

**AGREEMENT  
SURFACE USE AGREEMENT**

This **AGREEMENTSURFACE USE AGREEMENT** ("**Agreement**") is entered into by Meining Cattle Co., LLC, a Colorado limited liability company ("**Landowner**") and J-2 Contracting Co., a Colorado corporation ("**J-2**"), to be effective as of October 1, 2024 (the "**Effective Date**"), subject to the terms herein.

**1. AGREEMENT PREMISES; PERMITTED USES.**

**1.1 Use of Property.** Subject to the terms and conditions contained in this Agreement, Landowner hereby agrees to allow J-2 the use of the following described property (the "**Property**") for the purposes as set forth in this Agreement:

a. Parcel 1: Lot B, Recorded Exemption, No. 1057-30-4 RE-3234, Lot B of RE-1156, lying in the West ½ of the Southeast ¼ of Section 30, Township 4 North, Range 66 West, of the 6<sup>th</sup> P.M., Weld County, Colorado, according to the plat recorded in the records of the Weld County, Colorado, Clerk and Recorder on October 16, 2003, at reception no. 3117679.

b. Parcel 2: Lot A, Recorded Exemption, No. 1057-30-4 RE-3234, Lot B of RE-1156, lying in the West ½ of the Southeast ¼ of Section 30, Township 4 North, Range 66 West, of the 6<sup>th</sup> P.M., Weld County, Colorado, according to the plat recorded in the records of the Weld County, Colorado, Clerk and Recorder on October 16, 2003, at reception no. 3117679.

**1.2 Permitted Uses.** It is the intent of this Agreement to permit J-2 to make improvements to and utilize the Property as its primary access for all operations at the Sweet Valley Reservoir Complex; these operations include but are not limited to the hauling of sand and gravel. To that end, J-2 may make improvements to and utilize the Property within the locations shown in Exhibit A2. Improvements may include grading, installation of road base material, and reasonable maintenance thereof including dust suppression. J-2 shall not make improvements to or utilize any portions of the Property outside those areas shown in Exhibit A2 without first obtaining written consent from Landowner. No other uses of the Property are permitted without prior written approval of the Landowner.

**1.3 Use by Landowner.** J-2 agrees that Landowner may utilize the Property for access to Landowner's surround property provided such access does not interfere with J-2 operations under Agreement.

**1.4** J-2 agrees to install pipeline under roadway lease area to allow for water fill of future augmentation pond as show in Exhibit A2.

**2. TERM OF AGREEMENT**

**2.1** The initial term of this Agreement ("**Initial Term**") shall commence, if at all, on the Commencement Date and terminate, unless extended by J-2 as provided below, on October 31, 2029.

**2.2** The "**Commencement Date**" is November 1, 2024.

2.3 J-2 shall have the right to extend the term of this Agreement by two five-year periods (November 1, 2029—October 31, 2034; and, November 1, 2034—October 31, 2039) by providing written notice to Landowner no later than 30 days prior to the expiration of the then current five-year term. J-2's obligation to use the Property is subject to obtaining, in J-2's sole and subjective discretion, all governmental approvals, permits, and authority to mine and haul sand and gravel on and from Weld County Parcel 105730100042 (the "Sweet Water Pit"). J-2 may notify Landowner of its termination of this Agreement at any time prior to the Commencement Date. Upon termination, this Agreement shall be of no effect, and neither party shall have any obligations to the other, except for as provided in Section 10 (Reclamation Upon Termination) below.

### 3. **CONSIDERATION**

3.1 **Monthly Surface Use Fee.** Unless J-2 terminates this Agreement pursuant to §2.3, and beginning on the Commencement Date, J-shall pay Landowner a monthly surface use fee of \$1,350.00 per month (for the first 12-month period), with each installment due on the fifth day of each month. The monthly amount shall increase by two percent per year.

3.2 **Additional Consideration.** Unless J-2 terminates this Agreement pursuant to §2.3, J-2 shall pay Landowner \$60,000.00 as additional consideration, which is intended to cover Landowner's costs associated with the required relocation of Landowner's Center Pivot Sprinkler and associated infrastructure approximately 50' west of its current location and the costs to return the Center Pivot Sprinkler and associated infrastructure to its original location, which amount shall be due on or before September 1, 2024, and shall become non-refundable once construction on the relocation commences. Should J-2 terminate this Agreement before construction of the relocation commences Landowner shall refund the \$60,000.00.

