

## SURFACE USE AGREEMENT

This Surface Use Agreement (“**Agreement**”) is dated and made effective this 16<sup>th</sup> day of February, 2011, and is by and among **Kerr-McGee Oil & Gas Onshore LP** (“**KMG**”), **Kerr-McGee Gathering LLC** (“**KMGG**”) with an address of 1099 18th Street, Suite 1800, Denver, CO 80202, and **Gillespie Family Partnership, LTD** (“**Surface Owner**”) with an address of 4531 Carefree Trail, Parker, Colorado 80134.

A. Surface Owner represents to KMG that Surface Owner owns the surface estate of that certain tract of land more particularly described on **Exhibit A** attached hereto, being a portion of the NE/4 of Section 30, Township 2 North, Range 67 West, Town of Firestone, Weld County, Colorado (the “**Property**”);

B. Surface ownership of the Property is subject to the rights of the oil and gas mineral leasehold estate, a portion of which is now owned by KMG;

C. Surface Owner plans to develop the surface of the Property as residential subdivision known as the “**The Overlook At Firestone, Filing No. 3**” (the “**Project**”);

D. KMG currently operates two (2) wells on the Property known as the HSR Russell 1-30A (NE/NE) and the Russell Tom L “C” #1 (NE CENTER), (the “**Existing Wells**”), and desires to develop its oil and gas leasehold estate by drilling additional wells (the “**Future Wells**”) on the Property; and

E. This Agreement sets forth the parties’ rights and obligations regarding the relationship between the development of the Property by Surface Owner and KMG’s operation and development of its oil and gas leasehold estate underlying the Property, such rights and obligations to be binding upon the parties’ successors and assigns.

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1. **AREAS RESERVED FOR THE EXISTING WELLS AND FUTURE WELLS.**

Surface Owner shall set aside and provide to KMG only that portion of the Property hereinafter referred to as the “**Oil & Gas Operations Areas.**” Such areas are depicted on **Exhibit B** attached hereto, Oil & Gas Operations Area #1, Oil & Gas Operations Area #2 and Oil & Gas Operations Area #3. Oil & Gas Operations Area #1 and Oil & Gas Operations Area #2 are reserved for, and limited to, the operation of the Existing Wells including the right to maintain, repair, operate, rework, re-drill or replace the Existing Wells. KMG shall not have the right to drill additional wells or install additional surface facilities or additional improvements within Oil & Gas Operations Area #1 and Oil & Gas Operations Area #2. Kerr McGee may drill Future Wells within Oil & Gas Operations Area #3 the number of which is not limited by this Agreement. KMG currently plans on drilling six (6) Future Wells within Oil & Gas Operations



Area #3 at the locations generally depicted on **Exhibit B**. The parties agree that the six (6) well pad design generally depicted on **Exhibit B** impacts six (6) building units or lots in the Project. KMG shall have the right to maintain, repair, operate, rework, re-drill or replace the Future Wells and KMG may drill more than six (6) Future Wells in Oil & Gas Operations Area #3 PROVIDED, however, the locations of those Future Wells complies with then existing well location rules of the Colorado Oil and Gas Conservation Commission (“COGCC”) and does not result in the loss to Surface Owner of additional building units in the Project. KMG shall not drill the six (6) Future Wells depicted on **Exhibit B** more than ten feet (10’) apart from each other, and in no event shall a Future Well be located any closer than one hundred fifty feet (150’) to any lot line (other than the six (6) lots depicted on **Exhibit B**) or roadway. Except as provided in this Agreement, KMG shall not install additional surface facilities or improvements within any of the Oil & Gas Operations Areas. Except for any surface facilities or improvement existing as of the date of this Agreement and as contemplated by this agreement, all future production facilities or improvements shall be limited to the cross-hatched area designated as the **Oil & Gas Production Facilities Area** depicted on **Exhibit B**.

Except for the Oil & Gas Operations Areas, the Oil & Gas Production Facilities Area, Petroleum Pipeline Easement(s) (as defined herein below) and the Access Roads (as defined below) all as set forth in this Agreement, KMG shall not occupy the surface of the Property. In the event of an emergency or for reasonable incidental, temporary (not more than 48 hours for incidental, temporary activities) and non-damaging activities, KMG may occupy other parts of the surface of the Property so long as KMG shall be strictly and solely responsible for any damages resulting from its use of the surface that may occur including but not limited to damages arising from delay of, or interference with, surface development by Surface Owner.

## 2. SETBACK REQUIREMENTS.

Surface Owner will not locate any lot line, building, or structure within any of the Oil & Gas Operations Areas, the Oil & Gas Production Facilities Area, or any of the Petroleum Pipeline Easements, except as expressly permitted under this Agreement. Surface Owner understands and acknowledges that the COGCC has rules and regulations that apply to the distance between a wellhead and public roads, production facilities, building units and surface property lines, among other things. In order to give full effect to the purposes of this Agreement, Surface Owner hereby waives its right to object to the location of any of KMG’s facilities on the basis of setback requirements in the rules and regulations of the COGCC, as they may be amended from time to time; provided the location of any of KMG’s facilities are consistent with the terms and conditions of this Agreement. Surface Owner further and similarly waives its right to object to any other state or local setback requirements or other requirements or regulations that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of KMG, its successors and assigns, to explore for and produce the oil and gas in accordance with this Agreement. KMG or its successors and assigns may cite the waiver in this paragraph in order to obtain a location exception or variance under COGCC rules or from any other state or local governmental body having jurisdiction. Surface Owner agrees not to object to the use of the surface in the Oil & Gas Operations Areas so long as such use is consistent with this Agreement and Surface Owner will provide KMG or its successors and assigns with whatever written support they may reasonably require to obtain permits from the COGCC or any local jurisdiction.

KMG understands and acknowledges that the Town of Firestone and/or Weld County has rules and regulations that apply to the distance between a wellhead and public roads, production facilities, building units and surface property lines, among other things. In order to give full effect to the purposes of this Agreement, KMG hereby waives its right to object to the location of any of Surface Owner's subdivision infrastructure, homes and other improvements on the basis of setback requirements of the Town of Firestone and/or Weld County, as they may be amended from time to time. KMG further and similarly waives its right to object to any other state or local setback requirements or other requirements or regulations that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of Surface Owner, its successors and assigns, to develop a subdivision and to build in accordance with this Agreement. Surface Owner or its successors and assigns may cite the waiver in this paragraph in order to obtain a location exception or variance under Town of Firestone and/or Weld County code or from any other state or local governmental body having jurisdiction. KMG agrees not to object to the use of the surface of the Property, so long as such use is consistent with this Agreement and KMG will provide Surface Owner or its successors and assigns with whatever written support they may reasonably require to obtain subdivision approvals or buildings permits from the Town of Firestone and/or Weld County, or from any other state or local governmental body having jurisdiction.

