

## SURFACE USE AGREEMENT

This Surface Use Agreement ("**Agreement**") is dated and made effective this 18<sup>th</sup> day of March, 2009, and is between Kerr-McGee Oil & Gas Onshore LP ("**KMG**") with an address of 1099 18th Street, Suite 1800, Denver, CO 80202, and Broken Arrow Investments, LLC, a Colorado limited liability company, with an address of 699 North 1<sup>st</sup> Avenue, Greeley, Colorado 80631 ("**Gravel Company**") and Dust & Dirt Excavating, LLC, a Colorado limited liability company, with an address of 699 North 1<sup>st</sup> Avenue, Greeley, Colorado 80631 ("**Surface Owner**").

### **Whereas:**

- A. Surface Owner owns the surface estate of that certain tract of real property located in unincorporated Weld County, Colorado more particularly described in Exhibit A hereto (hereinafter the "**Property**")
- B. Gravel Company is the current lessee of a sand, gravel and aggregate mining lease covering the Property;
- C. 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, which lease is described on Exhibit B hereto.;
- D. Gravel Company has received a mining permit from the State of Colorado Division of Minerals & Geology ("**DMG**") for the purpose of operating an aggregate mining facility known as the Derr Pit.
- E. KMG currently operates one well on the Property (Davis Farms #7-4), (the "**Existing Well**") generally located in the center of the SW/4NE/4 of Section 4, Township 5 North, Range 65 West, and has the right to develop its oil and gas leasehold estate by drilling additional wells (the "**Future Wells**" and together with the Existing Well, the "**Wells**") on the Property; and
- F. This Agreement sets forth the parties' rights and obligations regarding the relationship between the development of the Property by the Surface Owner, Gravel Company 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.

### **Now Therefore:**

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 WELL AND FUTURE WELLS; WELL LOCATIONS.**

Gravel Company shall set aside and provide to KMG that portion of the Property hereinafter referred to as the, "**Existing Oil and Gas Operations Area**", such area being depicted on Exhibits C, D-1 and D-2 attached hereto. The Existing Oil and Gas Operations Area is to be made available to KMG in its present condition for any operations conducted by KMG in connection with the Existing Well, including, but not limited to, drilling and production activities, workovers, well deepenings, recompletions, fracturing and a replacement well. The Existing Well will be limited to the Oil and Gas Operations Area shown on Exhibit C, D-1 and D-2, unless this Agreement is amended by consent of Gravel Company and KMG. Except for the Existing and Future Oil and Gas Operations Areas, and the access roads and Petroleum Pipeline Easements (as defined below) 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 to the Property.

KMG shall have the right to conduct drilling operations for Future Wells within the "**Future Oil and Gas Drilling Operations Area**", such area being depicted on Exhibit D-1 hereto, including horizontal and directional wells that produce from and drain the Property and/or lands other than the Property. At the conclusion of the drilling activities within the Future Oil and Gas Drilling Operations Area, KMG shall limit its activities related to future oil and gas production to the "**Future Oil and Gas Operations Area**", as depicted on Exhibit D-2. As part of the consideration for this Agreement, Gravel Company 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, so long as any such activity is consistent with this Agreement and so long as such activities relate only to the production of oil and gas from the mineral estate associated with lease listed on Exhibit B to include any extension, renewal or ratification thereof, and leases pooled therewith, and so long as KMG is not in breach of this Agreement. KMG shall not otherwise have the right to drill new wells on the Property. In no event shall Gravel Company stockpile mined materials within a radius of 150 feet of the Existing Well or any Future Well.

**2. SETBACK REQUIREMENTS AND EXTRACTION IN VICINITY OF OIL AND GAS OPERATIONS AREAS.**

Gravel Company reserves the option to mine the gravel within each of the Oil and Gas Operations Areas in accordance with the terms of this Agreement but only to the limits permitted under its permit from the DMG. In the event that Gravel Company elects to mine the gravel in the Existing Oil and Gas Operations Area or the Future Oil and Gas Operation Areas, Gravel Company shall notify KMG in writing 60 days prior to commencing mining operations within the Existing Oil and Gas Operations Area or the Future Oil and Gas Operation Areas and shall first place temporary concrete barriers around the Existing Well and Future Wells, if any, as directed by KMG prior to commencing any mining operations on the Property. Gravel Company shall conduct its mining operations in the Existing Oil and Gas Operations Area or the Future Oil and Gas Operation Areas as quickly as reasonably practicable. Gravel Company shall conduct its mining within the Existing Oil and Gas Operations Area and the Future Oil and Gas Operations Areas by excavating pie shaped wedges of gravel and aggregate and thereafter

backfilling and compacting the area with overburden or other suitable material prior to excavating the next pie shaped area; provided, however, that in no event shall Gravel Company mine within 90 feet of any Existing Well, Future Wells or any tanks, separators, dehydrators, compressors and other equipment ("Production Facilities") and provided further that in no event shall more than one quarter circle segment of the pie shape be excavated at any one time. Excavation in the Existing Oil and Gas Operations Area and the Future Oil and Gas Operations Areas will be coordinated with KMG in a mutually acceptable manner so as to avoid conflict with KMG's oil and gas operations and to ensure there is an appropriate safety plan and interim emergency procedures. Gravel Company will bear all costs associated with the mining operation, including permanent or temporary rerouting and replacement of access roads, and flowlines and utility lines in order to prevent unnecessary interruption of production from any affected Existing Well or Future Wells, if any. In addition, Gravel Company and its successor and assigns shall indemnify and hold KMG harmless from any and all damage, loss and liability, including attorney's fees, incurred as a result of Gravel Company's operations in the Existing Oil and Gas Operations Area or the Future Oil and Gas Operation Areas.

