

**INTERGOVERNMENTAL AGREEMENT TO PROVIDE  
PARTIAL FUNDING OF A STUDY TO CHARACTERIZE AIR EMISSIONS FROM  
NATURAL GAS DRILLING AND WELL COMPLETION OPERATIONS**

This Intergovernmental Agreement is made by and between the **Garfield County Board of County Commissioners, State of Colorado**, a statutory county (the "BOCC"), and **The Board of Governors of the Colorado State University System, acting by and through Colorado State University**, an institution of higher education of the State of Colorado (the "University") (collectively, the "Parties") to partially fund a study to characterize air emissions from natural gas drilling and well completion operations in Garfield County (the "IGA" or "Agreement"). This Agreement is effective as of October 29, 2012 (the Effective Date").

RECITALS

A. The Parties are authorized to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments in the development of public purpose projects pursuant to Section 18 (2)(a) and (2)(b) of Article XIV, and the Amendment to Section 2 of Article XI of the Colorado Constitution, and C.R.S. §§ 23-31-120 and 29-1-20, *et seq.*, as amended.

B. The University, a comprehensive, land-grant University, has designed a study to characterize air emissions from natural gas drilling and well completion operations that is consistent, compatible and beneficial to the academic role and mission of the University as an institution of higher education and that is of particular interest and potential benefit to the citizens of Garfield County, which has experienced rapid growth in natural gas development.

C. The cost to conduct the study in Garfield County over a three year period beginning in the fall of 2012 and concluding in the fall of 2015 will not exceed \$1,763,218.

D. The BOCC desires this research to be performed and at a regularly scheduled meeting on August 20, 2012 expressed its unanimous verbal commitment to provide financial support for this study up to an amount and on the terms and conditions set forth in this IGA.

NOW, THEREFORE in consideration of the mutual promises and covenants contained herein the Parties agree as follows:

AGREEMENT

1. Purpose of this Agreement. The purpose of this IGA is to define the terms and conditions by which the BOCC will fund and the University will perform the research activities described in the University's July 27, 2012 proposal entitled "Characterizing Air Emissions from Natural Gas Drilling and Well Completion Operations in Garfield County, Colorado," which is attached as **Exhibit A** (the "**Proposal**") and is incorporated in this IGA for all purposes. The Proposal, as presented and discussed in a recorded public meeting of the BOCC on August 20, 2012 defines the nature and scope of the work to be performed and funded in accordance with this Agreement (the "**Project**").

2. The Project. The goal of the Project defined in paragraph 1 is to identify materials emitted from natural gas drilling and well completion operations and to measure their concentrations within a specified distance from the well site. The Project is not intended to and will not consider, quantify, or opine upon the impacts, including health impacts, the materials or their concentrations may have. The data and results of the Project, as defined and described in the Proposal, shall be published upon completion of the study in accordance with paragraph 5 below.

3. Term. This IGA shall have an Effective Date of October 29, 2012 regardless of the date signed by each Party, and shall terminate on December 31, 2012 (the "**Initial Term**"). Subject to appropriation by the BOCC and compliance with C.R.S. § 29-1-110, this IGA will automatically renew for one year, through December 31, 2013, unless terminated in accordance with the terms of this Agreement or by operation of law. Thereafter, this Agreement may be renewed for single one-year terms by written agreement signed by the BOCC. Renewal shall conform to annual budgeting and appropriation in accordance with paragraph 15(c) below.

4. Project Funding. The Parties acknowledge that the scope of the Project as currently defined exceeds the amount to be funded by the BOCC. The Parties anticipate that the difference between the BOCC's commitment and final Project cost will be funded by grants, donations, gifts, commitments or sponsorships from third-parties. The University agrees to spend or encumber through the University accounting system available gift or other contributed funds to the Project costs to the extent practical before invoicing the BOCC or to reflect an appropriate credit to the amount of the invoice. In no instance shall the gift funds account be less than 20% spent or encumbered at the end of any month or the University will not invoice for that month. The University will send with the monthly invoice an accounting of the gift funds.