3.3 **Center Pivot Relocation.** Landowner shall have the obligation to relocate the center pivot sprinkler currently located on the Property off the Property after September 1, 2024, and before the Commencement Date.

### 4. **RELATION TO PRIOR AGREEMENTS**

4.1 **PDC Energy Surface Use Agreement.** J-2 acknowledges and understands that there is an existing surface use agreement between Landowner and PDC Energy dated May 24, 2019, notice of which was recorded with the Weld County Clerk and Recorder under reception number 4495049 (the "PDC Agreement"), for the construction and operation of an oil well pad and related infrastructure. J-2's rights to use of the Property under this Agreement are subject to the prior rights granted by Landowner to PDC under the PDC Agreement. In the event PDC Energy commences with the oil and gas operations as contemplated under the PDC Agreement, and J-2 is forced to discontinue its use of that portion of its access road, Landowner shall provide to J-2 a reasonable alternate route on Landowner's property to provide access to the Sweet Valley Reservoir Complex.

### 5. **INSURANCE**

5.1 **Liability Insurance.** During the Term, J-2 shall maintain insurance covering (i) J-2's liability with respect to any improvements that J-2 may perform in connection with the Property; and (ii) J-2's liability for occupation, maintenance and use of the Property. Such insurance shall provide limits of not less than \$1,000,000 per occurrence combined single limit, bodily injury/property damage, with a general aggregate limit of \$2,000,000. J-2 shall also maintain umbrella coverage in the amount of at least \$5,000,000. All such insurance policies shall name Landowner as an additional insured, and no policy may be subject to cancellation without 30 days' prior written notice to Landowner.

## 6. COMPLIANCE WITH LAW.

6.1 **Compliance With Laws.** In connection with its use, J-2 shall comply at its expense with all applicable laws, regulations, and requirements of any public authority, including those regarding maintenance, operation and use of the Property.

6.2 **Dust and Weed Control.** J-2 agrees to be responsible for controlling weeds and dust as required on the portion of the Property utilized by J-2 for the Sweet Valley Reservoir access for the duration of this Agreement.

## 7. LIENS, INDEMNIFICATION AND LIABILITY.

7.1 **Liens.** J-2 shall pay for work done on or for services rendered or material furnished to the Property and shall keep the Property free from any liens arising by, through or under J-2, except that J-2 may withhold payment of any claim in connection with a good faith dispute over the obligation to pay. If J-2 fails to discharge any such lien after 30 days' written notice from Landowner, Landowner may do so.

7.2 **Indemnification of Landowner.** J-2 shall indemnify Landowner from any loss, liability, claim of liability or expense (including reasonable attorneys' fees and litigation expenses) arising out of or related to any violation of law or negligent action or inaction of J-2, its agents, independent contractors, employees, customers, suppliers or invitees, any condition of the Property that is the responsibility of J-2 under this Agreement.

7.3 **Indemnification of J-2.** Landowner shall indemnify J-2 from any loss, liability, claim of liability or expense (including reasonable attorneys' fees and litigation expenses) arising out of or related to any violation of law or negligent action or inaction of Landowner, its agents, independent contractors, employees, or invitees pursuant to this Agreement.

7.4 **Survival.** The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

## 8. CONDEMNATION.

8.1 **Substantial Taking.** If any areas of the Property permitted to be used under this Agreement are condemned Property such that the uses permitted under this Agreement are rendered J-2 unusable, then J-2, at its sole discretion, shall have the right to terminate this Agreement by giving written notice to Landowner, in which event this Agreement shall terminate as of the date upon which possession is taken by the condemning authority and J-2 shall pay all fees due through such date of termination.

