

SURFACE USE AGREEMENT

This Surface Use Agreement (“**Agreement**”) is dated and made effective this 19th day of April, 2011, and is between Kerr-McGee Oil & Gas Onshore LP (“**KMG**”) with an address of 1099 18th Street, Suite 1800, Denver, CO 80202, and Rocky Mountain Assets Investment LLC (collectively hereinafter referred to as “**Surface Owner**”) all with an address of 444 Rocky Mountain Avenue, Berthoud, Colorado 80513.

- A. Surface Owner owns the surface estate of that certain tract of land more particularly described on Exhibit “A” attached hereto, being part of the N/2 of Section 15, Township 3 North, Range 68 West, Weld County, Colorado (hereinafter referred to as 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 a mixed-use development known as Westridge.
- D. KMG does not currently operate any well(s) on the Property, but has the right to develop its oil and gas leasehold estate by drilling wells (the “**Future Well(s)**”) 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. OIL AND GAS OPERATIONS.

Surface Owner shall set aside and provide to KMG that portion of the Property hereinafter referred to as the “**Oil and Gas Operations Area(s)**” (“**OGOA(s)**”), such area(s) being depicted on **Exhibit “A”** attached hereto. The **OGOA(s)** are to be made available to KMG for its exclusive use in their present condition for any operations conducted by KMG in connection with the Existing Well or any Future Well, including, but not limited to, drilling and production activities, workovers, well deepenings, recompletions, fracturing, re-fracturing and replacement wells. Except for the **OGOA(s)**, and the access roads and easements associated with flowlines, gathering lines and pipelines as provided in this Agreement, KMG shall not occupy the surface of the Property except in the event of an emergency or for reasonable incidental, temporary and non-damaging activities, for which KMG shall be strictly and solely responsible for any damages that may occur. Notwithstanding the foregoing and subject to the provisions of this Agreement, the wellhead location of any Future Well drilled from any **OGOA**, and other facilities placed

within the west OGOA shall be as close to the center of the west OGOA as reasonable and any future wells and facilities shall be placed as close to the eastern edge of the east OGOA as reasonable, taking into account regulatory setback requirements and operational limitations, so as to minimize the adverse effects of zoning setbacks on Surface Owner's future surface development. KMG will provide Surface Owner with Future Well and production facility plans for review prior to commencement of operations on the Property.

Notwithstanding anything to the contrary herein, the west OGOA, including during initial drilling and completion operations shall not exceed 10 acres, and the east OGOA, including during initial drilling and completion operations, shall not exceed 15 acres

a. ***Well Locations.***

KMG shall have the right to drill Future Wells within the OGOA(s), including horizontal and directional wells that produce and drain the Property and lands other than the Property, so long as such locations are pooled with the N/2 of Section 15 as described above and are permitted locations under the then applicable well spacing regulations of the Colorado Oil and Gas Conservation Commission ("COGCC") or exceptions granted thereto by the Director of the COGCC. As part of the consideration for this Agreement, Surface Owner hereby waives its right to, and covenants that it shall not protest or object to any such exception location or application for same by KMG. KMG shall not otherwise have the right to drill new wells on the Property.

b. ***Production Facilities.***

KMG shall have the right to locate, build, repair and maintain tanks, separators, dehydrators, compressors and other equipment reasonably appropriate for the operation and production of any Future Wells only within the OGOA(s) and directly related to the oil and gas production on said lands, unless otherwise agreed to by the Surface Owner.

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

- (i) KMG shall install and maintain, at its sole cost and expense, all fences around the Existing Well(s) and any Future Wells in compliance with the Rules and Regulations of the COGCC and local rules and regulations in effect at the time KMG files an application for a permit to drill with the COGCC. The fence material may be upgraded at Surface Owner's option and expense, so long as the upgrade complies with COGCC and local rules and regulations and KMG consents to such upgraded fence. KMG shall not unreasonably refuse Surface Owner's request to upgrade the fence material, which consent shall not be unreasonably withheld. If the Surface Owner's development plans require a zoning change(s) or annexation, Surface Owner shall pay the cost and expense

for the upgraded fence material required by the zoning change or annexation;