### 3. GATHERING LINES, FLOWLINES, AND EASEMENTS.

#### *a. Existing and Future Pipelines.*

Subject to the limitations hereinafter described, KMG, KMGG or other designated gas gatherer has a continuing right and entitlement to own, operate, maintain, repair and replace all flowlines, gathering lines and other pipelines that may be necessary or convenient to its operations on the Property. All Existing or Future Pipelines shall be located only within the Petroleum Pipeline Easement(s) depicted on **Exhibit B**. Notwithstanding the foregoing, nothing in this Agreement will be construed to prevent KMG or KMGG, at its sole expense, from taking those actions that are necessary to connect any Existing or Future Well; provided, however, such connection or connections do not unreasonably interfere with Surface Owner's use of the Property or require any changes to the plat of Surface Owner's project as planned as of the date of this Agreement. The current development plans for The Overlook at Firestone, Filing No. 3 anticipate the relocation of the existing gathering line ("**Existing Gathering Pipeline**") to the designated easement corridor shown on **Exhibit B** as the "**New 30' (min.) wide petroleum pipeline easement.**"

#### *b. Relocated Pipeline.*

KMG and /or KMGG are not required to move the Existing Gathering Pipeline until such time as Surface Owner may request. Requested relocation of the Existing Gathering Pipeline to the New 30' (min.) wide petroleum pipeline easement shall be at the Surface Owner's sole cost and expense. At such time as Surface Owner desires to have the Existing Gathering Pipeline relocated to the New 30' (min.) wide petroleum pipeline easement, it shall give written notice to KMG or KMGG, as appropriate. KMG and KMGG will not cease operations of Existing Gathering Pipeline until the replacement gathering pipeline (i) is constructed within the New 30' (min.) wide petroleum pipeline easement, (ii) is fully operational, and (iii) has been

completely paid for by Surface Owner. In addition, operation of the Existing Gathering Pipeline shall not cease unless and until Surface Owner has executed, acknowledged and delivered to KMG or KMGG the petroleum pipeline Right-of-Way Grant in the form of **Exhibit C** attached hereto for the New 30' (min.) wide petroleum pipeline easement.

Notwithstanding the foregoing, Surface Owner shall not dedicate, convey or grant a right of way to any surface interest over the existing 50' wide Panhandle Eastern Pipeline Easement as depicted on **Exhibit B** or install asphalt, concrete or other impervious surface above the Existing Pipeline without the prior written consent of KMGG. Prior to any such dedication, conveyance or other grant of a right-of-way encroaching into the existing 50' wide Panhandle Eastern Pipeline Easement, as shown on **Exhibit B**, or any such installation, Surface Owner shall request and move the Existing Gathering Line be moved to the New 30' (min.) wide petroleum pipeline easement as depicted on **Exhibit B**.

***c. Petroleum Pipeline Easement.***

The Petroleum Pipeline Easements shall be fifty feet (50') in width during construction, installation or relocation operations and otherwise reduced to thirty feet (30') in width for post-construction usage. KMG and KMGG acknowledge that the Petroleum Pipeline Easements will be non-exclusive and agree that they will not object to its concurrent use by other oil and gas operators or utilities, as Surface Owner may grant from time to time, so long as such other parties comply with KMG's pipeline guidelines, attached hereto as **Exhibit D**. Notwithstanding the foregoing, Surface Owner shall not permit, nor shall it place any other utility or structure within ten feet horizontally or two feet vertically of any KMG and KMGG pipeline. The Petroleum Pipeline Easements shall be depicted and labeled on all subdivision plats.

KMG and KMGG shall not, without the prior written consent of Surface Owner, have the right to lay additional flowlines or gathering pipelines on the Property, outside the Petroleum Pipeline Easements. All flowlines and pipelines shall be buried to a depth of approximately 36 inches from the surface. Surface Owner shall maintain a minimum of 36 inches and not more than 72 inches of cover over all pipelines and flowlines during any of Surface Owner's operations on the Property. The construction and burying of additional flowlines, gathering lines and pipelines shall be at the sole cost and expense of KMG, KMGG or its gas purchaser.

***d. Pipeline Crossings.***

If Surface Owner's development plans anticipate that roadways will or may in the future cross over any Pipelines, Surface Owner will pothole or request that KMG or KMGG pothole the Existing Pipelines or Future Pipelines to check the depth of such Pipelines. Prior to Surface Owner's installation of a new roadway, KMG or KMGG will lower, as required, the affected pipelines to sufficient depth for the road elevations. Surface Owner agrees to pay KMG or KMGG the reasonable cost of inspecting and lowering the pipelines, as well as the reasonable cost of any sub-grade work required to achieve the road construction specifications.



#### 4. ACCESS.

Surface Owner shall provide KMG with continuous access to the Oil & Gas Operations Areas, the Oil & Gas Production Facilities Area, and all pipelines including but not limited to the Petroleum Pipeline Easement. The access roads to be used by KMG will either be those roads that currently are in place or those that are anticipated to be constructed by Surface Owner at its sole cost and expense as part of Surface Owner's development of the Property ("Access Roads"). All Access Roads constructed shall be at least thirty (30) feet in width and built to withstand a minimum of 104,000 pounds and 26,000 pounds per axle. KMG agrees to access the Property according to the routes depicted and described on the attached **Exhibit B** once the streets are constructed by Surface Owner and Surface Owner provides KMG notice of such but KMG may continue to use its present access routes until that time and until receipt of such notice from Surface Owner.

#### 5. BATTERIES AND EQUIPMENT.

KMG shall have the right to operate, repair, replace and maintain existing tanks, existing separators, existing dehydrators, existing compressors and other existing equipment within the Oil & Gas Production Facilities Area depicted on **Exhibit B**. KMG shall have the right to install, operate, repair, replace and maintain future tanks (only low-profile tanks), separators, dehydrators, compressors, and other equipment reasonably necessary for the operation of the Future Wells only within the cross-hatched area of the Oil & Gas Productions Facilities Area depicted on **Exhibit B**.

With respect to KMG's equipment and facilities other than flowlines or pipelines:

- a. KMG shall install and maintain, at its sole cost and expense, all fences around the Existing Well and any Future Wells;
- b. KMG shall install and maintain, at its sole cost and expense, all gates and locks reasonably necessary for the security of any wells or facilities in the Oil & Gas Operations Areas and in the Oil & Gas Production Facilities Area.
- c. KMG shall paint any production facilities for any wells, including wellhead guards, with paint that is approved by the COGCC; and
- d. Surface Owner shall not inhibit KMG's access to the Oil & Gas Operations Areas and the Oil & Gas Production Facilities Area or inhibit KMG's operations within these Areas by landscaping or other improvements, unless otherwise agreed upon between Surface Owner and KMG.
- e. KMG agrees to keep the Oil & Gas Operations Areas and the Oil & Gas Production Facilities Area, free of weeds, debris and to maintain same in good condition and attractive manner.