## 9. DEFAULT.

9.1 **J-2's Default.** If J-2 is in default of any of its obligations under this Agreement and the default is not cured within thirty 30 days after J-2's receipt of written notice from Landowner, which notice states the nature of the default with reasonable particularity, Landowner may terminate the Agreement, in addition to all remedies available at law or in equity, provided, if such event of default is a default in observing or performing any covenant or condition to be observed or performed by J-2 hereunder (other than the payment of money), and such default cannot with diligence be cured, or the curing of which cannot be commenced, within such thirty 30 days, J-2 such shall have such additional period as may be necessary to cure such default with diligence and continuity.

9.2 **Landowner's Default.** If Landowner is in default of any of its obligations under this Agreement and the default is not cured within thirty 30 days after Landowner's receipt of written notice from J-2, which notice states the nature of the default with reasonable particularity, J-2 may, without liability, cure the default and deduct the cost thereof against Rent, in addition to all remedies available at law or in equity, provided, if such event of default is a default in observing or performing any covenant or condition to be observed or performed by Landowner hereunder (other than the payment of money), and such default cannot with diligence be cured, or the curing of which cannot be commenced, within such 30 days, Landowner such shall have such additional period as may be reasonably necessary to cure such default with diligence and continuity.

## 10. **RECLAMATION UPON TERMINATION.**

10.1 **Removal of J-2 Personal Property.** Upon expiration or other termination of this Agreement, J-2 shall have the right and obligation to remove all of J-2's equipment, machinery, signs, inventory, merchandise, fixtures, furnishings, and other personal property of J-2 on the Property ("**J-2 Personal Property**").

10.2 **Condition of Property.** Upon expiration or other termination of this Agreement, J-2 shall restore the Property to a condition substantially similar to its condition as of the Commencement Date, including removing any concrete, asphalt, or gravel road improvements, and replacement of topsoil, but excluding relocating or replacing the center pivot to its location prior to the Commencement Date.

## 11. **HAZARDOUS SUBSTANCES.**

11.1 For the purposes of this Agreement, the term "**Environmental Laws**" shall be defined to include all present or future laws or regulations regarding the protection of the environment, wildlife, human health and safety, including without limitation the use, storage, generation, release, removal or abatement of hazardous and/or toxic materials that are regulated materials. As used herein, "**Hazardous Substances**" shall mean all hazardous or toxic materials, substances, chemicals or wastes that are regulated under any Environmental Laws, including, without limitation, asbestos, asbestos-containing materials, and PCBs.

11.2 J-2 represents and warrants that to J-2's actual knowledge as of and prior to the Effective Date, no Hazardous Substances have been generated, released, stored or deposited over, beneath, or on the Property from any source whatsoever by J-2, its agents, independent contractors or invitees, or, to the best of J-2's knowledge after due and diligent inquiry, by any predecessor owner or user of the Property or onto any property adjoining the Property. J-2 agrees that J-2 will not generate, released, use, store or deposit any Hazardous Substances on or in the Property.

11.3 J-2 shall defend, indemnify and save harmless Landowner and its agents and employees against all loss, liability or expense (including, without limitation, reasonable attorneys' fees) relating to personal injury or property injury (including any costs, fines or penalties incurred by Landowner in connection with the correction of any violation of Environmental Laws if Landowner is required by law to perform such correction, but excluding punitive, indirect, incidental, special, speculative, exemplary and/or consequential damages or claims for lost profits, lost rent, or other economic damages) arising from the presence or release of Hazardous Substances on or in the Property, but only to the extent such Hazardous Substances were introduced by J-2, its agents or contractors.

11.4 The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

## 12. GENERAL PROVISIONS.

12.1 **Time of Essence.** Time is of the essence of the performance of this Agreement.

12.2 **Nonwaiver.** Waiver of performance of any provision shall not be a waiver of nor prejudice the party's right otherwise to require performance of the same provision or any other provision.

12.3 **Notices.** All notices and approvals required or permitted under this Agreement shall be served by (a) certified mail, return receipt requested, (b) by overnight delivery by reputable national overnight service (such as FedEx or UPS), or (c) personal service to each party at the following address, unless either party sends written notice of a change in its address in the manner provided in this Section 16.7.

