

**ROAD IMPROVEMENTS AGREEMENT PERTAINING TO LA PLATA
COUNTY ROAD 120 – GCC ENERGY, LLC**

THIS AGREEMENT, made and entered into this ____ day of _____, 2016 by and between the Board of County Commissioners of La Plata County, Colorado (hereinafter referred to as the "County"), and GCC Energy, LLC, (hereinafter referred to as "GCC").

Recitals

A. GCC owns and operates a coal mine in Hesperus, Colorado. GCC leased property at 6473 County Road 120, Hesperus, CO, also known as La Plata County Parcel No. 565336200077 (the "Property"). The Property is leased by GCC from the State of Colorado for the purpose of operating a coal mine.

B. An application for a Class II land use permit was submitted to the County by GCC in 2012. The application was processed by the County as Project No. 2012-0089, GCC Energy King II Coal Mine (the "Mine Project"). The Mine Project was approved by the La Plata County Board of County Commissioners on _____, 2016. Execution of this Agreement is a condition of approval of the Mine Project.

C. Sections 82- 161, 82-192 and 82-193 of the La Plata County Code (the "LPCC") require new development to mitigate adverse impacts in order to ensure compatible development and to address the onsite and offsite impacts on public roads. GCC agrees that, as a condition of approval for the Class II land use permit, GCC will fund and construct certain Road Improvements to ensure the Mine Project is compatible with other existing, adjoining land uses, as outlined in this Agreement.

D. Roadrunner Design Services completed a Traffic Impact Analysis, dated July 31, 2015 and updated November 19, 2015 (the "Traffic Impact Analysis"), which analyzed the impacts of the Mine Project's traffic on County roads and State highways. An agreed upon summary of the improvements to be constructed by GCC and timing and phasing of the same are summarized on Exhibit A attached hereto and incorporated herein. The elements described within Exhibit A are referred to herein as the "Road Improvements."

E. Pursuant to the terms of GCC's approved land use permit for the Mine Project, the trucks are required to utilize an approximately 6.4 mile stretch of County Road 120 ("CR 120"), which contains approximately 3.9 miles of a gravel segment, and 2.5 miles of a paved segment. Due to the condition of CR 120 and the requirement that the Mine Project be compatible with surrounding properties, the Mine Project's approval is subject to the imposition of phased limits on the daily average of outgoing trucks based on a monthly average with Sundays excluded and a daily maximum of outgoing trucks, as follows:

Applicable Time Period	Avg. # Outgoing Trucks/Day/6-day wk	Max. # Outgoing Trucks/Single Day
Project approval up to and including date of Preliminary Acceptance of Phase 1 and Phase 2	80	96
Commencement of Phase 3 up to and including date of Preliminary Acceptance of Phase 4	100	120
Subsequent to Preliminary Acceptance of Phase 4	120	144

F. The County is responsible for the ongoing maintenance of CR 120. However, to fully mitigate the ongoing impacts of the Mine Project on County Road 120, in addition to the Road Improvements, GCC has also agreed to be responsible for a portion of the costs associated with ongoing maintenance of CR 120, as further detailed in Article 5. For purposes of this Agreement the term “Maintenance Costs” shall mean the costs incurred by the County to maintain County Road 120 including the application of gravel, snow removal, signage, sign maintenance, blading, shoulder repairs, cleaning of drainage ditches and culverts, repair and replacement of culverts, restriping, repairs of erosion damage or embankment slopes, weed mitigation, dust control and stabilization, pavement preservation (including but not limited to preventive maintenance that preserves the system, retards future deterioration and maintains or improves the functional condition of the system), pavement maintenance (including but not limited to asphalt crack sealing, pot hole repair, chip sealing, slurry or micro-surfacing, overlay or partial and/or full-depth repairs), pavement rehabilitation (including but not limited to structural enhancements that extend the service life of existing pavement and/or improves its load carrying capacity such as restoration treatments and structural overlays) and pavement reconstruction.

G. GCC wishes to undertake and complete the Road Improvements and the County is willing to allow GCC to make the Road Improvements consistent with the terms and provisions of this Agreement.

H. GCC and the County wish to establish a formula for the calculation of the Maintenance Fee (as defined herein) to be paid by GCC to the County for Maintenance Costs, and a process for payment of the same.