#### 6. NOTICE OF FUTURE OPERATIONS.

KMG shall provide at least seven (7) days prior written notice to Surface Owner of any operations in connection with the reworking, fracturing, deepening or recompletion operation on

the Existing Well or any Future Wells; provided, however, that KMG shall provide at least thirty (30) days prior written notice to Surface Owner and/or any homeowner's association formed by Surface Owner that is associated with the Property upon the drilling of any Future Wells. Regardless of the foregoing notice requirements, KMG shall have immediate access to any of its facilities in the event of an emergency.

After receipt of the above notice, but not less than five (5) working days prior to KMG's mobilization on the applicable Oil & Gas Operations Areas, either KMG or Surface Owner may request an on-site meeting. The purpose of the meeting shall be to inform Surface Owner of the expected activity and to coordinate site access, hazards, barricades, restoration or any other issues that affect the use and safety of Surface Owner's development.

## **7. NOTICES TO HOMEOWNERS AND BUILDERS.**

Surface Owner shall furnish all buyers of the Property from Surface Owner with a plat or map showing the Oil & Gas Operations Areas, the Oil & Gas Production Area, and the Petroleum Pipeline Easement. In addition, Surface Owner by recordation of this Agreement shall provide notice to all builders, homeowners, homeowner associations and other buyers of the Property from Surface Owner that:

- a. There may be ongoing oil and gas operations and production in the Oil & Gas Operations Areas on the surface of the Property;
- b. There are likely to be additional Future Wells drilled and oil and gas operations and production from the Oil & Gas Operations Areas that affect the surface of the Property;
- c. Heavy equipment may be used by KMG from time to time for oil and gas production operations and that such operations may be conducted on a 24 hour basis;
- d. Future purchasers of all or a portion of the Property, as successors in interest to Surface Owner, will be acquiring a proportionate interest in Surface Owner's rights under this Agreement and assuming those obligations undertaken by Surface Owner pursuant to this Agreement; and
- e. Homeowner associations and buyers of individual lots or homes, as successors in interest to Surface Owner, will be acquiring a proportionate interest in Surface Owner's rights under this Agreement, and will be subject to the waivers contained in this Agreement.

## **8. DRILLING AND COMPLETION OPERATIONS.**

KMG shall endeavor to diligently pursue any drilling operations to minimize the total time period and to avoid rig relocations or startup during the course of drilling. Surface Owner waives any objections to continuous (i.e., 24-hour) drilling operations.



**9. GOVERNMENTAL PROCEEDINGS.**

Surface Owner shall not oppose, and will, if requested by KMG, submit a letter of support for, KMG in any agency or governmental proceedings, including but not limited to the COGCC, the Town of Firestone or other governing body proceedings, related to KMG's operations on the Property, including but not limited to drilling, workovers, well deepenings and recompletions, provided that KMG's position in such proceedings is consistent with this Agreement. KMG agrees that KMG will not object in any forum to a request by Surface Owner to zone, rezone, plat or replat or construct on all or any portion of the Property to the extent such requests or activities are consistent with this Agreement.

**10. LIMITATION OF LIABILITY, RELEASE AND INDEMNITY.**

a. No party shall be liable for, or be required to pay for, special, punitive, exemplary, incidental, consequential or indirect damages to any other party for activities undertaken within the scope of this agreement;

b. Except as to claims arising out of pollution or environmental damage (which claims are governed by Section 12 below) or out of other provisions of this Agreement (which claims shall be governed by the terms of this Agreement), each party shall be and remain responsible for its own liability for all losses, claims, damages, demands, suits, causes of action, fines, penalties, expenses and liabilities, including without limitation attorneys' fees and other costs associated therewith (all of the aforesaid herein referred to collectively as "Claims"), arising out of or connected with each such party's ownership or operations on the Property, no matter when asserted, subject to applicable statutes of limitations. Each such party shall release, defend, indemnify and hold the other parties, their officers, directors, employees, successors and assigns, harmless against all such Claims. This provision does not, and shall not be construed to, create any rights in persons or entities not a party to this Agreement, nor does it create any separate rights in parties to this Agreement other than the right to be indemnified for Claims as provided herein;

c. Upon the assignment or conveyance of a party's entire interest in the Property, that party shall be released from its indemnification in Section 11.b. above, for all actions or occurrences happening after such assignment or conveyance.

**11. ENVIRONMENTAL INDEMNITY.**

The provisions of Section 11 above, except for Section 11.a., shall not apply to any environmental matters, which shall be governed exclusively by the following, subject to the limitations of Section 11.a. above:

a. "Environmental Claims" shall mean all Claims asserted by governmental bodies or other third parties for pollution or environmental damage of any kind, arising from operations on or ownership of the Property or ownership of the oil and gas leasehold interest, whichever is applicable, and all cleanup and remediation costs, fines and penalties associated therewith, including but not limited to any Claims arising from Environmental Laws or relating to asbestos or to naturally occurring radioactive material. Environmental Claims shall not include the costs of any remediation undertaken voluntarily by any party, unless such remediation is performed under the imminent threat of a Claim by a governmental body or other third party;

b. "Environmental Laws" shall mean any laws, regulations, rules, ordinances, or order of any governmental authority(ies), which relate to or otherwise impose liability, obligation, or standards with respect to pollution or the protection of the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.), the Clean Water Act (33 U.S.C. §§ 466 et seq.), the Safe Drinking Water Act (14 U.S.C. §§ 1401-1450), the Hazardous Material Transportation Act (49 U.S.C. §§ 1801 et seq.), the Clean Air Act, and the Toxic Substances Control Act (15 U.S.C. §§ 2601-2629); and

c. Environmental Indemnification. KMG shall protect, defend, indemnify, and hold harmless Surface Owner, homeowners association and any lot owner who purchases a lot from Surface Owner from any Environmental Claims relating to the Property or oil and gas leasehold thereunder that arise out of KMG's ownership and operation of the Oil & Gas Operations Areas and its ownership and operation of its pipeline easement or rights-of-way on the Property. Surface Owner shall fully protect, defend, indemnify and hold harmless KMG from any and all Environmental Claims relating to the Property that arise out of Surface Owner's development of the Property.

## **12. EXCLUSION FROM INDEMNITIES.**

The indemnities of the parties herein shall not cover or include any amounts which the indemnified party is actually reimbursed by any third party. The indemnities in this Agreement shall not relieve any party from any obligations to third parties.

## **13. NOTICE OF CLAIM FOR INDEMNIFICATION.**

If a Claim is asserted against a party for which the other party would be liable under the provisions of Section 11 or 12 above, it is a condition precedent to the indemnifying party's obligations hereunder that the indemnified party give the indemnifying party written notice of such Claim setting forth all particulars of the Claim, as known by the indemnified party, including a copy of the Claim (if it is a written Claim). The indemnified party shall make a good faith effort to notify the indemnifying party within five days of receipt of a Claim and shall affect such notice in all events within such time as will allow the indemnifying party to defend against such Claim.