With the single exception of a slurry wall, Gravel Company will not locate any lot line, building, or structure within either the Existing or Future Oil and Gas Operations Areas. Gravel Company's slurry wall encroachment into the Existing or Future Oil and Gas Operations Area shall not interfere with present or future KMG operations. Gravel Company will give ninety (90) days notice prior to commencing operations in the Existing or Future Oil and Gas Operations Area. Gravel Company shall complete such operations within fourteen days of commencement. Gravel Company 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, Gravel Company 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. Gravel Company 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. Gravel Company agrees not to object to the use of the surface in the Existing Oil and Gas Operations Area and any Future Oil and Gas Operation Areas so long as such use is consistent with this Agreement and so long as any such activity is consistent with this Agreement and so long as such activities relate only to the production of oil and gas from the mineral estate associated with lease listed in Exhibit B to include any extensions, renewals or ratifications thereof and lands pooled therewith. Gravel Company 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.

### **3. GATHERING LINES AND FLOWLINES.**

Subject to the limitations hereinafter described, KMG has a continuing right and entitlement to own, operate, maintain, repair and replace all existing and future flowlines,

gathering lines and other pipelines that may be necessary or convenient to its operations on the Property ("**Pipelines**"). The construction and burying of additional Pipelines shall be at the sole cost and expense of KMG or its gas purchaser.

Although this Agreement is intended to confine the placement of the Pipelines to certain specified locations within the Property, nothing herein shall be construed as a limitation on KMG's ultimate right to make all necessary well connections to any Existing or Future Wells, so long as such connections are made consistent with this Agreement. Specific locations have been designated on Exhibits C, D-1 and D-2 for the location of the Pipelines ("**Petroleum Pipeline Easements**"). The Petroleum Pipeline Easements shall be fifty feet (50') in width during construction, installation, maintenance, repair or relocation operations and otherwise reduced to twenty feet (20') in width for post-construction usage, being ten feet (10) on either side of the pipeline.

Gravel Company's development plans anticipate that roadways will cross over Existing and Future Pipelines. Gravel Company agrees to abide by the **General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC and Kerr - McGee Rocky Mountain Corporation Pipelines and Related Facilities revised April 11, 2006 (Exhibit E)**. In particular, Gravel Company shall maintain a minimum of 48 inches and not more than 72 inches of cover over all Pipelines during any of Gravel Company's operations on the Property. When crossing KMG pipelines with trucks and lighter equipment, Gravel Company will maintain a minimum of two feet and a maximum of six feet of dirt coverage, to the existing cover over the pipeline. KMG may install and maintain markers on its Petroleum Pipeline Easements. KMG shall mark its flowlines at all locations reasonably requested by Gravel Company. Future Pipelines shall be located within the Petroleum Pipeline Easements unless otherwise agreed upon between Surface Owner, Gravel Company and KMG. KMG acknowledges that the Petroleum Pipeline Easements 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 the requirements of Exhibit E.

Gravel Company will not allow any extraction to occur, commencing at the surface of the original ground, closer than 25 feet from any Pipeline of KMG unless a soils stability report prepared by an engineer licensed in the state of Colorado indicates that a lesser set back will be adequate for preservation of the integrity of said pipeline and provided that upon completion of such extraction Gravel Company shall back fill and level the area within 25 feet from any Pipeline. Notwithstanding anything herein to the contrary, in no event shall Gravel Company allow any extraction to occur, commencing at the surface of the original ground, closer than 15 feet from any Pipeline without KMG's prior written approval.

Gravel Company shall not allow any stockpile of soil to be placed over any Pipeline of KMG.

When crossing KMG Pipelines with heavy equipment, like earth moving equipment, Gravel Company will maintain a minimum of four feet and a maximum of six feet of dirt coverage, in addition to the existing cover over the pipeline. When crossing KMG pipelines with trucks and lighter equipment, Gravel Company will maintain a minimum of two feet and a maximum of six feet of dirt coverage, to the existing cover over the pipeline.

The depth of cover over the KMG Pipelines shall not be reduced or drainage over KMG's pipeline altered without KMG's written approval.

Any utility crossing must be a minimum of 18" inches vertical separation from KMG Pipelines. Parallel utilities must maintain a minimum of ten-foot separation, unless KMG grants a lesser distance of separation which grant shall not be unreasonably withheld. It would not be unreasonable to withhold such consent due to reasonable safety or operational concerns. Gravel Company will request that all utility companies contact KMG prior to laying lines parallel to KMG pipelines.

Construction of any permanent structure within KMG's Petroleum Pipeline Easement is not permitted. Planting of trees and shrubs is not permitted on KMG's Petroleum Pipeline Easement.