a. BOCC Funding Commitment. The BOCC agrees to pay the University, and thus fund this Project, on a cost-reimbursement basis in an amount not to exceed ONE MILLION AND ZERO DOLLARS (\$1,000,000.00) over the entire term of this IGA, including all renewal periods. Costs eligible for payment and reimbursement are those specified in the Budget and Budget Explanation, attached as **Exhibit B** and incorporated herein for all purposes (the budget and budget explanation are collectively referred to as "**the Budget**") and defined by applicable law. The University shall invoice the BOCC monthly based upon actual expenditures. Any funds not expended in the Initial Term of this IGA shall be subject to re-appropriation by the BOCC. If funds are not appropriated by the BOCC in subsequent fiscal years, this IGA shall terminate in accordance with Paragraph 14(c). Under no circumstances shall the amount reimbursed to the University by the BOCC exceed \$1,000,000.00.

b. Additional Funding Required. As of the Effective Date of this IGA, no other enforceable agreements to fund this Project are in place or anticipated. However, through its Foundation, the University has received various gifts and promises of future gifts intended to fund this Project. The sum total of these anticipated gifts

is currently anticipated to bridge the gap between actual Project cost and the BOCC's funding commitment.

- c. No University Funding. The University is not responsible for funding any portion of the cost of this Project. The University is responsible for ensuring that the Project is completed on time and within Budget.

5. Publication. The University, as a state institution of higher education, engages only in research that is compatible, consistent, and beneficial to its academic role and mission. Therefore, results of research activities must be reasonably available for publication. The Parties acknowledge that the University shall have the right to publish all Project data and results. The University agrees, however, that it will not release any data from or results of this research to any third-party other than the Technical Advisory Committee and peer reviewers, defined and discussed in the Proposal, before they are provided to the BOCC. During the term of this IGA, including any renewals beyond the Initial Term, and for six (6) months thereafter, all Project results will be shared with the BOCC prior to publication to any third party.

- a. Final Data and Results. Prior to publication of any final data or results, the University shall provide the BOCC with all Project data and draft publications. As a separate deliverable, final Project data shall be provided in portable, electronic format. The BOCC shall have forty-five (45) days within which to review and comment on the data and draft publication. The BOCC does not reserve any right to direct the content of the final products. If the BOCC has any questions, comments or requests with respect to the data or draft publication, it shall notify the University of them in writing within the 45 day period. Upon receipt of such notice, the University shall delay publication of all data or results for a reasonable time up to but not longer than ninety (90) days in order to respond to the BOCC's questions or requests for additional information.
- b. Scientific Review. Draft results may be presented in a scientific seminar or conference to garner technical, scientific peer review comments. If that occurs, a copy of the information to be presented may be provided to County Representative in advance of the presentation.
- c. Not a Public Record Until Published. Until the date of publication, all Project data and results shall be considered work product as defined by C.R.S. § 24-72-202 (6.5)(a) for purposes of any request to inspect the Project data pursuant to the Colorado Open Records Act, C.R.S § 24-72-200.1, *et seq.* ("CORA").
- d. Notice of CORA Requests. If, prior to final publication, either Party receives a request to inspect documents related to the Project pursuant to CORA, it shall immediately notify the other Party of such a request.

6. Equipment. Unless otherwise provided in the Project or Budget in Exhibits A and B, respectively, or other writing signed by the Parties, all equipment purchased with funds provided under this IGA for use in connection with the Project shall be the property of the

University, and shall remain available as needed to provide services under this IGA while this IGA is in effect. Equipment currently anticipated to be purchased with these funds is identified in the Budget.

7. University's Rights and Responsibilities. The University shall:
  - a. Perform the Scope of Work On Time and Within Budget. Perform the scope of work described in the Proposal within Budget and under the direction and supervision of the University Principal Investigator in accordance with any milestones or periodic deliverables specified in this IGA, including those stated in the Proposal. Performance includes delivery to the BOCC of all project data in portable, electronic format, in addition to the publication of results, within the time frame specified in paragraph 5(a).
  - b. Designate a Principal Investigator. Professor Jeffrey L. Collett, Jr., of the Atmospheric Science Department shall be the University's Principal Investigator for the Project, as defined in the Proposal and Budget.
  - c. Immediately Disclose Hazardous Conditions. If during the course of the Project the University becomes aware, through any means, of conditions that are or could be hazardous to the health, safety or welfare of the citizens of Garfield County, the University will immediately notify all appropriate authorities and the BOCC through its County Representative and Oil and Gas Liaison, both of whom are identified in paragraph 8(a).
  - d. Provide Accounting of Additional Funding. The University will notify the County Representative as soon as practicable upon receipt of every outside financial contribution made to fund the Project.
  - e. Satisfy Reporting Requirements. At least annually, the University shall provide a written progress report to the BOCC through its County Representative that includes the budget, funding, and expense information required by and defined in the Proposal as well as an annual accounting of all contributions made to the Project and the application of those contributions to Project costs.
  - f. Submit Monthly Invoices. Monthly invoices shall be submitted to the County Representative. The University will assure and verify to the BOCC that at the end of the Project, all outside financial support is completely spent before the University sends the final invoice. If any outside funding remains, the University will credit the BOCC for the remaining outside financial support amount in the final invoice.
  - g. Immediately Disclose Funding Shortfall. If during the course of the Project it appears that the BOCC's funding commitment combined with all third-party contributions received will be insufficient to meet actual and anticipated Project expenses, or if the University anticipates that the current Budget will be