- (ii) 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 OGOA(s). Such gates and locks shall be the standard gates and locks used by KMG;
- (iii) KMG shall install low profile tanks as part of the production facilities; and
- (iv) KMG shall paint any production facilities for any wells, including wellhead guards, with paint that is approved by the COGCC; and
- (v) KMG shall relocate the irrigation ditch through the west OGOA as shown on Exhibit "A"; and
- (vi) Surface Owner shall not inhibit KMG's access to the OGOA(s) or inhibit KMG's operations within the OGOA(s) by landscaping or other improvements, unless otherwise agreed upon between Surface Owner and KMG. KMG agrees to construct a small berm and Surface Owner shall be able to install planting within the OGOA's as shown in Exhibit "A" as part of the Surface Owners agreement with the Town of Mead.

c. ***Setback Requirements.***

Surface Owner will not locate any building or public roadway within 75' of the boundary of any OGOA or within any OGOA, and shall not locate any lot line or other structure within any OGOA. 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 those rules and regulations may be amended from time to time, so long as such facilities are sited in accordance with this Agreement. Moreover, Surface Owner acknowledges that the COGCC density classification of the Property and surrounding area at the time an application for permit to drill is filed. For the operations contemplated by this Agreement, Surface Owner hereby waives the high density setback distances, as required by COGCC rules and regulations or local regulations.

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 over the oil and gas operation. Surface Owner agrees not to object to the use of the surface in the OGOA(s) so long as such use is consistent with this Agreement and Surface Owner will provide KMG or its successors and assigns with any and all written support they may reasonably require to obtain permits from the COGCC or any local jurisdiction.

2. Gathering Lines, Flowlines, and Easements.

a. *Existing and Future Pipelines.*

Subject to the limitations hereinafter described, KMG, its affiliate Kerr-McGee Gathering LLC (“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, subject to the terms of this Agreement. Although this Agreement is intended to confine the placement of those pipelines to certain specified locations within the Property, nothing herein shall be construed as a limitation on KMG’s, KMGG’s or other designated gas gatherer ultimate right to make all necessary well connections to any Future Well. To accommodate the current development plans for Westridge KMG shall locate all such pipelines within the designated easement corridor shown on Exhibit “A” as the “**Petroleum Pipeline Easement.**” It is further anticipated that any additional pipelines, flowlines and gathering lines that may be required in the future (“**Future Pipelines**”) will also be placed within the Petroleum Pipeline Easement. . Surface Owner shall also then deliver to KMG or KMGG an executed and acknowledged Pipeline Right of Way Grant on the form that is attached hereto as Exhibit “B” in order to convey the future Petroleum Pipeline Easements.

b. *Relocated Pipelines.*

Surface Owner may request that KMG relocate Future Pipelines owned by KMG or KMGG to an alternative Petroleum Pipeline Easement at the Surface Owner’s sole cost and expense. At such time as Surface Owner desires to have any Future Pipelines owned by KMG or KMGG relocated to an alternative Petroleum Pipeline Easement, it shall give written notice to KMG who shall promptly prepare, or commission the preparation of, a cost estimate to accomplish the relocation. As soon as available, KMG will then provide the cost estimate to Surface Owner who will then have the opportunity to review same and make a final determination about whether it wishes to proceed with the relocation. If Surface Owner elects to have KMG effectuate the relocation of pipeline owned by KMG or KMGG, it shall tender the estimated costs of such to KMG together with its written request to commence the project as soon as reasonably practicable, or as otherwise requested by Surface Owner. Surface Owner shall also then deliver to KMG or KMGG an executed and acknowledged Pipeline Right of Way Grant on the form that is attached hereto as Exhibit “B” in order to convey the alternative Petroleum Pipeline Easement and shall amend Exhibit “A_” to reflect the revised pipeline location. Prior to execution and acknowledgement of the Pipeline Right-of-Way Grant by Surface Owner, KMG or KMGG will complete a certified survey and submit a plat of the certified survey to the Surface Owner if the pipelines have been constructed. If the pipelines are not constructed, Surface Owner will execute and deliver the Pipeline Right of Way Grant and KMG or KMGG will complete an “as-built” survey when construction is completed and submit

the same to the Surface Owner. The “as-built” survey will be attached to the Pipeline Right of Way Grant and the Grantee may record the same.