#### **4. ACCESS.**

a. Gravel Company shall provide KMG with continuous access to the Existing Oil and Gas Operations Area, the Future Oil and Gas Drilling Operation Areas, and the Future Oil and Gas Operation Areas and the Petroleum Pipeline Easements. 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 KMG. KMG agrees to access the Property according to the routes depicted and described on the attached Exhibit C, D-1 and D-2. When crossing irrigation structures with heavy equipment, like earth moving equipment, KMG will maintain a minimum of four feet and a maximum of six feet of dirt coverage, in addition to the existing cover over the structures. When crossing irrigation structures with trucks and lighter equipment, KMG will maintain a minimum of two feet and a maximum of six feet of dirt coverage, to the existing cover over the structures.

Access to the Existing Oil and Gas Operations Area and the Future Oil and Gas Operations Areas may be changed by mutual agreement of Gravel Company and KMG. Gravel Company shall have the right to use any access roads.

Gravel Company shall maintain and keep any access jointly used by Gravel Company and KMG in a condition and state of repair that serves the needs of Gravel Company. In the event such joint access roads need to be improved in order to serve the needs of KMG, the parties agree to coordinate any such improvements as may be required by KMG in order to conduct its operations, provided that any such improvements shall be at KMG's sole cost and expense. Neither KMG, nor Gravel Company shall unreasonably interfere with the use by the other party of access roads.

## **5. BATTERIES AND EQUIPMENT.**

KMG shall have the right to locate, build, repair and maintain Production Facilities reasonably appropriate for the operation and production of the Existing Well or any Future Wells at the locations depicted on Exhibit D-2, and shall relate only to the production of oil and gas from the mineral estate associated with lease set forth in Exhibit B, any extensions, renewals or ratifications thereof and leases pooled therewith.

With respect to KMG's Production 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 in compliance with the Rules and Regulations of the COGCC;

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 and Gas Operations Areas. Such gates and locks shall be the standard gates and locks used by KMG;

c. KMG shall paint any production facilities for any Wells, including wellhead guards, with paint that is approved by the COGCC; and

Gravel Company shall not inhibit KMG's access to the Oil and Gas Operations Areas or inhibit KMG's operations within the Oil and Gas Operations Areas or in the vicinity of the Production Facilities by landscaping or other improvements, unless otherwise agreed upon between Gravel Company and KMG. Gravel Company shall place temporary concrete barriers around all Production Facilities as directed by KMG before any mining operations commence. In no event shall Gravel Company mine within 90 feet of any Production Facilities or stockpile mined materials within a radius of 50 feet of any Production Facilities.

## **6. NOTICE OF FUTURE OPERATIONS.**

KMG shall provide at least seven (7) days prior written notice to Gravel Company of any operations in connection with the reworking, fracturing, deepening or recompletion operation on an Existing Well or Future Well; provided, however, that KMG shall provide at least thirty (30) days prior written notice to Gravel Company of the initial drilling of any Future Well. 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 twenty (20) working days prior to KMG's mobilization on the applicable Existing Oil and Gas Operations Area and/or the Future Oil and Gas Operation Areas, either KMG or Gravel Company may request an on-site meeting. The purpose of the meeting shall be to inform Gravel Company of the expected activity and to

coordinate site access, hazards, barricades, restoration or any other issues that affect the use and safety of Gravel Company's development.

#### **7. COMPLIANCE WITH SAFETY REGULATIONS .**

KMG understands that Gravel Company's surface mining operations on the Property are subject to certain OSHA regulations. KMG agrees that while conducting operations on Property, it will comply with such reasonable OSHA requirements which Gravel Company notifies KMG are applicable to KMG's operations on the Property. KMG also agrees to inform its contractors and subcontractors about such requirement.

#### **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. Gravel Company waives any objections to continuous (i.e., 24-hour) drilling operations.

#### **8. GOVERNMENTAL PROCEEDINGS.**

Gravel Company shall not oppose KMG in any agency or governmental proceedings, including but not limited to the COGCC, Weld County, 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 and so long as KMG is not in breach of this Agreement.

#### **10. DEVELOPMENT PLANS.**

Gravel Company has provided herewith copies to KMG of its Mining Permit, and the engineering structural report prepared in connection with the Mining Permit (the "Plans"). KMG acknowledges receipt of said Plans and has no objections to said Plans as approved by the DMG. This acceptance by KMG in no way waives KMG's rights in this Agreement or obligations of Gravel Company under the terms of this Agreement. KMG shall not oppose Gravel Company before any agency or governmental proceeding if it's proposed or actual activities are not inconsistent with the terms of this Agreement and so long as Gravel Company is not in breach of this Agreement.

#### **11. 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.

## **12. 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, indemnify, and hold harmless Gravel Company, homeowners association and any lot owner who purchases a lot from Gravel Company or 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 and Gas Operations Areas and its ownership and operation of its Petroleum Pipeline Easements or rights-of-way on the Property. Gravel Company shall fully protect, defend, indemnify and hold harmless KMG from any and all Environmental

Claims relating to the Property that arise out of Gravel Company's development of the Property.