NOW, THEREFORE, in consideration of the premises above and the terms and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and GCC hereby agree as follows:

**ARTICLE ONE
COMPLETION OF IMPROVEMENTS**

1.1 Nature of Improvements: GCC agrees to install and/or construct, at its sole cost and responsibility and in substantial conformance with the terms hereof, those certain Road Improvements summarized on Exhibit A and more specifically detailed in the construction plans described in Article 1.2 herein. [SR1]

1.2 Standards: The Road Improvements shall be performed by GCC in conformance with all County standards and specifications in effect at the time of commencement of construction including, but not necessarily limited to those standards and conditions set forth in Section 82-161 and Chapter 74 of Subpart B of the LPCC, and in substantial accordance with detailed plans and specifications of the proposed Road Improvements submitted to and approved by the County Engineer in writing. Unless otherwise waived by the County Engineer, construction plans submitted for review and comment shall be prepared by a professional engineer registered in the State of Colorado. The plans must include the following statement: "These construction plans for La Plata County Project No. 2012-0089, GCC Energy King II Coal Mine were prepared by me (or under my direct supervision) in accordance with the requirements of those standards and conditions set forth in § 82-161 and Chapter 74 of Subpart B of the La Plata County Code," name of engineer, name of firm. The statement shall be signed and stamped by the Registered Professional Engineer who prepared or directed preparation of the construction plans. Unless otherwise identified or noted, all plans and specifications submitted shall be assumed to comply with the provisions of the LPCC. The County shall not be responsible for the accuracy and adequacy of the design, dimensions and elevations on the plans and, through acceptance thereof, assumes no responsibility for the completeness and/or accuracy of the plans and specifications.

The date of submission to the County Engineer of complete and detailed construction plans and specifications for each phase shall be achieved by GCC pursuant to the schedules set forth on Exhibit A. Within twenty one (21) days of receipt of GCC's construction plans, the County Engineer shall, in writing, either approve or disapprove the submittal if, within his reasonable discretion, he finds the plans to be incomplete or lacking sufficient detail. If the County Engineer fails to approve or disapprove the applicable construction plans within the aforementioned twenty one (21) days, then GCC's proposed commencement date of the phase shall be extended by the additional number of days until the County Engineer responds. There shall be no substantial changes in or deviations from the approved plans except with the express written consent of the County Engineer. The plans and specifications shall be considered valid for two (2) years from the date of approval by the County Engineer, after which time such plans shall be void and will be subject to re-review and re-acceptance by the County Engineer. Upon approval of the plans pertaining to the Road Improvements, the County Engineer shall issue a Notice to Proceed to GCC. GCC shall give the County no less than seventy-two (72) hours' written notice prior to the commencement of performance of any Road Improvements.

1.3 Costs of Improvements and Security: Upon approval by the County Engineer of the plans for a particular phase of the Road Improvements and prior to commencement of construction, GCC shall furnish to the County a good faith estimate of the total cost to GCC of installing and/or constructing that particular phase of the Road Improvements. The sole purpose for such estimate shall be to provide a basis for establishing the amount of the performance and warranty bond described herein and shall not be construed as a warranty or guarantee of actual improvement costs or quantities. In order to secure the performance of the installation and construction of the Road Improvements and prior to the issuance of a Notice to Proceed, GCC shall provide to the

County as obligee a performance and warranty bond issued by an approved corporate surety licensed to do business in the State of Colorado in an amount equal to one hundred twenty percent (120%) of the estimated total cost required to perform the particular phase of the Road Improvements (the “Bond”). The form of such Bond shall be approved by the County Engineer and the County Attorney, which approval shall not be withheld unreasonably. Such performance and warranty Bond shall insure that GCC will comply with all County standards and specifications, the submitted plans as approved by the County and the terms of this Agreement and shall ensure recovery by the County of any expenses incurred within the warranty period described in Article 1.6(b) herein. If a default exists, the County shall be entitled to (i) insist upon performance by the surety of the Bond; or (ii) draw on the Bond for the amount reasonably determined by the County to be necessary to cure the default in a manner consistent with the approved plans and specifications up to the amount of the performance and warranty bond; and/or (iii) sue GCC for recovery of any amount necessary to cure the default over and above the amount available under the Bond.

1.4 Available Grant Funds. The County agrees to exercise reasonable efforts, consistent with its past practices, to apply for grants that may offset the financial obligations of GCC for construction of the Road Improvements, using GCC’s funds as matching contributions, if needed. In the event the County is successful in obtaining such grants, GCC will fund all design and engineering services for the project and the County’s involvement will be limited to soliciting bids and, if necessary under the terms of the grant, managing construction of the project. GCC agrees to abide by all grant conditions, to assist the County in properly and timely fulfilling the requirements of the grant and, if necessary, entering into such additional agreements or reasonably modifying the terms of this Agreement as may be necessary to execute and fulfill the grant requirements. If a grant is received, the security and warranty to be provided by GCC pursuant to Article 1.3 shall cover the full cost of all Road Improvements, not just those funded directly by GCC. In the event the County is unsuccessful in obtaining such grants, GCC’s obligation to timely complete the Road Improvements shall remain the same.