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

The Petroleum Pipeline Easement 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. All relocated and Future Pipelines owned by KMG or KMGG shall be located within the Petroleum Pipeline Easement unless otherwise agreed upon between Surface Owner and KMG or KMGG. KMG acknowledges that the Petroleum Pipeline Easement will be non-exclusive and agrees that it 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 “C”. 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 pipeline. The Petroleum Pipeline Easement and OGOA(s) shall be depicted and labeled on all subdivision plats submitted to Weld County.

KMG shall not, without the prior written consent of Surface Owner, have the right to lay additional flowlines or pipelines on the Property, outside the Petroleum Pipeline Easement. All flowlines and pipelines shall be buried to a depth of approximately 48 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 or its gas purchaser.

d. ***Pipeline Crossings.***

If Surface Owner’s development plans anticipate that roadways will or may in the future cross over existing Pipelines, Surface Owner will pothole or request that KMG 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 Existing or Future 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.

3. ACCESS.

Surface Owner shall provide KMG with continuous access to all of the OGOA(s) and the Petroleum Pipeline Easement. The access roads to be used by KMG will either be those roads that are constructed by it under this Agreement, 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. All access roads, whether existing or newly constructed, shall be of sufficient scope to allow KMG to conduct its oil and gas operations and shall be at least 25 feet in width and built to withstand a minimum of 104,000 pounds and 26,000 pounds per axle. Unless and until relocated, KMG agrees to access the Property according to the route depicted and described as Access Road #1 on the attached Exhibit “A”. If and when new access routes are constructed by

Surface Owner, Surface Owner agrees to provide 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. Provided, however, that upon the written request of Surface Owner, KMG agrees to relocate Access Road #1 at its own expense on one occasion to Access Road #2, as depicted on Exhibit A. Such replacement road shall be built to the same standards set forth in this Agreement and shall be built within one (1) year of Surface Owner's request. In such event, KMG shall have no obligation to reclaim Access Road #1, which responsibility is accepted by Surface Owner.

4. NOTICE OF FUTURE OPERATIONS.

KMG shall provide at least seven (7) days written notice to Surface Owner prior to commencing actual operations in connection with the reworking, fracturing, deepening or recompletion operation on the Existing Well(s) or any Future Wells; provided, however, that KMG shall provide at least thirty (30) days written notice to Surface Owner and/or any homeowner's association formed by Surface Owner that is associated with the Property prior to commencing 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 OGOA(s), 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.

5. NOTICE TO HOMEOWNERS, BUILDERS, TENANT FARMERS AND OTHER SURFACE LESSEES.

Surface Owner shall furnish all buyers of the Property from Surface Owner, current and future tenant farmers and other surface lessees with a plat or map showing the OGOA(s) and the Petroleum Pipeline Easement. In addition, Surface Owner shall provide notice to all builders, homeowners, homeowner associations, other buyers of the Property from Surface Owner, current and future tenant farmers and other lessees that:

- a. There may be ongoing oil and gas operations and production in the OGOA(s) 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 OGOA(s) 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 Sections 1, 6, 17, and the covenants contained in Section 1 prohibiting the location of any building or structure within the OGOA(s) or the Petroleum Pipeline Easement and waiving objection to any setback rules of the COGCC or any local jurisdiction.

6. 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.

7. GOVERNMENTAL PROCEEDINGS.

Surface Owner shall not oppose KMG in any agency or governmental proceedings, including but not limited to the COGCC, the Town of Mead 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. For purposes of seeking a COGCC hearing on the approval of KMG's Application for Permit to Drill ("Form 2") for Existing or Future Wells or KMG's Oil and Gas Location Assessment ("Form 2A") for any related location, the Surface Owner hereby waives its right to allege noncompliance with COGCC rules or applicable statute, or to allege potential adverse impacts to public health, safety, and welfare, including the environment and wildlife resources, that are within the jurisdiction of the COGCC as the basis for such a hearing. Surface Owner further agrees to oppose any conditions of approval that would be incorporated into KMG's Form 2A or Application for Permit to Drill Form 2 pursuant to COGCC rule 306 that are inconsistent with this Agreement.