Landowner: Scott Meining  
18636 County Road 25.5  
Platteville, CO 80651

J-2: J-2 Contracting Co.  
105 Coronado Ct. Unit A-101  
Fort Collins, CO 80525

All such notices and other communications shall, when transmitted by overnight delivery, if mailed, or delivered, be deemed to be given upon receipt, provided, rejection or other refusal to accept delivery, or the inability to deliver because of a change in address of which no notice in accordance with the terms of this Agreement was given, shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

12.4 **Attorney's Fees.** In the event suit, action or arbitration is instituted to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court or arbitrator may adjudge reasonable as attorneys' fees and other costs of litigation at trial, hearing or on appeal of such suit or action, or on any petition for review, in addition to all other sums provided by law. References to arbitration in this paragraph shall not, however, constitute an agreement to arbitrate disputes under this Agreement. Whether or not suit or action is instituted, if a party defaults in its obligations under this Agreement (subject to any notice requirements or grace periods specified in this Agreement), the defaulting party will be responsible for the other party's reasonable attorneys' fees and costs in pursuing the default and enforcing compliance with this Agreement.

12.5 **Authorization of Agreement.** Each party covenants and warrants to the other that the person(s) executing this Agreement on behalf of the party is duly authorized to execute and bind the party under this Agreement.

12.6 **Consent.** Whenever either party's decision, determination, approval or consent is required under this Agreement, the party will promptly exercise judgment reasonably. Any consent granted by a party under this Agreement shall not constitute a waiver of the requirement for consent in subsequent cases.

12.7 **Brokers.** Neither Landowner nor J-2 shall owe any real estate commission to any real estate broker in connection with this Agreement.

12.8 **Section Headings.** The headings to the sections and paragraphs of this Agreement are included only for the convenience of the parties and shall not have the effect of enlarging, diminishing, or affecting the interpretation of its terms.

12.9 **Applicable Law/Venue.** The law of the State of Colorado shall be applicable for all purposes under this Agreement, and the venue for any litigation shall be in a court of competent jurisdiction in Weld County, Colorado.

12.10 **Prior Agreements.** This Agreement (including attached exhibits) is the entire, final and complete agreement of the parties with respect to the matters set forth in this Agreement and supersedes and replaces all written and oral agreements previously made or existing by and between the parties or their representatives with respect to such matters.

12.11 **Validity of Provisions.** If any of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.

12.12 **Modifications.** This Agreement may not be modified except by endorsement, in writing, attached to this Agreement, dated and signed by the parties. Neither party shall be bound by any oral statement of any agent or employee modifying this Agreement.

12.13 **Recording.** This Agreement shall not be recorded, but the parties shall execute a memorandum of this Agreement in recordable form that may be recorded by either party

12.14      **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall constitute a single instrument. Further, the parties agree that this Agreement may be signed and/or transmitted by electronic mail of a .PDF document or electronic signature (e.g., DocuSign or similar electronic signature technology) and thereafter maintained in electronic form, and that such electronic record shall be valid and effective to bind the party so signing as a paper copy bearing such party's hand-written signature. The parties further consent and agree that the electronic signatures appearing on this Agreement shall be treated, for purpose of validity, enforceability and admissibility, the same as hand-written signatures.

12.15      **Force Majeure.** Neither Landowner nor J-2 shall be considered in default of any of the terms, covenants and conditions of this Agreement on its part to be performed, if it fails to timely perform same and such failure is due in whole or in part to any strike, lockout, labor trouble (whether legal or illegal), civil disorder, restrictive governmental laws and regulations, riots, insurrections, war, accidents, casualties, acts of nature, acts caused directly or indirectly by the other party hereto (or such party's agent, employees or invitees) or any other cause (except financial inability) beyond its control ("**Force Majeure**"). Unless otherwise specifically provided in this Agreement, a party shall be entitled to an extension of time equal to one day for each day of delay due to Force Majeure provided that the party claiming the Force Majeure notifies the other party within five business days of the claimed event of Force Majeure. Provided, however, the foregoing shall not apply to, excuse or be invoked to justify any delay in the payment of Rent or any other sum of money due from one party payable to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**LANDOWNER:**

Meining Cattle Co., LLC, a Colorado limited liability company

By: T. Scott Meinig  
Name: T. Scott Meinig  
Title: Manager

J-2:

J-2 Contracting Co., a Colorado corporation

By: Christopher Leone  
Name: Christopher Leone  
Title: President