1.5 Completion of Improvements. Unless otherwise agreed to by the County Engineer in writing, GCC shall commence the applicable phase of the Road Improvements project within thirty (30) days of the issuance of the Notice to Proceed and shall diligently pursue the same to completion. Unless otherwise agreed to by the County Engineer in writing, in no event shall the Road Improvements be completed later than the date set forth in GCC’s plan submittal and accepted as reasonable by the County Engineer.

1.6 Acceptance of Road Improvements.

a. Preliminary Acceptance. Upon satisfactory completion of each phase of the Road Improvements, GCC shall request “Preliminary Acceptance” thereof by the County in accordance with the following provisions:

- (i) Upon completion of the installation or construction of a phase of the Road Improvements, GCC shall deliver to the County Engineer the following: (A) Unless waived by the County Engineer, record drawings

of the Road Improvements certified by a Colorado professional engineer that the Road Improvements have been completed in accordance with the plans approved by the County are safe, adequate and within County and other legal standards and that he/she knows of no defects in the improvements, (B) Certification by GCC that he/she knows of no defects in the Road Improvements and that the Road Improvements are free and clear of any mechanics or materialman's liens, and (C) a request for inspection of the completed Road Improvements.

(ii) Within fourteen (14) days of receipt of GCC's request for inspection, the County will compare the certified record drawing information with the approved construction drawing and shall inspect the completed phase of the Road Improvements. If the County Engineer finds that the specified improvements have been completed substantially in accordance with the plans and other requirements of this Agreement, the County Engineer shall issue a letter to GCC evidencing Preliminary Acceptance.

(iii) If, upon inspection, the County Engineer finds that the Road Improvements have not been completed substantially in accordance with the plans and other requirements of this Agreement or applicable grant agreement, or if such Road Improvements are found to contain significant defects, the County Engineer shall issue to GCC a written notice of noncompliance specifying the respects in which the Road Improvements have not so been completed or what defects have been found. GCC shall thereon be required to take such action as is necessary to cure any noncompliance or defective condition within the time prescribed by the County Engineer before resubmitting the Road Improvements for Preliminary Acceptance. Upon curing the same, GCC shall deliver to the County Engineer a new request for inspection. Upon such delivery, the foregoing provisions of this Article 1.6(a) shall apply anew with respect to the new Preliminary Acceptance.

b. Warranty Period. Upon Preliminary Acceptance by the County, the applicable phase of the Road Improvements shall be subject to a two (2) year "Warranty Period". During the Warranty Period, the Bond shall be reduced to 25% of the estimated total cost required to perform the phase of the Road Improvements.

c. Repair Prior to Final Acceptance. Until Final Acceptance (defined below) by the County of the Road Improvements, GCC shall, at GCC's expense, make all needed repairs or replacements to the Road Improvements required on account of defects in design, materials or workmanship.

d. Final Acceptance. At the end of the Warranty Period, GCC shall be entitled to request "Final Acceptance" thereof by the County in accordance with the following provisions:

(i) No earlier than sixty (60) days or later than thirty (30) days prior to the expiration of the Warranty Period, GCC shall give "Final Notice" to the County Engineer requesting a final inspection of the Road Improvements.

(ii) Within fourteen (14) days of receipt of GCC's request for Final Acceptance the County Engineer shall inspect the completed Road Improvements and if the County Engineer finds that the specified improvements are substantially free of defects in materials and workmanship and have been repaired and maintained as and to the extent required in this Agreement, the County Engineer shall issue a letter to GCC and the County evidencing Final Acceptance.

(iii) If, upon inspection, the County Engineer finds that the Road Improvements are not substantially free of defects in materials and workmanship or have not been repaired and maintained as and to the extent required in this Agreement or applicable grant agreement, the County Engineer shall issue to GCC a written notice of noncompliance specifying what defects have been found or to what respect the improvements have not been repaired or maintained. GCC shall thereon be required to take such action as is necessary to cure any noncompliance or defective condition before resubmitting the Road Improvements for Final Acceptance. Upon curing the same, GCC shall deliver to the County Engineer a new Final Notice. Upon such delivery, the foregoing provisions of this Article 1.5(d) shall apply anew with respect to the new Final Notice.

e. Final Release of Security. At the time that the County Engineer issues a letter of Final Acceptance of the Road Improvements, any remaining amount of the performance and warranty Bond shall be released.