**13. 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.

**14. 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.

**15. 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.

**16. 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.

**17. 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 and complied with the requirements of the oil and gas lease pertaining to removal of equipment, reclamation, cleanup and all other applicable provisions of the leases and existing laws and regulations. When this Agreement ceases to be in full force and effect, the Parties shall execute any and all releases necessary to evidence the fact that this Agreement shall no longer apply to the Property

**18. 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

**Gravel Company:**

Darwin Derr  
699 North 1<sup>st</sup> Avenue  
Greeley, Colorado 80631

With a copy to:

Joseph R. King  
Law Office of Joseph R. King  
6343 West 120<sup>th</sup> Avenue, Suite 220  
Broomfield, Colorado 80020

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

**19. RECORDING.**

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

**20. SURFACE DAMAGES.**

Gravel Company 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 within the Existing Oil and Gas Operations Area and the Future Oil and Gas Operations Areas and for any access road, flowline, or pipelines constructed on the Property. KMG may provide a copy of this Agreement to the COGCC as evidence of this waiver.

**21. 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.

**22. 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.

**23. 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.

**24. 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.

**25. 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.

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

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

By: *Jane Ann Byroad*  
Jane Ann Byroad  
Agent and Attorney-in-fact

**BROKEN ARROW INVESTMENTS, LLC**

*Darwin Derr*  
BY: DARWIN DERR, MANAGER

**DUST & DIRT EXCAVATING, LLC**

*Doug Derr*  
BY: DOUG DERR, MANAGER

**ACKNOWLEDGMENTS**

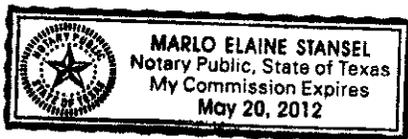
STATE OF TEXAS )  
 ) ss.  
COUNTY OF MONTGOMERY )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of April, 2009, by Jane Ann Byroad, as Agent and Attorney-in-Fact of Kerr McGee Oil & Gas Onshore LP, on behalf of such company.

Witness my hand and official seal.

*Marlo Elaine Stansel*  
Notary Public

My Commission Expires: May 20, 2012

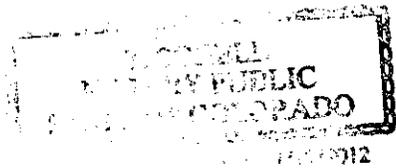


STATE OF COLORADO )  
 ) ss.  
CITY and COUNTY OF BROOMFIELD )

The foregoing instrument was acknowledged before me this 18 day of March 2009,  
by Darwin Derr, as Manager of Broken Arrow Investments, LLC.

Witness my hand and official seal. T. Schell  
Notary Public

My Commission Expires: 7-19-2012



STATE OF COLORADO )  
 ) ss.  
CITY and COUNTY OF BROOMFIELD )

The foregoing instrument was acknowledged before me this 18 day of March 2009,  
by Doug Derr, as Manager of Dust & Dirt, LLC.

Witness my hand and official seal. T. Schell  
Notary Public

My Commission Expires: \_\_\_\_\_



**Exhibit "A"**

**Legal Description of the Property**

Attached hereto and made a part of that certain Surface Use Agreement between Broken Arrow Investments, LLC and Kerr-McGee Oil & Gas Onshore LP, dated March 18, 2009.

A tract of land located in the Northeast Quarter of Section 4, Township 5 North, Range 65 of the 6<sup>th</sup> P.M., Weld County, Colorado, and being more particularly described as follows:

Commencing at the North quarter corner and considering the West line of said Northeast quarter to bear South 01 degrees 24 minutes 41 seconds West with all other bearings contained herein being relative thereto: thence South 01 degrees 24 minutes 41 seconds West, 1150.00 feet along the West line of the Northeast quarter of said Section 4 to an existing fence line and the true point of beginning: thence along said fence line by the following twelve (12) courses;

- South 82 degrees 26 minutes 00 seconds East, 509.80 feet;
- North 77 degrees 17 minutes 00 seconds East, 589.30 feet;
- South 01 degrees 07 minutes 00 seconds West, 82.20 feet;
- South 28 degrees 44 minutes 00 seconds East, 39.30 feet;
- South 00 degrees 46 minutes 00 seconds West, 226.70 feet;
- South 83 degrees 16 minutes 00 seconds East, 201.80 feet;
- North 09 degrees 03 minutes 00 seconds East, 164.80 feet;
- North 88 degrees 31 minutes 00 seconds East, 218.50 feet;
- South 21 degrees 46 minutes 00 seconds East, 481.30 feet;
- South 00 degrees 30 minutes 00 seconds East 353.50 feet;
- South 44 degrees 55 minutes 00 seconds East, 237.00 feet;
- South 26 degrees 57 minutes 00 seconds East 415.57 feet; to a point on the South line of said Northeast quarter

thence North 88 degrees 14 minutes 05 seconds West, 2112.20 feet along said South line to the Southwest corner of the Northeast quarter of said Section 4;

thence North 01 degrees 24 minutes 41 seconds East, 1410.09 feet to the True Point of Beginning.

**Exhibit "B"**

**Mineral Leasehold Estate**

Attached hereto and made a part of that certain Surface Use Agreement between Broken Arrow Investments, LLC and Kerr-McGee Oil & Gas Onshore LP, dated March 18, 2009.