## **14. REPRESENTATIONS.**

Each party represents that it has the full right and authority to enter into this Agreement. KMG does not represent that it has rights to settle matters for all of the mineral owners or any other lessees in the Property and this Agreement shall only apply to and bind the KMG leasehold interest, and those claiming under KMG, in the property.

## **15. SUCCESSORS.**

The terms, covenants, and conditions hereof shall be binding upon and shall inure to the benefit of the parties and their respective heirs, devisees, executors, administrators, successors and



assigns; provided, as to KMG, successors and assigns shall be deemed to be limited to lessees under the oil and gas leases which KMG owns.

**16. TERM.**

This Agreement shall become effective when it is fully executed and shall remain in full force and effect until KMG's leasehold estate expires or is terminated, and KMG has plugged and abandoned all wells owned all or in part by KMG and complied with the requirements of all applicable oil and gas leases pertaining to removal of equipment, reclamation, cleanup and all other applicable provisions of the leases and existing laws and regulations.

**17. NOTICES.**

Any notice or other communication required or permitted under this Agreement shall be sufficient if deposited in U.S. Mail, postage prepaid, addressed to each of the following:

**If to KMG:**

Kerr McGee Oil & Gas Onshore LP  
1999 Broadway, Suite 3700  
Denver, Colorado 80202  
Attention: Director of Land Denver Basin

**If to KMGG:**

Kerr-McGee Gathering LLC  
1099 18<sup>th</sup> Street, Suite 1800  
Denver, CO 80202  
Attention: Wattenberg Area Midstream

**If to Surface Owner:**

Gillespie Family Partnership, LTD  
c/o Parmer Gillespie  
4531 Carefree Trail  
Parker, Colorado 80134

and

Gillespie Family Partnership, LTD  
c/o Parmer Gillespie  
14808 West Robson Circle North  
Goodyear, Arizona 85395

with copy to:

Grant, Grant & Goiran LLP  
Attn: Cameron Grant  
P.O. Box 908  
275 S. Main Street, #201  
Longmont, Colorado 80502-0908

Any party may, by written notice so delivered to the other parties, change the address or individual to which delivery shall thereafter be made.

**18. RECORDING.**

This Agreement, any amendment hereto shall be recorded by KMG, which shall provide the other parties with a copy showing the recording information as soon as practicable thereafter.

**19. WAIVER OF DAMAGES.**

Subject to terms of Letter Agreement between the parties hereto, Surface Owner hereby waives all surface damage payments pursuant to any COGCC or local regulation, state statute, common law or prior agreement, for each and every well that is drilled, tank battery and emissions control device located on the Property within the Oil & Gas Operations Areas and the Oil & Gas Production Facilities Area, and also including but not limited to any Access Road, or any flowlines, gathering lines including the Pipeline constructed within the Petroleum Pipeline Easement. KMG may provide a copy of this Agreement to the COGCC as evidence of this waiver.

**20. ARBITRATION.**

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be resolved by arbitration conducted in Denver, Colorado and shall be administered by the American Arbitration Association under its commercial rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**21. APPLICABLE LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to its conflict of laws provisions.

**22. ENTIRE AGREEMENT.**

This Agreement sets forth the entire understanding among the parties hereto regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. This Agreement shall not be amended, except by written document signed by all parties.

**23. EXECUTION AND BINDING EFFECT**

This Agreement may be executed in any number of counterparts each of which shall be deemed an original instrument but all of which together shall constitute one and the same instrument, and shall be binding upon and inure to the benefit of the parties, and each of their respective heirs, executors, administrators, successors and assigns and is executed by the parties as of the Effective Date set forth above.

**24. COMPLIANCE WITH REGULATION.**

Surface Owner expressly acknowledges that this Agreement satisfies KMG's obligation under COGCC rules 305 and 306 to consult in good faith with the Surface Owner regarding the proposed oil and gas operations. Surface Owner further expressly acknowledges that this Agreement shall be deemed to be specifically applicable to and to fully satisfy, the obligation of KMG to accommodate Surface Owner's use of the surface of the Property, existing or future, and waives any statutory or common law claims with respect thereto, except for actions to enforce this Agreement or obtain damages for its breach.

Surface Owner understands and accepts that KERR-McGEE GATHERING LLC is executing this Agreement only with respect to Section 3 and then only to the extent said Section 3 is applicable to gathering pipelines (as distinguished from flowlines).

The parties have executed this Agreement on the day and year first above written.

**KERR-McGEE OIL & GAS ONSHORE LP**

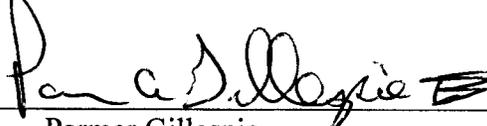
By:   
David H. Bell *TDS*  
Agent & Attorney-in-Fact

**KERR-McGEE GATHERING LLC**

By:   
Ronald H. Olsen *RB*  
Agent & Attorney-in-Fact

**SURFACE OWNERS**

**GILLESPIE FAMILY PARTNERSHIP, LTD**

By:   
Parmer Gillespie  
Managing Partner



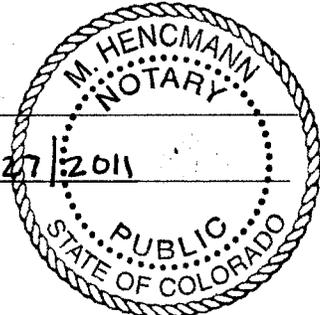
ACKNOWLEDGMENTS

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Denver )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of March, 2011, by David H. Bell, as Agent & Attorney-in-Fact of Kerr-McGee Oil & Gas Onshore LP on behalf of such company.

Witness my hand and official seal.

[Signature]  
Notary Public  
My Commission Expires: 9/27/2011



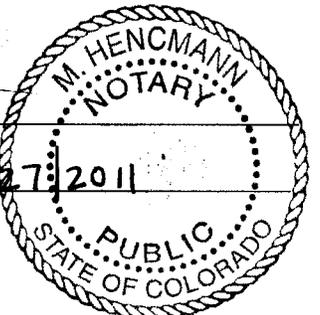
My Commission Expires 9-27-2011

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Denver )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of March, 2011, by Ronald H. Olsen, as Agent & Attorney-in-Fact of Kerr-McGee Gathering, LLC, on behalf of such company.

Witness my hand and official seal.

[Signature]  
Notary Public  
My Commission Expires: 9/27/2011



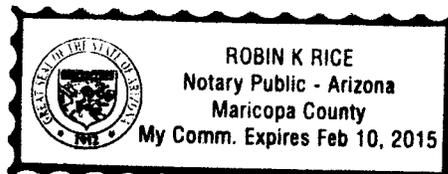
My Commission Expires 9-27-2011

Arizona  
STATE OF ~~COLORADO~~ )  
 ) ss.  
COUNTY OF Maricopa )

The foregoing instrument was acknowledged before me this 14 day of March, 2011, by Parmer Gillespie, as Managing Partner for Gillespie Family Partnership, LTD.