1.7 Warranties of GCC: GCC warrants that the Road Improvements will be installed in a good and workmanlike manner and in substantial compliance with the plans and specifications it provides to the County Engineer and requirements of this Agreement and shall be substantially free of defects in materials and workmanship.

1.8 Revegetation and Weed Control: GCC recognizes the potential harm of disturbed soil and the nuisance caused by the proliferation of undesirable plants therein. GCC shall be responsible for all work and costs associated with the reseeding and/or weed control of the improved portions of CR 120 for one (1) year following the completion of any phase of the Road Improvements. Such work shall be completed consistent with the standards set forth in Section 58-63 of the LPCC pertaining to the control of undesirable plants on public rights-of-way except that any violation of Section 58-63 of the LPCC shall be the financial responsibility of GCC during the course of construction and for the one (1) year period specified in this Article 1.8.

1.9 Inspection: At all times during the term of this Agreement, the County shall have the right, but not the duty, to inspect materials and workmanship related to the particular

phase of Road Improvements. Upon GCC's reasonable request, the County shall inspect the particular phase of Road Improvements during construction. In the event that any materials or work do not conform to the standards set forth in this Agreement, GCC shall, at GCC's own cost, make all corrections necessary to bring the particular phase of Road Improvements into conformity with County standards and specifications. If corrections are not made within thirty (30) days of having received notice of lack of conformance from the County Engineer, such shall be considered a breach of this Agreement by GCC and the County shall have the right, but not the duty, to exercise any or all of the remedies set forth in Article 6 hereunder or to draw upon the performance and warranty Bond.

1.10 Work by the County: The County reserves the right to perform work or maintenance operations on CR 120. Whenever possible, the County will coordinate its work or maintenance operations with GCC. The County shall be responsible for any damage to CR 120 that may occur as a result of the County's work, maintenance or repair of CR 120.

1.11 Emergency or Extraordinary Repairs: Repairs deemed to be an emergency by the County Engineer after consultation with GCC, and otherwise within the scope of this Agreement, shall be completed by GCC within seventy-two (72) hours after written notification to GCC. Until such repairs are completed, GCC shall post signs or implement adequate temporary measures to protect the public safety. If GCC is unable to make the required repairs during such seventy-two (72) hours, the County may make the repairs and shall be reimbursed by GCC within thirty (30) days for costs thereof or, alternatively, close the road.

1.12 Right of Way Acquisition. In the event that additional right-of-way must be acquired in order to complete the Road Improvements, GCC shall exercise commercially reasonable efforts to negotiate in good faith with the owner of such property and shall be responsible for payment of the same. Any right-of-way so obtained shall be in fee or in the form of an easement reasonably acceptable to the County Attorney and conveyed to the County. The width of any such right-of-way shall not be less than that set forth in the County's road standards or that deemed reasonably necessary by the County Engineer to contain and maintain the required and necessary improvements. If GCC, after good faith negotiations with the owner of such property, is unable to acquire right-of-way necessary to complete the Road Improvements, the County will either exercise eminent domain in order to acquire the property in fee or in the form of an easement reasonably acceptable to the County Attorney or waive the particular right-of-way acquisition requirement. GCC shall be responsible for all costs associated with the County's acquisition of right of way, either through eminent domain or threat of eminent domain, all costs (including but not limited to the cost of appraisers and expert witnesses) and reasonable attorney's fees associated therewith. GCC shall pay such costs within sixty (60) days of its receipt of documentation as GCC may reasonably require from the County establishing that the costs are due to the County. If right of way must be acquired, said process shall comply with the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970".

**ARTICLE TWO
RELOCATION/VACATION**

GCC agrees and understands that, by this Agreement, the County does not release or relinquish its title, right or control of CR 120. Furthermore, County reserves the right to expand, maintain, improve, relocate or vacate CR 120 as it deems fit without the prior approval of or further obligations to GCC. The vacation, if any, of CR 120 shall be pursuant to applicable law and regulations including those requiring a public hearing for the purpose of determining whether the road should be vacated and the terms, conditions and reservations thereof. In the event that the County expands, improves or relocates CR 120, the County shall pay all costs associated therewith.

**ARTICLE THREE
EXISTING FACILITIES**

Prior to constructing the Road Improvements, GCC shall, with all due diligence, investigate, contact and cooperate with any and all utilities, public or private, and determine whether any of the aforesaid have lines, pipes or other facilities located in the right-of-way of CR 120 and GCC shall use commercially reasonable efforts to avoid destruction or damage of the same. In the event that such damage or destruction occurs, GCC shall indemnify the County for all costs related thereto as set forth in Article 10 herein.