[Attached]

**Exhibit "C"**

**Existing Oil and Gas Operations Areas**

Attached hereto and made a part of that certain Surface Use Agreement between Broken Arrow Investments, LLC and Kerr-McGee Oil & Gas Onshore LP, dated March 18, 2009.

[Attached]



**C OIL AND**

THIS AGREEMENT, Entered into this the 6th day of

between Davis Farms, Inc., a Colorado Corporation  
P. O. Box 836  
Greeley, Colorado 80631

and The Colton Company, D 204 Petroleum Center, San Antonio, Texas 78209 hereinafter called lessor,  
hereinafter called lessee, does witness:

1. That lessor, for and in consideration of the sum of Ten & more Dollars in hand paid and of the covenants and agreements hereinafter contained to be performed by the lessee, has this day granted, leased, and let and by these presents does hereby grant, lease, and let exclusively unto the lessee the hereinafter described land, and with the right to unitize this lease or any part thereof with other oil and gas leases as to all or any part of the lands covered thereby as hereinafter provided, for the purpose of carrying on geological, geophysical and other exploratory work, including core drilling, and the drilling, mining, and operating for, producing, and saving all of the oil, gas, casinghead gas, casinghead gasoline and all other gases and their respective constituent vapors, and for constructing roads, laying pipe lines, building tanks, storing oil, building power stations, telephone lines and other structures thereon necessary or convenient for the economical operation of said land alone or conjointly with neighboring lands, to produce, save, take care of, and manufacture all of such

substances, and for housing and boarding employees, said tract of land with any reversionary rights therein being situated in the County of \_\_\_\_\_

Weld State of Colorado and described as follows:

Township 5 North, Range 65 West, 6th P.M.  
Section 4: Lot 1, S $\frac{1}{2}$ NE $\frac{1}{4}$  (also described as NE $\frac{1}{4}$ )

Township 6 North, Range 65 West, 6th P.M.  
Section 33: E $\frac{1}{2}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{2}$ NE $\frac{1}{4}$  and that part of the SW $\frac{1}{2}$ NE $\frac{1}{4}$  lying east of the Bliss lateral, formerly the McCall lateral.

and containing 401.36 acres, more or less.

2. It is agreed that this lease shall remain in full force for a term of five (5) years from this date, and so long thereafter as oil or gas, or either of them, is produced from said land or from lands with which said land is consolidated, or the premises are being developed or operated.

3. In consideration of the premises the said lessee covenants and agrees:  
To deliver to the credit of lessor, free of cost, in the pipe line to which lessee may connect his wells, the equal one-eighth (1/8) part of all oil produced and saved from the leased premises.

4. The lessee shall monthly pay lessor as royalty on gas marketed from each well where gas only is found, one-eighth (1/8) of the proceeds if sold at the well, or if marketed by lessee off the leased premises, then one-eighth (1/8) of its market value at the well. The lessee shall pay the lessor: (a) one-eighth (1/8) of the proceeds received by the lessee from the sale of casinghead gas, produced from any oil well; (b) one-eighth (1/8) of the value, at the mouth of the well, computed at the prevailing market price, of the casinghead gas, produced from any oil well and used by lessee off the leased premises for any purpose or used on the leased premises by the lessee for purposes other than the development and operation thereof. Lessor shall have the privilege at his own risk and expense of using gas from any gas well on said land for stoves and inside lights in the principal dwelling located on the leased premises by making his own connections thereto.

Where gas from a well or wells, capable of producing gas only, is not sold or used for a period of one year, lessee shall pay or tender as royalty, an amount equal to the delay rental as provided in paragraph 5) hereof payable annually on the anniversary date of this lease following the end of each such year during which such gas is not sold or used, and while said royalty is so paid or tendered this lease shall be held as a producing property under paragraph numbered two hereof.

5. If operations for the drilling of a well for oil or gas are not commenced on said land on or before the 6th day of May 1982 this lease shall terminate as to both parties, unless the lessee shall on or before said date pay or tender to the lessor or for the lessor's credit in the First National Bank at Greeley, Colorado 80631 or its successors, which Bank and its successors are the lessor's agent and shall continue as the depository of any and all sums payable under this lease regardless of change of ownership in said

land or in the oil and gas or in the rentals to accrue hereunder, the sum of Four hundred one and 36/100 Dollars, which shall operate as a rental and cover the privilege of deferring the commencement of operations for drilling for a period of one year. In like manner and upon like payments or tenders the commencement of operations for drilling may further be deferred for like periods successively. All payments or tenders may be made by check or draft of lessee or any assignee thereof, mailed or delivered on or before the rental paying date, either direct to lessor or assigns or to said depository