Witness my hand and official seal.

[Signature]  
Notary Public  
My Commission Expires: Feb. 10, 2015





3763967 04/21/2011 01:56P Weld County, CO  
13 of 25 R 131.00 D 0.00 Steve Moreno Clerk & Recorder

**Exhibit A**  
To  
Surface Use Agreement

[Legal Description]

**TRACT 1, OVERLOOK AT FIRESTONE, REPLAT A, WELD COUNTY, COLORADO**



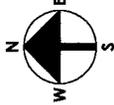
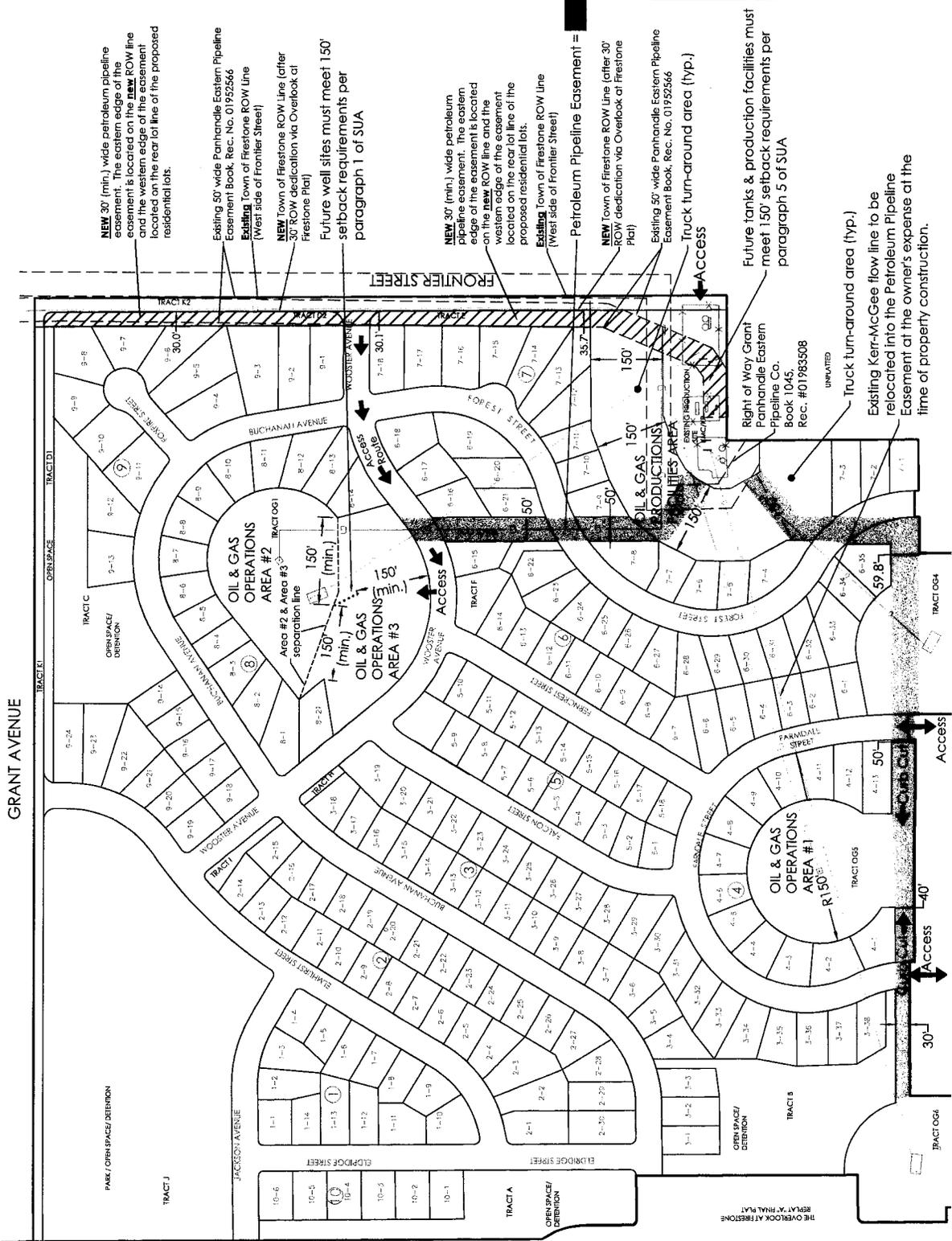
3763967 04/21/2011 01:56P Weld County, CO  
14 of 25 R 131.00 D 0.00 Steve Moreno Clerk & Recorder

**Exhibit B**  
To  
Surface Use Agreement

[Oil & Gas Operations Areas  
and  
Petroleum Pipeline Easements – Present and Future]



# Oil & Gas Operations Exhibit B - Overlook at Firestone, Filing No. 3



Scale: 1"=200'  
 Date: 02.01.11

**Legend:**

- Proposed 30' (min.) wide petroleum pipeline easement
- Existing location of Frontier ROW
- Future location of Frontier ROW



**NEW 30' (min.) wide petroleum pipeline easement.** The eastern edge of this easement is located on the **NEW ROW** line located on the rear lot line of the proposed residential lots.

Existing 50' wide Panhandle Eastern Pipeline Easement Book, Rec. No. 0192566

Existing Town of Firestone ROW Line (West side of Frontier Street)

**NEW Town of Firestone ROW Line (after 30' ROW dedication via Overlook at Firestone Plat)**

Future well sites must meet 150' setback requirements per paragraph 1 of SUA

**NEW 30' (min.) wide petroleum pipeline easement.** The eastern edge of the easement is located on the **new ROW** line and the western edge of the easement located on the rear lot line of the proposed residential lots.

Existing Town of Firestone ROW Line (West side of Frontier Street)

Petroleum Pipeline Easement =

**NEW Town of Firestone ROW Line (after 30' ROW dedication via Overlook at Firestone Plat)**

Existing 50' wide Panhandle Eastern Pipeline Easement Book, Rec. No. 0192566

Truck turn-around area (typ.)