**ARTICLE FOUR
LIABILITY INSURANCE/IMMUNITY**

4.1 Release of Liability: It is expressly understood that the County cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the LPCC and that GCC, when dealing with the County or its officers or agents or their designees, acts at GCC's own risk as to any representation or undertaking by the County or its officers or agents or their designees. This section shall not be construed to limit the rights and remedies of the parties otherwise provided by law.

4.2 Immunity. GCC acknowledges that the County shall retain statutory immunity from suit with respect to the condition of County Roads and that said immunity was designed for the protection of the tax payers against claims and damages. GCC further acknowledges that such immunity does not apply to GCC. GCC agrees to obtain and maintain, until the date of Final Acceptance, general liability insurance, naming the County as an additional insured, in the amount of Three Hundred-Fifty Thousand Dollars (\$350,000.00) per person and Nine Hundred Thousand Ninety Dollars (\$990,000.00) in aggregate. The policy shall provide that the County shall be notified at least thirty (30) days in advance of any reduction in coverage, termination or cancellation of the policy. Such notice shall be sent by certified mail to the County Engineer, return receipt requested. GCC agrees that any contractors engaged by or for GCC to construct the Road Improvements shall maintain general liability coverage in full force and effect to the County on an annual basis and initially upon execution of this Agreement. Failure to provide proof of insurance shall constitute a default

of the terms of this Agreement. GCC shall require that all contractors engaged in the construction of the Road Improvements maintain worker's compensation insurance as required by applicable law.

ARTICLE FIVE MAINTENANCE FEE

5.1 Road Maintenance Fee. GCC shall pay an annual fee, the amount of which shall vary as set forth herein. The Maintenance Fee shall begin to be assessed upon execution of this Agreement by the County and GCC, which means that, for the first year, the Maintenance Fee shall only be assessed for the months from the date of execution to the end of the calendar year. No later than September 1 of each year, GCC shall submit to the County Engineer a summary of the annual tonnage of coal removed from the Mine Project for that year (with tonnage amounts for September, October, November and December being estimated amounts). The data on tonnage shall be submitted in a form similar to the form submitted to the Colorado Department of Reclamation and Mine Safety (the "CDRMS"); however, it shall also include a calculation of the Maintenance Fee owed. Payment of the Maintenance Fee shall be submitted to the County no later than November 1 of each year (the "Payment Date"). If full payment is not received by the County within thirty (30) days of the Payment Date, a 5% monthly finance charge shall be applied to the outstanding principal. If, at the end of the calendar year, the actual data on tonnage is less than GCC estimated in its written summary and, as such, the Maintenance Fee paid by GCC to the County for such calendar year was more than what is required by this Agreement, GCC shall be entitled to a credit against GCC's next payment of the Maintenance Fee for the amount of such overpayment; or if the actual data on tonnage is more than GCC estimated in its written summary and GCC shall have paid an amount less than the Maintenance Fee required to be paid hereunder, then GCC shall immediately pay the amount of such difference to the County. All interest accrued or earned on the Maintenance Fee shall be the property of the County to be utilized by the County to further mitigate the impacts of the Mine Project on CR 120 or to cure any default of GCC hereunder.

Until January 1, 2018, the Maintenance Fee shall be \$0.12 per ton of coal removed from the Mine Project. Thereafter the Maintenance Fee shall increase yearly in accordance with increases in the Annual Construction Cost Index published by the Colorado Department of Transportation. In such event, on or about December 1 of each year the County shall give written notice to GCC of the revised Maintenance Fee for the ensuing year. The County's failure to give GCC written notice of the percentage increase on December 1 shall not be construed as a waiver of the right to such increase. Rather, the increase shall take effect on the first day of the month following the expiration of sixty (60) days from the date of the County's written notification to GCC.

5.2 Use of Maintenance Fee. The County agrees to use the Maintenance Fee only on Maintenance Costs that are directly and reasonably related to the mitigation of impacts related to the Mine Project on CR 120.

ARTICLE SIX DEFAULT

6.1 Default: A default by GCC shall exist if (a) GCC fails to construct the Road Improvements in substantial compliance with the plans and specifications and the other requirements of this Agreement; (b) GCC fails to construct the Road Improvements in a good and workmanlike manner, substantially free from defects in materials and workmanship (c) GCC fails to complete construction of the Road Improvements by the agreed upon completion date; (d) GCC fails to cure any noncompliance specified in any written notice of noncompliance within thirty (30) days after receipt of the notice of noncompliance; (e) GCC otherwise breaches or fails to comply with any obligation of GCC under this Agreement; or (f) GCC becomes insolvent, files a voluntary petition in bankruptcy, is adjudicated and bankrupt pursuant to an involuntary petition in bankruptcy, or a receiver is appointed for GCC.

