

Date of execution: April 26, 2021

[Operator signature page follows]

OPERATOR:

CUB CREEK ENERGY, LLC, a Delaware limited liability company

By: Scott B. Baily

Name: Scott B Baily

Title: President

Date of execution: April 22, 2021