1957  
00030  
17-1-1982

**Exhibit "D-1"**

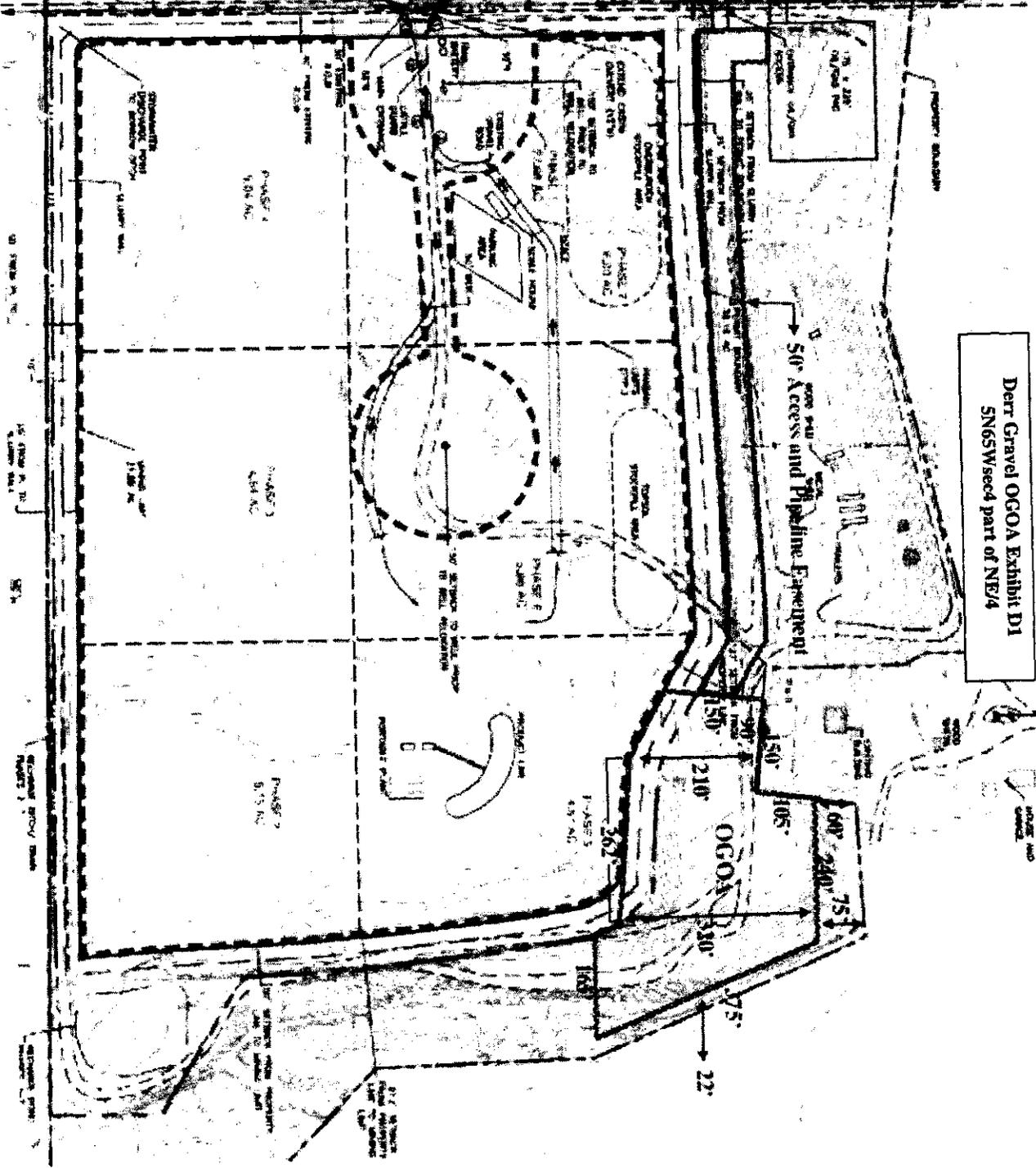
**Future Oil and Gas Operations Areas**

Attached hereto and made a part of that certain Surface Use Agreement between Broken Arrow Investments, LLC and Kerr-McGee Oil & Gas Onshore LP, dated March 18, 2009.

[Attached]

BALSAM AVENUE (W.C.R. 41 1/2)