6.2 Remedies of the County: In the event of any threatened or actual breach or violation of or any default under this Agreement, in addition to all other remedies available, the County shall be entitled to injunctive relief restraining the breach, violation or default or threatened breach, violation or default, together with such other legal or equitable relief which may otherwise be available, including specific performance. GCC expressly consents to and submits to the jurisdiction of the District Court for the Sixth Judicial District of Colorado (and to appropriate appellate courts of the State of Colorado), in any suit, action, dispute or proceeding seeking to enforce any provision of, or based on, arising out of or relating to this Agreement or the transactions contemplated hereby and agrees that all claims in such action or proceeding may be heard and determined in such court. If any action is necessary to enforce the County's rights hereunder, the County shall be entitled to recover all reasonable costs of such action or litigation, including but not limited to costs, expert and other witness fees, travel, telephone, copying and other expenses of every type and description, including reasonable attorney's fees.

6.3 County's Right to Complete Road Improvements: The right of the County to complete or cause completion of the Road Improvements shall include the following rights: The County shall have the right to complete the Road Improvements in substantial accordance with the plans and specifications either itself or by contract with a third party or by assignment of its rights to a successor who operates the Mine Project by purchase, foreclosure or otherwise.

6.4 Use of Funds by the County: Any funds obtained by the County under the performance and warranty Bond or recovered by the County from GCC by suit or otherwise shall be used by the County to pay the costs of completion of the Road Improvements and other requirements of this Agreement and to pay the reasonable costs and expenses of the County in connection with the default by GCC, including reasonable attorney's fees.

**ARTICLE SEVEN
DEDICATION**

All Road Improvements performed by GCC shall be and hereby are dedicated to the County.

**ARTICLE EIGHT
MODIFICATIONS**

This Agreement may not be modified or amended in any manner except by an instrument in writing executed by the County and GCC. Approvals for such amendments or modifications shall not be unreasonably withheld. Notwithstanding the foregoing, certain minor interpretations or modifications of this Agreement (e.g., extension of a deadline, written waiver of a minor requirement) are allowed to be handled administratively by the County Manager or County Engineer, as applicable.

**ARTICLE NINE
AUTHORITY**

9.1 GCC Authority. GCC expressly warrants and represents to the County that GCC has full power and authority to enter into this Agreement and that the person signing this Agreement in a representative capacity for GCC has the authority to so sign. GCC understands that the County is relying on such representations and warranties in entering into this Agreement.

9.2 County Authority. The County expressly warrants and represents to the GCC that the County has full power and authority to enter into this Agreement and that the person signing this Agreement in a representative capacity for the County has the authority to so sign. The County understands that GCC is relying on such representations and warranties in entering into this Agreement.

**ARTICLE TEN
INDEMNIFICATION**

GCC shall indemnify and save harmless the County from any and all suits, actions, claims, judgments, obligations or liabilities of every nature and description which arise from an event or occurrence prior to the date of Final Acceptance and which are caused by, arise from, or are on account of the construction and installation of the Road Improvements. This indemnification shall not apply to claims arising from the negligent acts or omissions of the County. GCC shall pay any and all judgments rendered against the County on account of any such suit, action or claim together with all reasonable expenses and attorney's fees incurred by the County in defending such suit, action or claim. The County shall, within ten (10) days after being served with any such claim, suit or action notify GCC of its reliance upon this indemnification and provide GCC with a copy of all documents pertaining to the claim or cause of action. This indemnity provision shall be in addition to any

other liability which GCC may have. This provision is not, as to third parties, a waiver of any defense or immunity otherwise available to the County in defending any action on behalf of the County and the County shall be entitled to assert in any action every defense or immunity that the County could assert in its own behalf.

**ARTICLE ELEVEN
GENERAL PROVISIONS**

11.1 This Agreement shall be binding upon the successors and assigns of the parties hereto.

11.2 All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement. The recitals of this Agreement are incorporated into this Agreement by this reference.

11.3 This Agreement shall be interpreted and enforced according to the laws of the State of Colorado.

11.4 Any one or more waivers of any covenant or condition by any party hereto shall not be construed as a waiver of a subsequent breach of the same covenant or condition; and a consent or approval to, or of, any act requiring consent or approval shall not be deemed to waive or render unnecessary such consent or approval to, or of, any subsequent similar acts.