8. 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 9 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 8.b. above, for all actions or occurrences happening after such assignment or conveyance.

9. ENVIRONMENTAL INDEMNITY.

The provisions of Section 8 above, except for Section 8.a., shall not apply to any environmental matters, which shall be governed exclusively by the following, subject to the limitations of Section 8.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, 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 OGOA(s) 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.

10. 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.

11. 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 8 or 9 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.

12. 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 in the property.

13. 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.

14. 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.

15. 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
1099 18th Street, Suite 1800
Denver, Colorado 80202
Attention: Director of Land Denver Basin

If to Kerr-McGee Gathering

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

If to Surface Owner:

Rocky Mountain Assets Investment LLC
444 Mountain Avenue
Berthoud, Colorado 80513
Attn: Jim Birdsall

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

16. RECORDING AND SUBORDINATION.

This Agreement and any amendment hereto shall be recorded by KMG. KMG shall provide the Surface Owner with a copy showing the recording information as soon as practicable thereafter.

- a. Surface Owner agrees to cooperate in any reasonable way with KMG, its successors and assigns, to secure subordinations of any encumbrances placed of record upon the Property prior to the execution of this Agreement.

17. SURFACE DAMAGES.

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 OGOA(s) and also including but not limited to any access road, flowline, or pipeline constructed within the Petroleum Pipeline Easement. KMG may provide a copy of this Agreement to the COGCC as evidence of this waiver.

18. 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.

19. 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.

20. 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.

21. 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.

22. COMPLIANCE WITH REGULATION.

Surface Owner expressly acknowledges that this Agreement satisfies KMG's obligation under COGCC rules 305 and 306, as amended, 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.

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

KERR-McGEE OIL & GAS ONSHORE LP

By: 
David Bell 
Agent and Attorney-in-fact

KERR-McGEE GATHERING LLC (limited to the provisions of Section 2 of this Agreement)

By: 
Ronald Olsen
Agent & Attorney-in-Fact 

ROCKY MOUNTAIN ASSETTS INVESTMENT LLC

By: 
James I. Birdsall
Manager

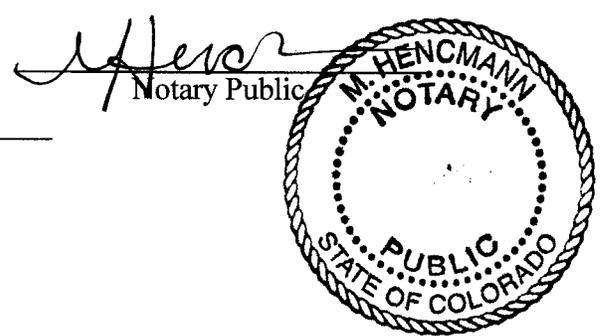
ACKNOWLEDGMENTS

STATE OF Colorado)
)ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 21st day of April, 2011, by David Bell, as Agent and Attorney-in-Fact of Kerr-McGee Oil & Gas Onshore LP on behalf of such corporation.

Witness my hand and official seal.

My Commission Expires: 9/27/2011

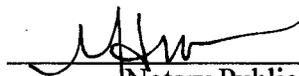


My Commission Expires 9-27-2011

STATE OF Colorado)
)ss.
COUNTY OF Denver)

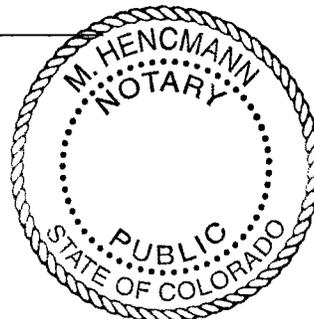
The foregoing instrument was acknowledged before me this 27th day of April, 2011, by Ronald Olsen, as Agent and Attorney-in-Fact of Kerr-McGee Oil & Gas Onshore LP and Kerr-McGee Gathering LLC, on behalf of such corporations.

Witness my hand and official seal.