Future tanks & production facilities must meet 150' setback requirements per paragraph 5 of SUA

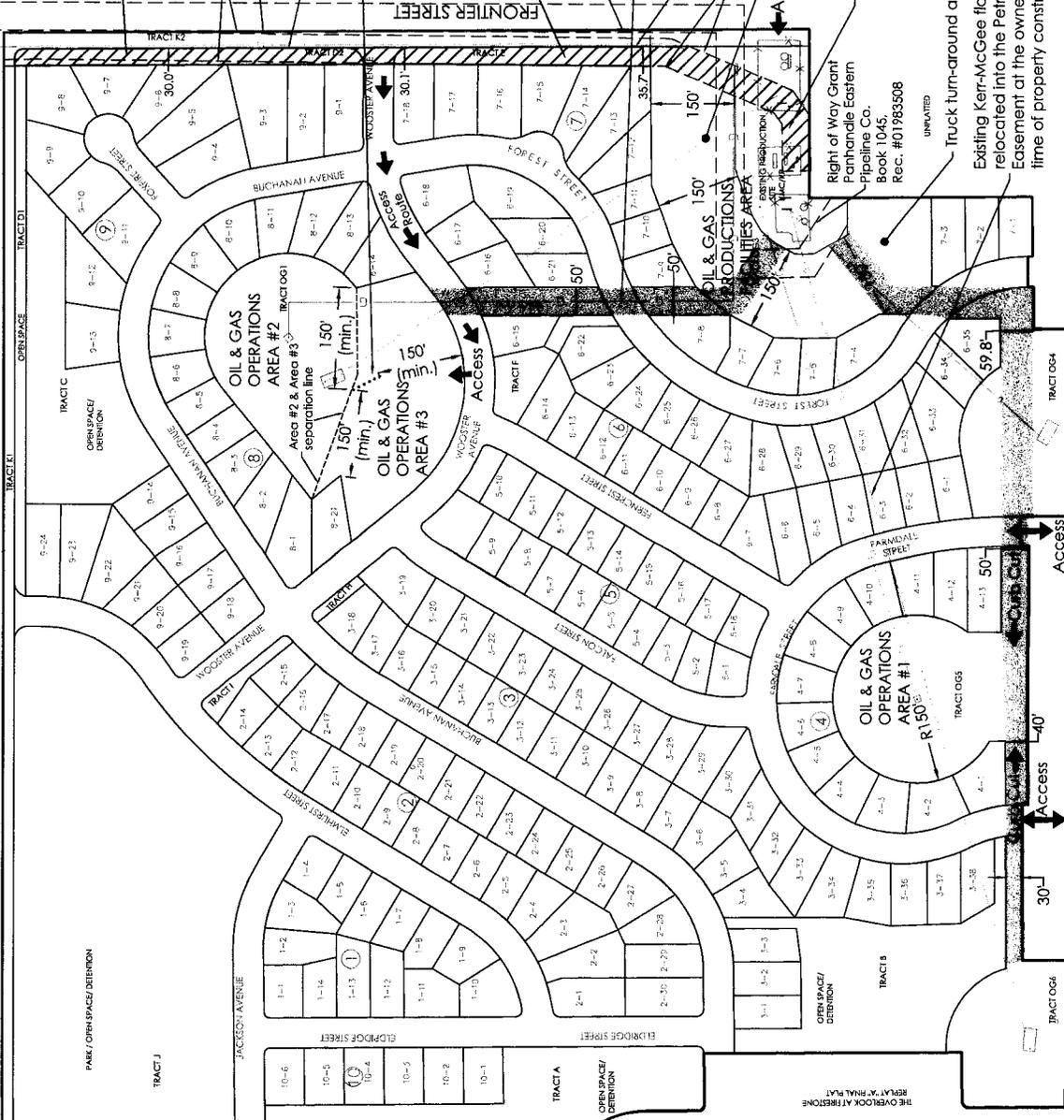
Truck turn-around area (typ.)

Existing Kerr-McGee flow line to be relocated into the Petroleum Pipeline Easement at the owner's expense at the time of property construction.

Right of Way Grant Panhandle Eastern Pipeline Co. Book 1045, Rec. #01983508

UNLATER

GRANT AVENUE



THIMBLAND SUBDIVISION SECOND PLAT

THE OVERLOOK AT FIRESTONE REPLIT. FINAL PLAT



3763967 04/21/2011 01:56P Weld County, CO  
16 of 25 R 131.00 D 0.00 Steve Moreno Clerk & Recorder

**Exhibit C**  
To  
Surface Use Agreement

[Right-of-Way Grant]



### RIGHT-OF-WAY GRANT

**THIS RIGHT-OF-WAY GRANT** ("Grant") is made this 16<sup>th</sup> day of February, 2011 from **GILLESPIE FAMILY PARTNERSHIP, LTD** ("Grantor") to **KERR-MCGEE GATHERING LLC**, a Colorado limited liability company, whose address is 1099 18th Street, Suite 1800, Denver, Colorado 80202 ("KMGG"). The parties agree as follows:

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants, conveys and warrants unto KMGG, its successors and assigns, a perpetual non-exclusive right-of-way and easement to survey, construct, maintain, inspect, operate, repair, alter, replace, modify, change the size of, reconstruct, mark, monitor, abandon or remove, at KMGG's election, one pipeline, meter, launcher and all appurtenances, below or above ground, convenient for the transportation or transmission of oil, gas, petroleum products, water, hydrocarbons and any other substances, whether fluid, solid or gaseous, and any products, derivatives, combinations or mixtures of any of the foregoing, in, on, over, under, or through the lands situated in Weld County, State of Colorado, being described as follows:

TOWNSHIP \_\_\_\_ NORTH, RANGE \_\_\_\_ WEST, 6TH PM  
Section \_\_\_\_: \_\_\_\_\_

The specific route and course of the right-of-way and easement conveyed hereby ("Right-of-Way Lands") are more particularly described on Exhibit "A" attached hereto and made a part hereof. The parties have agreed that the width of the Right-of-Way Lands is fifty feet (50') during construction, and subsequent to construction the width of the Right-of-Way Lands will be thirty feet (30').

After the initial construction of the pipeline KMGG may require, from time to time, temporary additional work space parallel and adjacent to the Right-of-Way Lands to survey, construct, maintain, inspect, operate, repair, alter, replace, modify, change the size of, reconstruct, mark, monitor, abandon or remove the pipeline together with all appurtenances. Grantor agrees to negotiate in good faith with KMGG to allow KMGG the use of this temporary additional work space.

Grantor represents and warrants to KMGG that Grantor is the sole owner in fee simple of the Right-of-Way Lands, subject to the burden of the Right-of-Way and has full right, power and authority to enter into this Grant.

The pipe constructed hereunder shall be placed at a depth of not less than 36 inches below the surface of the ground. Grantor agrees not to increase or decrease the surface elevation on the Right-of-Way Lands without KMGG's prior written permission. KMGG shall repair and/or restore any fence on or adjacent to the Right-of-Way Lands removed or severed by KMGG in the course of the operations provided for in this Grant to the condition such fence was in prior to the removal by KMGG. If necessary to prevent the escape of Grantor's livestock, KMGG shall construct temporary gates or fences in those areas affected by KMGG's operations as provided for in this Grant.

KMGG shall level and restore any lands affected by KMGG's operations that may have excessive settling and sufficiently compact the soil within a reasonable period of time after completion of construction to the condition that existed at the time immediately prior to the placement of KMGG's pipeline, to the extent reasonably practicable.



Grantor agrees not to build, create, construct or permit to be built, created or constructed, any obstruction, building, fence, reservoir, engineering works or other structures or improvements over, under, on or across the Right-of-Way Lands without the prior written consent of KMGG.