30' Pipeline Easement



Derr Gravel OGOA Exhibit D1  
SNGSweed part of NE/4

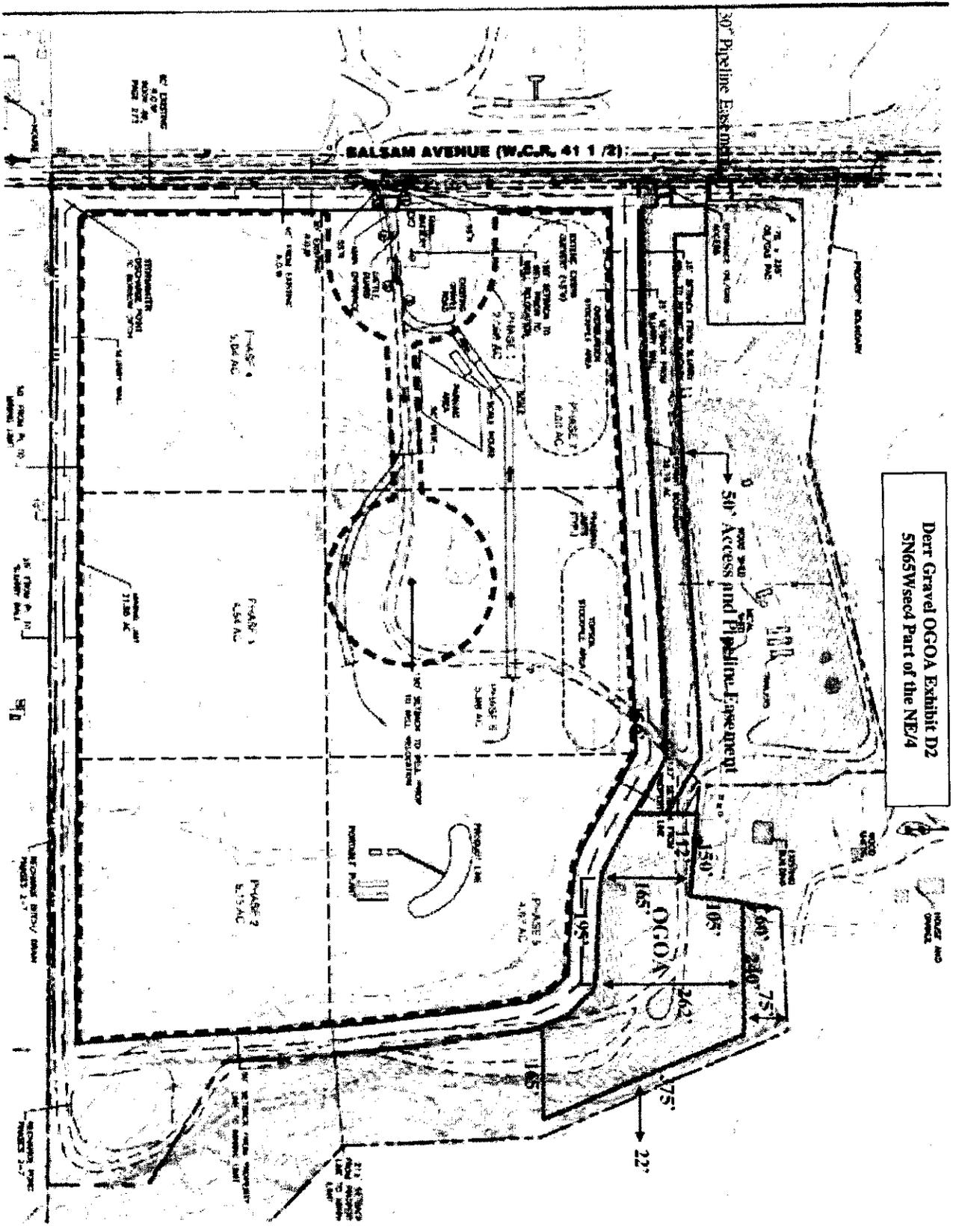
**Exhibit "D-2"**

**Future Oil and Gas Operations Areas**

Attached hereto and made a part of that certain Surface Use Agreement between Broken Arrow Investments, LLC and Kerr-McGee Oil & Gas Onshore LP, dated March 18, 2009.

[Attached]

Derr Gravel OGOA Exhibit D2  
 5N65Wsec4 Part of the NE/4



**Exhibit "E"**

**General Guidelines for Design and Construction Activities On or Near Kerr-McGee Gathering LLC and Kerr-McGee Rocky Mountain Corporation Pipelines and Related Facilities, Revised April 11, 2006**

Attached hereto and made a part of that certain Surface Use Agreement between Broken Arrow Investments, LLC and Kerr-McGee Oil & Gas Onshore LP, dated March 18, 2009.

[Attached]



## **General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC and Kerr - McGee Oil & Gas Onshore LP 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 (KMG) right-of-way (ROW). These are not intended to, nor do they waive or modify any rights KMG may have under existing easements or ROW agreements. For information regarding KMG'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 KMG 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 KMG in the below requirements is meant to include and apply to any Kerr McGee entity.

### **Design**

- KMG shall be provided sufficient prior notice of planned activities involving excavation, blasting, or any type of construction on KMG's ROW or near its facilities. This is to determine and resolve any location, grade or encroachment problems and allow for the protection of KMG'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 KMG 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 KMG's ROW. The encroaching entity shall also provide a set of "as-built drawings" and submit to KMG, showing the facilities in the vicinity of KMG's ROW upon completion of the work.
- Only facilities shown on drawings reviewed by KMG will be approved for installation on KMG's ROW. All drawing revisions that affect facilities proposed to be placed on KMG's ROW must be approved by KMG in writing.
- KMG shall approve the design of all permanent road crossings.
- Any repair to surface facilities following future pipeline maintenance or repair work by KMG on it's "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 KMG on replacement ROW granted to relocate KMG 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 KMG.
- The depth of cover over the KMG pipelines shall not be increased or reduced nor surface modified for drainage without KMG's written approval.
- Construction of any permanent structure within KMG pipeline easement is not permitted without written approval by KMG.
- Planting of shrubs and trees is not permitted on KMG pipeline easement without written approval by KMG.
- Irrigation equipment i.e. backflow prevent devices, meters, valves, valve boxes, etc. shall not be located on KMG easement without written approval by KMG.
- Foreign utility installations, IE, distribution gas, oil and gas gathering, water, electric, telephone, cable and sewer lines, etc., may cross perpendicular to KMG's pipeline within the ROW, provided that a minimum of eighteen inches (18") of vertical clearance is maintained between KMG 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 KMG. In no case will vertical separation be less than 12" whether written or not. Constant line elevations must be maintained across KMG's entire ROW width, gravity drain lines are the only exception and must be approved in writing. Foreign line crossings below the KMG pipeline must be evaluated by KMG to ensure that a significant length of the KMG line is not exposed and unsupported during construction. Foreign line crossings above the KMG pipeline with less than 18" of clearance must be evaluated by KMG to ensure that additional support is not necessary to prevent settling on top of the KMG natural gas pipeline. A KMG representative must be on site during any crossing activities to verify clearance depths and to assure the integrity and support of the KMG facility. All installations of foreign crossings done by boring and or jacking require the KMG facility to be exposed to verify clearances.
- Foreign utilities shall not run parallel to KMG pipelines within the KMG easement without written permission by KMG. A minimum of 10.0 feet of horizontal separation must be maintained in parallel installations whether the foreign utility is