insufficient to complete a scientifically valid and defensible study, the University will immediately notify the BOCC in accordance with paragraph 16.

- h. Operations Committee Assignments. The Operations Committee organized by the University shall include representatives of the BOCC as designated in paragraph 8(b) or other written designation from the BOCC.

8. Garfield County's Responsibilities. The BOCC shall:

- a. Designate County Representative. The BOCC shall administer this Agreement through a County Representative responsible for ensuring that both the BOCC and the University meet the performance requirements of this Agreement, including delivery schedules, annual budgeting, and monthly invoice review and approval. The County Representative shall be the Environmental Health Manager, who will be assisted as necessary by the Oil and Gas Liaison. Communications with them as defined in this IGA shall be sent to:

Paul Reaser  
Environmental Health Manager  
195 West 14<sup>th</sup> Street  
Rifle, Colorado 81650

Kirby Wynn  
Oil and Gas Liaison  
0375 County Road 352, Building 2060  
Rifle, Colorado 81650

- b. Designate Operations Committee Representatives. The Environmental Health Manager and Oil and Gas Liaison shall represent the BOCC on the Operations Committee.

9. Private Property. If any part of the Project requires use of privately owned property, the Parties will work together to identify and contact the property owner and to seek permission through a revocable license to access the land for Project purposes. If no agreement can be reached or if consideration is required, the Parties will cooperate with each other to identify mutually acceptable alternatives or terms for dealing with property owner, including but not limited to expanding the definition of costs eligible for reimbursement defined in 4(a) above to include license fees.

10. Confidentiality. None of the documents, data, information, or methodologies to be utilized in connection with or that will result from the Project is considered confidential or proprietary to either Party.

11. Intellectual Property. Neither the Project nor its results shall constitute "Intellectual Property," defined as all discoveries, inventions, methodologies, improvements,

software (but no copyrightable works) conceived, made, discovered, and first reduced to practice in performance of the research under this Agreement ("IP"). However:

- a. Should any IP become associated with the Project, it shall be owned as follows:
  - i. University IP. IP created solely by one or more persons who are employees of the University ("University IP") shall be owned by the University, subject to the rights of its inventors in accordance with the policies of the University. The University may, at any time and without notice, assign or convey any or all of its rights in University IP to the Colorado State University Research Foundation (CSURF). The BOCC will be provided a non-exclusive, unrestricted, perpetual, royalty-free license to use the University IP for any purpose, but without the right to sublicense.
  - ii. BOCC IP. Ownership of IP created solely by one or more persons who are employees of the BOCC ("BOCC IP") shall be subject to the rights of its inventors in accordance with the written policies of the BOCC. The University will be provided a non-exclusive, unrestricted, perpetual, royalty-free license to use the BOCC IP for any purpose, but without the right to sublicense.
  - iii. Joint IP. IP jointly created by one or more employees of the University and one or more employees of the BOCC ("Joint IP") shall be jointly owned by the University and the BOCC. Each Party is free to enjoy its undivided interests in Joint IP. The BOCC shall pay all costs incurred in the course of obtaining patent or other intellectual property protection, and will consult the University with regard to filing of patent and copyright registration for all Joint IP. The BOCC is not, however, obligated to pay for Joint IP protection and if it decides not to, it shall fully assign in writing all of its right, title and interests in such specific Joint IP to the University and shall have no continuing commercialization rights to Joint IP whatsoever. The BOCC will, however, be provided a non-exclusive, unrestricted, perpetual, royalty-free license to use the Joint IP for any purpose, but without the right to sublicense.
- b. Each Party shall require its employees to promptly disclose any IP. Each Party agrees to provide the other Party with a copy of each IP disclosure within thirty (30) days after the disclosure is made, and in addition, will provide the other Party with a written listing of all IP created pursuant to this Agreement within sixty (60) days from the expiration or termination of this Agreement. For all such IP identified, CSURF will provide, upon agreement by BOCC to its payment of patent costs to CSURF, via separate written agreement(s), licenses to University IP and JOINT IP according to the provisions of above. Each Party will consult with the other Party at least thirty (30) days prior to filing any patent or copyright