KMGG shall have all rights, privileges and benefits necessary or convenient for the full use and enjoyment of this Grant, including but not limited to, the right of ingress and egress over and across Grantor's lands lying adjacent to the Right-of-Way Lands for any and all purposes necessary and incidental to exercising KMGG's rights hereunder.

KMGG shall be obligated to pay for, repair, replace or otherwise compensate Grantor for any damages resulting from KMGG's activities and operations on the Right-of-Way Lands, except for any damage to structures or improvements placed in the Right-of-Way Lands contrary to the terms contained herein; and, Grantor shall pay for, reimburse, indemnify and hold KMGG harmless from any and all claims or damages resulting from Grantor's activities on the Right-of-Way Lands. Grantor shall have the right to use and enjoy the Lands, subject to the rights herein granted.

This Grant cannot be modified, except by an instrument in writing signed by Grantor and an authorized representative of KMGG.

The rights granted herein may be assigned in whole or in part, and the terms, conditions, and provisions of this Grant are a covenant running with the land and shall extend to and be binding upon the successors, and assigns of Grantor and KMGG.

KMGG shall record an original of this Right-of-Way Grant in the records of the County in which the Right-of-Way Lands are located. By recording this Right-of-Way Grant, KMGG shall be deemed to have accepted all of the terms and conditions hereof.

This Grant may be executed in counterparts each of which shall be considered one and the same agreement.

IN WITNESS WHEREOF, Grantor has executed and delivered this Right-of-Way Grant as of the date first above written.

**GRANTOR:**

GILLESPIE FAMILY PARTNERSHIP, LTD

By: \_\_\_\_\_  
Parmer Gillespie  
Managing Partner

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of February, 2011, by Parmer Gillespie, as Managing Partner for Gillespie Family Partnership, LTD.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**Exhibit A**  
To  
Right of Way Grant

[Right-of-Way Lands]



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**Exhibit D**  
To  
Surface Use Agreement

[Pipeline Guidelines]



## General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC Pipelines and Related Facilities

This list of design, construction and contractor requirements, including but not limited to the following, is for the design and installation of foreign utilities or improvements on Kerr McGee Gathering LLC (KMGG) right-of-way (ROW). These are not intended to, nor do they waive or modify any rights KMGG may have under existing easements or ROW agreements. For information regarding KMGG's rights and requirements as they pertain to the existing easements, please reference existing easements and amendments documents. This list of requirements is applicable for KMGG facilities on easements and in road rights of ways only. Encroachments on fee property should be referred to the Land & ROW Department. Any reference to KMGG in the below requirements is meant to include and apply to any Kerr McGee entity.

### Design

- ♦ KMGG shall be provided sufficient prior notice of planned activities involving excavation, blasting, or any type of construction on KMGG's ROW or near its facilities. This is to determine and resolve any location, grade or encroachment problems and allow for the protection of KMGG's facilities and the general public. This prior notification is to be made **before** the actual work is to take place.
- ♦ The encroaching entity shall provide KMGG with a set of drawings for review and a set of final construction drawings showing all aspects of the proposed facilities in the vicinity of KMGG's ROW. The encroaching entity shall also provide a set of "as-built drawings" and submit to KMGG, showing the facilities in the vicinity of KMGG's ROW upon completion of the work.
- ♦ Only facilities shown on drawings reviewed by KMGG will be approved for installation on KMGG's ROW. All drawing revisions that affect facilities proposed to be placed on KMGG's ROW must be approved by KMGG in writing.
- ♦ KMGG shall approve the design of all permanent road crossings.
- ♦ Any repair to surface facilities following future pipeline maintenance or repair work by KMGG on its "prior rights" ROW will be at the expense of the developer or landowner. In addition, any repair to surface facilities following future pipeline maintenance or repair work by KMGG on replacement ROW granted to relocate KMGG facilities will also be done at the expense of the developer or landowner unless expressly addressed in surface use agreements and approved in writing by KMGG.
- ♦ The depth of cover over the KMGG pipelines shall not be increased or reduced nor surface modified for drainage without KMGG's written approval.
- ♦ Construction of any permanent structure within KMGG pipeline easement is **not** permitted without written approval by KMGG.
- ♦ Planting of shrubs and trees is not permitted on KMGG pipeline easement without written approval by KMGG.
- ♦ Irrigation equipment i.e. backflow prevent devices, meters, valves, valve boxes, etc. shall not be located on KMGG easement without written approval by KMGG.
- ♦ Foreign utility installations, IE, distribution gas, oil and gas gathering, water, electric, telephone, cable and sewer lines, etc., may cross perpendicular to KMGG's pipeline within the ROW, provided that a minimum of eighteen inches (18") of vertical clearance is maintained between KMGG pipeline(s) and the foreign utility. Any installation by a foreign utility with less than 18" of vertical separation is not allowed without written approval by KMGG. In no case will vertical separation be less than 12". Constant line elevations must be maintained across KMGG's entire ROW width, gravity drain lines are

the only exception and must be approved in writing. Foreign line crossings below the KMGG pipeline must be evaluated by KMGG to ensure that a significant length of the KMGG line is not exposed and unsupported during construction. Foreign line crossings above the KMGG pipeline with less than 18" of clearance must be evaluated by KMGG to ensure that additional support is not necessary to prevent settling on top of the KMGG natural gas pipeline. A KMGG representative must be on site during any crossing activities to verify clearance depths and to assure the integrity and support of the KMGG facility. All installations of foreign crossings done by boring and or jacking require the KMGG facility to be exposed to verify clearances.

- ♦ Foreign utilities shall not run parallel to KMGG pipelines within the KMGG easement without written permission by KMGG. A minimum of 10 feet of horizontal separation must be maintained in parallel installations whether the foreign utility is placed within the KMGG easement or adjacent to the KMGG easement. Any deviation from the 10' horizontal requirement must be approved in writing by KMGG and an "as built survey" provided to KMGG after installation. In the instance that high voltage electric lines, greater than 20kV, are installed parallel to a KMGG pipeline a minimum horizontal distance of 15' must be maintained.
- ♦ The foreign utility should be advised that KMGG maintains cathodic protection on its pipelines and facilities. The foreign utility must coordinate their cathodic protection system with KMGG's. At the request of KMGG, foreign utilities shall install (or allow to be installed) cathodic protection test leads at all crossings for the purposes of monitoring cathodic protection interference. The KMGG CP technician and the foreign utility CP technician shall perform post construction CP interference testing. Interference issues shall be resolved by mutual agreement between foreign utility and KMGG. All costs associated with the correction of cathodic protection interference issues on KMGG pipelines as a result of the foreign utility crossing shall be borne by the foreign utility for a period of one year from date the foreign utility is put in service.
- ♦ The developer shall understand that KMGG, whether specifically required per federal law or by company standard, will mark the routing of its underground facilities with aboveground pipeline markers and test leads and maintain those markers and test leads. Markers will be installed at every point the pipeline route changes direction and adequate markers will be installed on straight sections of pipeline to insure, in the sole opinion of KMGG, the safety of the public, contractor, KMGG personnel and KMGG facilities.
- ♦ On all foreign utility crossings and / or encroachments, metallic foreign lines shall be coated with a suitable pipe coating for a distance of at least 10 feet on either side of the crossing.
- ♦ AC Electrical lines must be installed in conduit and properly insulated.
- ♦ On all foreign pipelines, DOT approved pipeline markers shall be installed so as to indicate the route of the foreign pipeline across the KMGG ROW.
- ♦ No power poles, light standards, etc. shall be installed in the KMGG easement without written approval by KMGG.
- ♦ KMGG installs above ground appurtenances at various locations that are used in the operation of its facilities. Kerr McGee will install protective enclosures at the above ground appurtenances to protect them from outside damage. The design and placement of these above ground appurtenances and protective enclosures is done at KMGG's sole discretion, and may exceed any regulatory requirements.