## **General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC and Kerr - McGee Oil & Gas Onshore LP Pipelines and Related Facilities**

placed within the KMG easement or adjacent to the KMG easement. Any deviation from the 10.0' horizontal requirement must be approved in writing by KMG and an "as built survey" provided to KMG after installation.

- ♦ The foreign utility should be advised that KMG maintains cathodic protection on its pipelines and facilities. The foreign utility must coordinate their cathodic protection system with KMG's. At the request of KMG, 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 KMG 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 KMG. All costs associated with the correction of cathodic protection interference issues on KMG 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 KMG whether specifically required per federal law, or by company standard, will mark the routing of it's 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 KMG, the safety of the public, contractor, KMG personnel and KMG 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 KMG ROW.
- ♦ No power poles, light standards, etc. shall be installed in the KMG easement without written approval by KMG.
- ♦ KMG 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 KMG's sole discretion, and may exceed any regulatory requirements.

### **Construction**

- ♦ If KMG will be relocating KMG facilities for any entity, grading in the new KMG ROW shall be +/- 6 inches before KMG will mobilize to complete the relocation. Final cover after the completion of the project will not be less than 48" nor more than 72". All cover that exceeds 72" or less than 48" will be approved in writing by KMG. Cover during all construction activities will NEVER be less than 36" unless approved in writing and a KMG 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 KMG facilities. The entity requesting relocation is solely responsible for the final depth of cover over the relocated KMG 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 KMG's requirements and be contractually obligated to comply.
- ♦ The continued integrity of KMG's pipelines and the safety of all individuals in the area of proposed work near KMG's facilities are of the utmost importance. Therefore, contractor must meet with KMG representatives prior to construction to provide and receive notification listings for appropriate area operations and emergency personnel. **KMG'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 KMG pipelines prior to crossing to determine the exact alignment and depth of the lines. A KMG representative must be present.**



## **General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC and Kerr - McGee Oil & Gas Onshore LP Pipelines and Related Facilities**

- The use of probing rods for pipeline locating shall be performed by KMG representatives only, to prevent unnecessary damage to the pipeline coating. A KMG representative shall do all line locating.
- Notification shall be given to KMG 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 KMG's work site representative. Any Contractor schedule changes shall be provided to KMG immediately.
- Heavy equipment will not be allowed to operate directly over KMG pipelines or in KMG ROW unless written approval is obtained from KMG. Heavy equipment shall only be allowed to cross KMG pipelines at locations designated by KMG. 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 KMG.
- Contractor shall comply with all precautionary measures required by KMG, 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 KMG ROW inaccessible shall not be permitted unless the contractor agrees to restore the area to its original condition and provide protection to KMG's facility. At no time will cover be reduced to less than 36" without written approval by KMG and a KMG representative on site.
- A KMG representative shall be on-site to monitor any construction activities within twenty-five (25) feet of a KMG pipeline or aboveground appurtenance. The contractor shall not work within this distance without a KMG representative being on site. Contractor shall use extreme caution and take any appropriate measures to protect KMG facilities.
- Ripping is only allowed when the position of the pipe is known and not within ten (10) feet of KMG facility. KMG personnel must be present.
- Temporary support of any exposed KMG pipeline by Contractor may be necessary if required by KMG'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 KMG's on-site representative and thoroughly compacted in 12" lifts to 95% of standard proctor dry density minimum or as approved by KMG'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 KMG's facilities unless blasting notification is given to KMG including complete Blasting Plan Data. A pre-blast meeting shall be conducted by the organization responsible for blasting.

KMG 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 KMG's facilities as a result of their activities whether or not KMG representatives are present. KMG 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 KMG's facilities unless blasting notification is given to KMG a minimum of one week before blasting. The organization responsible for blasting must complete Blasting Plan Data. KMG 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 KMG. A written emergency plan shall be provided by the organization responsible for blasting.

KMG 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 KMG facility, pipeline, valve set, etc. shall be reported immediately to KMG. 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.



## **General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC and Kerr - McGee Oil & Gas Onshore LP Pipelines and Related Facilities**

- KMG personnel shall install all test leads on KMG 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
Foreman 1:	James Phillips	Phone: 303 655 - 4343
Foreman 1:	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: 800-922 -1987