application for IP and shall promptly notify the other of any patents or copyright registrations issued.

- c. Intellectual property created external to the Project ("External IP") will be owned by the originating Party. Nothing in this Agreement will be construed as any conferral of rights to any of the Parties regarding External IP. Nothing contained herein is to be construed as permission, a recommendation or an inducement to use or practice any product, process, equipment or formulation that may infringe upon any other intellectual property rights without the prior written permission of the intellectual property owner.
- d. The University does not make any representation or express or implied warranty that the use of University IP or Joint IP will not infringe any patent or other intellectual property rights.

12. Exclusive Warranty; Disclaimer. The University warrants that all deliverables provided under this Agreement will be provided substantially in accordance with the Proposal. Service results, deliverables, reports, IP disclosures and IP provided by the University are provided strictly "as-is" without any other warranty or guaranty of any kind. All other warranties, express and implied, are hereby expressly disclaimed **INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE**. The University shall not be liable for any indirect, special, incidental, consequential or punitive loss or damage of any kind, including but not limited to lost profits (regardless of whether or not the University knows or should know of the possibility of such loss or damages).

13. Independent Contractors. It is understood and agreed by the Parties that the University is an independent contractor with respect to the BOCC and that this Agreement is not intended and shall not be construed to create an employer/employee relationship or a joint venture relationship between the University and the BOCC. The University shall be free from the direction and control of the BOCC in the performance of the University's obligations under this Agreement, except that the BOCC may indicate specifications, standards requirements and deliverables for satisfaction of the University's obligations under this Agreement.

14. Liability; Insurance. Each Party agrees to be responsible for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the full extent allowed by law. Liability of either Party is at all times strictly limited and controlled by the provisions of the Colorado Government Immunity Act, C.R.S. §§ 24-10-101, *et seq.* as now or hereafter amended. Nothing in this Agreement shall be construed as a waiver of the protections of this Act. Each Party represents and warrants that it maintains comprehensive general liability insurance and all coverages required by law sufficient for the purpose of carrying out the duties and obligations arising under this Agreement. Either Party will furnish to the other a certificate evidencing such insurance upon written request.

15. Termination. This Agreement may terminate prior to expiration under the conditions stated in subparagraphs (a) through (c). Termination shall not relieve a Party from its obligations incurred prior to the termination date. Upon termination by the BOCC, except in the case of a material breach by the University, the BOCC shall pay all costs accrued by the

University as of the date of termination including non-cancelable obligations for the term of this Agreement, which shall include all appointments of staff incurred prior to the effective date of the termination. The University shall take steps to limit or terminate any outstanding financial commitments for which the BOCC is to be liable. The University shall furnish, within ninety (90) days of the effective termination date, a final report of all costs incurred and all funds received and shall reimburse the BOCC for payments that may have been advanced in excess of total costs incurred with no further obligations to the BOCC.

- a. Without Cause. Either Party may terminate this Agreement, without cause, upon not less than sixty (60) days' written notice, given in accordance with the Notice provisions of this Agreement set forth in paragraph 16.
- b. With Cause. A Party will be considered in default of its obligations under this Agreement if it fails to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement and such failure continues for thirty (30) days after the non-defaulting Party gives written notice thereof in accordance with paragraph 16. In the event of default, upon written notice to the defaulting Party, the non-defaulting Party may terminate this Agreement as of the date specified in the notice, and may seek such other and further relief as may be provided by law.
- c. By Operation of Law. The Parties' financial participation is subject to annual appropriation and budgeting by each. This IGA is not intended to, nor does it, create a multi-year fiscal obligation as defined by Section 20, Article X of the Constitution of the State of Colorado. Should either party fail to appropriate funds for any fiscal year, this IGA shall terminate by operation of law at the end of the fiscal year. The BOCC's fiscal year ends on December 31.