Notary Public

My Commission Expires: 9/27/2011



My Commission Expires 9-27-2011

STATE OF COLORADO)
)ss.
COUNTY OF Denver)

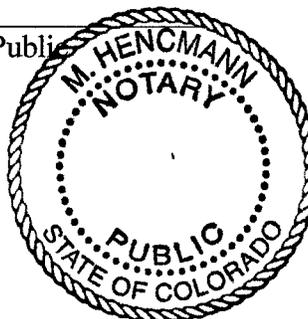
The foregoing instrument was acknowledged before me this 19th day of April, 2011, by James I. Birdsall as Manager of Rocky Mountain Assets Investment LLC.

Witness my hand and official seal.



Notary Public

My Commission Expires: 9/27/2011



My Commission Expires 9-27-2011

Exhibit "B"

Attached hereto and made a part of that certain Agreement Surface Use Agreement between _____ and Kerr-McGee Oil & Gas Onshore LP, dated _____ of _____, 20__.

RIGHT-OF-WAY GRANT

THIS RIGHT-OF-WAY GRANT ("Grant) is made this _____ day of _____, 20__, from _____, whose address is, _____, Colorado _____ ("Grantor"), to Kerr-McGee _____, a Colorado limited liability company, whose address is 1099 18th Street, Suite 1800, Denver, Colorado 80202 ("Grantee"). 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 Grantee, its successors and assigns, a perpetual non-exclusive right-of-way(s) and easement(s) to survey, construct, maintain, inspect, operate, repair, replace, modify, change the size of, reconstruct, mark, monitor, abandon or remove, at Grantee's election, pipelines and all appurtenances, below 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 _____ County, State of Colorado, being described as follows:

TOWNSHIP 3 NORTH, RANGE 68 WEST, 6TH PM
Section :

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

Grantors represent and warrant to Grantee that Grantors are the sole owner in fee simple of the Right-of-Way Lands and have full right, power and authority to make this Grant.

Grantee shall lay all pipe at a depth of not less than 48 inches. Grantee shall repair and/or restore any fence on or adjacent to the Right-of-Way Lands removed or severed by Grantee in the course of the operations provided for in this Grant. If necessary to prevent the escape of Grantor's livestock, Grantee shall construct temporary gates or fences.

Grantee 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 Grantee's rights hereunder. Grantors agree not to build, create, construct or permit to be built, created or constructed, any obstruction, building, fence,

deep-rooted landscaping, reservoir, engineering works or other structures or improvements over, under, on or across the Right-of-Way Lands without prior written consent of Grantee.

Grantee shall be obligated to pay for, repair, replace or otherwise compensate Grantors for any damages resulting from Grantee's activities and operations on the Right-of-Way Lands; and, Grantors shall pay for, reimburse, indemnify and hold Grantee harmless from any and all claims or damages resulting from Grantor's activities on the Right-of-Way Lands. Grantors shall have the right to use and enjoy the Right-of Way Lands, subject to the rights herein granted.

This Grant cannot be modified, except in writing signed by all parties hereto.

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 Grantors and Grantee.

Grantee agrees to level and restore any lands that may have excessive settling and sufficiently compact the soil within a reasonable period of time after completion of construction.

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

This Grant is made subject to the Surface Use Agreement between Grantor and Grantee, the provisions of which are incorporated herein by reference, including but not limited to provisions of the Surface Use Agreement relating to pipeline crossings and pipeline and easement relocation at the request of Grantor.

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

Grantors:

ROCKY MOUNTAIN ASSETTS INVESTMENT LLC

By: _____

Grantee:

KERR-MCGEE GATHERING LLC

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by

_____, as _____.

Witness my hand and official Seal.

My Commission Expires: _____

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Ronald Olsen, as Agent and Attorney-in-Fact of Kerr-McGee Gathering LLC, a Colorado limited liability company, on behalf of such company.

Witness my hand and official Seal.

My Commission Expires: _____

Notary Public



EXHIBIT "C"

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.



EXHIBIT "C"

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

- ♦ 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.**



EXHIBIT "C"

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



EXHIBIT "C"

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

- ♦ 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 |