11.5 It is not intended by this Agreement to, and nothing contained in this agreement shall, create any partnership, joint venture or other arrangement between GCC and the County. No term or provision of this Agreement is intended to or shall be for the benefit of any person, firm, organization or corporation not a party hereto and no other person, firm, organization or corporation shall have any right or cause of action hereunder. Nothing in this Agreement shall be construed as an assumption or acknowledgement of liability by GCC as to any third party.

11.6 All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when (a) personally delivered, (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested), or (c) after the lapse of three (3) business days following the mailing by registered or certified mail, postage pre-paid, addressed as follows (or such other address for a party as will be specified in a notice given in accordance with this Article 11.6):

For the County:	County Engineer La Plata County 1011 East 2 nd Avenue Durango, Colorado 81301
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With Copies to:	La Plata County Attorney 1099 Main, Suite 311 Durango, Colorado 81301
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For GCC: GCC Energy, LLC
Attn: Gina Nance
Cherry Creek Plaza 1
600 South Cherry Street, 10th Floor
Glendale, CO 80246

With Copies to: GCC Legal Department
600 South Cherry Street, 10th Floor
Glendale, CO 80246

11.7 The Parties acknowledge and agree that execution of this Agreement does not create a vested property right pursuant to C.R.S. §§ 24-68-101, *et seq.*, or under the common law. GCC shall comply with all conditions of its land use permit for the Mine Project and all applicable provisions of the LPCC. Failure to comply with the conditions of the Mine Project's land use permit or LPCC may result in an administrative, quasi-judicial, or judicial enforcement action as authorized by law. Nothing contained herein shall be interpreted to prevent the County from pursuing such action or shall be provided as a defense by GCC to such action. Furthermore, nothing contained herein shall be interpreted to relieve GCC of its obligation to seek future approval under the LPCC for operations on the Property.

11.8 The Parties agree that there is an essential nexus between GCC's obligations under this Agreement and the County's interest in protecting the health, safety and welfare of the public living adjacent to and traveling along CR 120. Furthermore, the Parties agree that the obligations of GCC contained herein are roughly proportional both in nature and extent to the impact of the use of the Property and the operations of the Mine Project.

11.9 If any part, section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Agreement. The parties hereby declare that they would have ratified this Agreement including each part, section, subsection, sentence, clause or phrase thereof; irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

11.10 No trustee, board member, commissioner, official, employee, consultant, attorney or agent of any party shall be personally liable to any party under this Agreement or in the event of any default or for any amount that may become due to any party.

11.11 This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE TO
ROAD IMPROVEMENTS AGREEMENT PERTAINING TO LA PLATA
COUNTY ROAD 120 – GCC ENERGY, LLC**

**La Plata County, State of Colorado
Board of County Commissioners**

By:
Title: Chair

GCC Energy, LLC

By:
Title:

EXHIBIT A

Construction Schedule for CR 120 Road Improvements

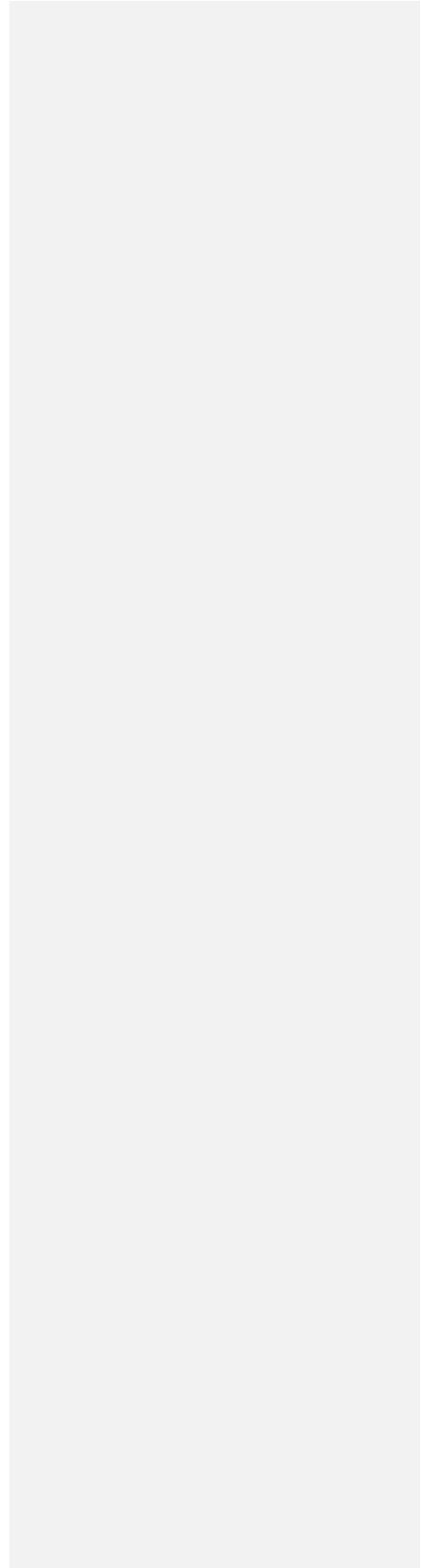


EXHIBIT A - Proposed Construction Schedule for County Road 120 (Existing Schedule per January 2016 GCC-County Discussions)

Item	Activity	Approx. Stn.		Approx. Length (LF)	Jan - April 2016	Nov. 2016	Jan - April 2017	Nov. 2017	Jan - April 2018	Nov. 2018	Jan - April 2019	Nov. 2019	Jan - April 2020	Nov. 2020	Permitted ADTs (1-way trips)		Permitted Loaded Trucks	
		From	To												Avg	Max	Avg	Max
a	P1 - ROW Acquisition				P1 ROW Acquisition										160	192	80	96
b	P1 - Preliminary Construction Plans				P1 Prelim Plans													
c	P1 - Final Construction Plans				P1 Final Plans													
d	P1 - Pavement adjacent to 2541 CR 120 (McCue)	130+00	143+00	1,300		P1 Construction												
e	P1 - Pavement adjacent to 3230 CR 120 (Hunzeker)	162+00	175+00	1,300		P1 Construction												
f	P2 - ROW Acquisition				P2 ROW													
g	P2 - Preliminary Construction Plans				P2 Prelim Plans													
h	P2 - Final Construction Plans				P2 Final Plans													
i	P2 - Widening, Regrading and Paving of Road Section at MP 2.6 - 4.4 (2541 CR 120, McCue)	130+00	143+00	1,300			P2 Construction											
j	P2 - Widening, Regrading and Paving of Road Section at MP 2.6 - 4.4	143+00	162+00	1,900			P2 Construction											
k	P2 - Widening, Regrading and Paving of Road Section at MP 2.6 - 4.4 (3230 CR 120, Hunzeker)	162+00	175+00	1,300			P2 Construction											
l	P2 - Widening, Regrading and Paving of Road Section at MP 2.6 - 4.4	175+00	197+00	2,200			P2 Construction											
m	P2 - Re-Alignment, Construction, and Paving of Road Section at MP 2.6 - 4.4 (Parcel 565729300020, Wiltse)	197+00	208+00	1,100			P2 Construction											
n	P2 - Widening, Regrading and Paving of Road Section at MP 2.6 - 4.4	208+00	228+00	2,000			P2 Construction											
o	P2 - Widening, Regrading, and Paving of Narrows at MP 5.9-6.3	300+00	321+00	2,100			P2 Construction											
p	P3 - ROW Acquisition							P3 ROW Acquisition							200	240	100	120
q	P3 - Preliminary Construction Plans							P3 Prelim Plans										
r	P3 - Final Construction Plans							P3 Final Plans										
s	P3 - Re-alignment, Construction, and Paving at MP 0.3 (90° corner)	8+00	22+00	1,400						P3 Construction								
t	P4 - ROW Acquisition									P4 ROW Acquisition								
u	P4 - Preliminary Construction Plans									P4 Prelim Plans								
v	P4 - Final Construction Plans									P4 Final Plans								
w	P4 - Road Reconstruction at MP xx to 2.6	0+00	130+00	13,000										P4 Construction				
x	P4 - Widening, Regrading and Paving of Road Section at MP 4.4-6.5, excluding MP 5.9-6.3	228+00	300+00	7200										P4 Construction				
y	P4 - Widening, Regrading and Paving of Road Section at MP 4.4-6.5, excluding MP 5.9-6.3	321+00	340+00	1900										P4 Construction				
z	All Improvements Installed and Accepted by County														240	288	120	144

Table Notes

The construction dates (Nov. 2016, Nov. 2017, Nov. 2018, Nov. 2019, Nov. 2020) are firm and enforceable
 The ROW and plan prep dates (2016, 2017., 2018, 2019, 2019, 2020) are, as presented here, are for planning purposes
 Any dates, planning or commitment, may be moved up earlier
 Nov. rather than Dec. is listed due to paving season limitations