## **Construction**

- ♦ If KMGG will be relocating KMGG facilities for any entity, grading in the new KMGG ROW shall be +/- 6 inches before KMGG will mobilize to complete the relocation. Final cover after the completion of the project will not be manipulated by the requesting entity to be less than 48" nor more than 72". All cover that exceeds 72" or less than 48" will be approved in writing by KMGG. This does not preclude KMGG from installing the pipeline at a minimum cover of 36" as provided for in CFR 49 Part 192. Cover during all construction activities will NEVER be less than 36" unless approved in writing and a KMGG representative is on site during the time cover is reduced.



- ♦ The entity requesting relocation shall survey top of pipe after installation but before backfill to determine proper final elevation of KMGG facilities. The entity requesting relocation is solely responsible for the final depth of cover over the relocated KMGG facility. Any deviation from cover requirements as outlined above will be corrected at the sole expense of the entity requesting relocation.
- ♦ Contractors shall be advised of KMGG's requirements and be contractually obligated to comply.
- ♦ The continued integrity of KMGG's pipelines and the safety of all individuals in the area of proposed work near KMGG's facilities are of the utmost importance. Therefore, contractor must meet with KMGG representatives prior to construction to provide and receive notification listings for appropriate area operations and emergency personnel. **KMGG's on-site representative will require discontinuation of any work that, in his or her opinion, endangers the operations or safety of personnel, pipelines or facilities.**
- ♦ **The Contractor must expose all KMGG pipelines prior to crossing to determine the exact alignment and depth of the lines. A KMGG representative must be present.**
- ♦ The use of probing rods for pipeline locating shall be performed by KMGG representatives only, to prevent unnecessary damage to the pipeline coating. A KMGG representative shall do all line locating.
- ♦ Notification shall be given to KMGG at least 72 hours before start of construction. A schedule of activities for the duration of the project must be made available at that time to facilitate the scheduling of KMGG's work site representative. Any Contractor schedule changes shall be provided to KMGG immediately.
- ♦ Heavy equipment will not be allowed to operate directly over KMGG pipelines or in KMGG ROW unless written approval is obtained from KMGG. Heavy equipment shall only be allowed to cross KMGG pipelines at locations designated by KMGG. Haul roads will be constructed at all crossings. The haul roads will be constructed using lightweight equipment. The existing depth of cover over the pipeline must be verified. Cover will be added such that a total of 8' of fill exists over the pipeline and extends a minimum of 10' on each side of the pipeline. Depth of cover will then taper as required for equipment access. Steel plates may be used for load dissipation only if approved in writing by KMGG.
- ♦ Contractor shall comply with all precautionary measures required by KMGG, at its sole discretion to protect its pipelines. When inclement weather exists, provisions must be made to compensate for soil displacement due to subsidence of tires.
- ♦ Excavating or grading which might result in erosion or which could render the KMGG ROW inaccessible shall not be permitted unless the contractor agrees to restore the area to its original condition and provide protection to KMGG's facility. At no time will cover be reduced to less than 36" without written approval by KMGG and a KMGG representative on site.
- ♦ A KMGG representative shall be on-site to monitor any construction activities within twenty-five (25) feet of a KMGG pipeline or aboveground appurtenance. The contractor **shall not** work within this distance without a KMGG representative being on site. Contractor shall use extreme caution and take any appropriate measures to protect KMGG facilities.
- ♦ Ripping is only allowed when the position of the pipe is known and not within ten (10) feet of KMGG facility. KMGG personnel must be present.
- ♦ Temporary support of any exposed KMGG pipeline by Contractor may be necessary if required by KMGG's on-site representative. Backfill below the exposed lines and 12" above the lines shall be replaced with sand or other selected material as approved by KMGG's on-site representative and thoroughly compacted in 12" lifts to 95% of standard proctor dry density minimum or as approved by KMGG's on-site representative. This is to adequately protect against stresses that may be caused by the settling of the pipeline.
- ♦ No blasting shall be allowed within 1000 feet of KMGG's facilities unless blasting notification is given to KMGG including complete Blasting Plan Data. A pre-blast meeting shall be conducted by the organization responsible for blasting.

- ♦ KMGG shall be indemnified and held harmless from any loss, cost of liability for personal injuries received, death caused or property damage suffered or sustained by any person resulting from any blasting operations undertaken within 500 feet of its facilities. The organization responsible for blasting shall be liable for any and all damages caused to KMGG's facilities as a result of their activities whether or not KMGG representatives are present. KMGG shall have a signed and executed Blasting Indemnification Agreement before authorized permission to blast can be given.
- ♦ No blasting shall be allowed within 200 feet of KMGG's facilities unless blasting notification is given to KMGG a minimum of one week before blasting. The organization responsible for blasting must complete Blasting Plan Data. KMGG shall review and analyze the blasting methods. A written blasting plan shall be provided by the organization responsible for blasting and agreed to in writing by KMGG. A written emergency plan shall be provided by the organization responsible for blasting.
- ♦ KMGG shall have a signed and executed Blasting Indemnification Agreement before authorized permission to blast can be given. A pre-blast meeting shall be conducted by the organization responsible for blasting.
- ♦ **Any** contact with any KMGG facility, pipeline, valve set, etc. shall be reported immediately to KMGG. If repairs to the pipe are necessary, they will be made and inspected before the section is re-coated and the line is back-filled.
- ♦ KMGG personnel shall install all test leads on KMGG facilities.

#### **Local Kerr-McGee Gathering LLC Representation:**

Manager of Construction & Facilities Engineering:	Kevin R. Osif, P.E.	Phone: 303 655 - 4307
Facilities Engineer:	Joseph E. Sanchez, P.E.	Phone: 303 655 - 4319
Operations Engineer:	Erik Smith	Phone: 303 655 -4359
Pipeline Foreman:	James Phillips	Phone: 303 655 - 4343
Pipeline Foreman:	Rick Noffsinger	Phone: 303-655 - 4326

#### **Emergency Contacts:**

On call supervisor	Phone: 303-559 - 4001
Kerr McGee 24 hour emergency number	Phone: 303-659 - 5922
One Call Emergency	Phone: 811