16. Legal Notice. All notices and other correspondence required by or related to the performance this Agreement shall be in writing and shall be effective when delivered by (i) certified mail, return receipt requested, postage prepaid; (ii) hand-delivery with signatory or delivery receipt provided; (iii) fax transmission with verification of receipt; or (iv) electronic mail with 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:

**University:**

Doug Leavell  
Sponsored Programs  
408 University Services Center  
601 So. Howes Street  
Colorado State University  
Fort Collins, CO 80523-2002  
Telephone: (970) 491-7178  
Fax: (970) 491-6147  
E-mail: doug.leavell@colostate.edu

**BOCC:**

Garfield County Manager  
108 8<sup>th</sup> Street, Suite 214  
Glenwood Springs, CO 81601  
Telephone: (970) 945-4000  
Fax: (970) 945-7785

cc:  
Garfield County Attorney  
108 8<sup>th</sup> Street, Suite 219  
Glenwood Springs, CO 81601  
Telephone: (970) 945-9150  
Fax: (970) 384-5005

17. Legal Authority. Each Party warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind it to its terms. The person(s) executing this Agreement on behalf of a Party warrant(s) that such person(s) has/have full authorization to execute this Agreement. This Agreement shall not be binding upon Colorado State University, its governing board or the State of Colorado unless signed by the University Vice-President for Research or his/her authorized delegate.

18. Conflict of Interest. Unless otherwise stated in this Agreement or in another writing signed by the BOCC, the BOCC certifies that no officer, employee, student or agent of the University has been employed, retained, or paid a fee, or has otherwise received or will receive during the term of this Agreement any personal compensation or consideration by or from the BOCC or any of the BOCC's commissioners, employees, or agents in connection with the obtaining, arranging, negotiation or conducting of this Agreement, the Project, or the results of the Project.

19. Whole Agreement. This IGA sets forth the whole agreement of the Parties. No representations, either verbal or written, shall be considered binding on either party to the extent not set forth herein.

20. Changes and Amendments. No change or amendment to this Agreement shall be valid unless it is made in writing and signed by the authorized representatives of the Parties.

21. No Assignment. This Agreement shall not be assigned without the prior written consent of the other Party.

22. No Third-Party Beneficiary. No third party may enforce or rely upon this IGA for any reason.

23. Counterparts. This IGA may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed the same instrument. Facsimile or photographic signatures of either party to this IGA or subsequent modifications thereto shall be effective for all purposes.

24. Governing Law, Venue and Survival. The laws of the State of Colorado shall govern validity, performance and enforcement of this IGA. Should either party institute legal action for enforcement of this IGA, venue of such action shall be in Garfield County, Colorado. The prevailing party shall be entitled attorney's fees, expenses and court costs. All rights concerning remedies, fees and costs shall survive termination of this IGA.

25. Waiver and Severability. No waiver of a breach of any provision of this Agreement shall operate as a waiver of any other breach. No provision of this Agreement shall be deemed to have been waived unless such waiver is in writing and signed by the Party waiving the same, with the signature on behalf of University being that of a vice president of University. If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to that specific provision or part thereof and the remaining part and all other provisions shall continue in full force and effect.

26. Headings. Paragraph headings are provided for reference and convenience only and are not determinative of the meaning or the interpretation of the language of this Agreement.

IN WITNESS WHEREOF, the Parties have executed triplicate originals of this IGA to be effective the 29th day of October, 2012, no matter the date of execution below.

**ATTEST:**

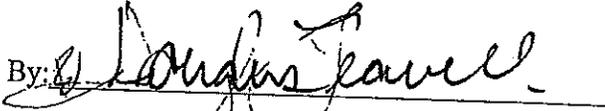
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Clerk to the Board

**BOARD OF COUNTY COMMISSIONERS OF  
GARFIELD COUNTY, COLORADO**

By: \_\_\_\_\_  
John Martin, Chairman

Date: \_\_\_\_\_

THE BOARD OF GOVERNORS OF THE  
COLORADO STATE UNIVERSITY SYSTEM,  
ACTING BY AND THROUGH THE  
COLORADO STATE UNIVERSITY

By: 

Printed Name: Doug Leavell

Title: Director, Sponsored Programs

Date: 10-19-12