

## AMENDMENT TO SURFACE USE AGREEMENT

THIS AMENDMENT to Surface Use Agreement (“Amendment”) is made and entered into this 10<sup>th</sup> day of November, 2022, by and among Kerr-McGee Oil & Gas Onshore LP (“KMOG”), with an address of 1099 18<sup>th</sup> St., Suite 700, Denver, CO 80202, and Tom Schmerge (“Owner”), with an address of 7754 County Road 60, Windsor, Colorado 80550. KMOG and the Owner are sometimes referred to hereinafter separately or together as “Party” or the “Parties.”

### RECITALS

WHEREAS, Owner and Incline Operating, LLC (“Incline”) executed that certain Surface Use Agreement and Grant of Easement dated as of August 27<sup>th</sup>, 2021 relating to real property in the SE/4 of Section 4, Township 5 North, Range 67 West, Weld County, Colorado (the “SUA”); and

WHEREAS, Incline assigned the SUA to KMOG by virtue of that certain Assignment Of Surface Use Agreement And Grant Of Easement dated as of April 1, 2022, and recorded on April 15, 2022 at Reception Number 4819004, Weld County, Colorado; and

WHEREAS, the Parties desire to amend the SUA as set forth below.

### OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual covenants contained in the SUA and herein, the Parties agree as follows:

1. Term. In the event KMOG does not commence operations for the drilling of a well within two years of the date of this Amendment, this Amendment shall expire and terminate; provided however, should KMOG commence surface disturbing activities related to construction of a well pad on or prior to two years from the date of this Amendment, the term of the SUA shall apply to this Amendment.
2. Exhibit A. Owner and KMOG hereby agree to delete Exhibit A as shown in the SUA and replace it with the Amended Exhibit A, attached hereto.
3. Access Roads. Owner and KMOG hereby agree that Section 3.b.ii. shall be deleted in its entirety and replaced with the following:

“Access Roads shall be limited to sixty feet (60’) wide and one hundred feet (100’) in length at the access point; the remainder of the corridor shall be a width of thirty feet (30’) and shall be constructed in the location shown on Amended Exhibit A. Culverts shall be installed at ditch and drainage crossings when requested in writing by Owner and shall be sized to prevent obstruction to the free flow of the volumes of water being carried, inclusive of flood stages. Operator shall

protect all water sources and conveyance structures, including but not limited to the natural flow of creeks, wells, and ditches, from all Operations and shall immediately remedy any diversion, curtailment, or blockage of water flows or contamination of water sources.”

4. Additional Surface Use Provisions. A new paragraph shall be added to Section 8 as follows:

g. **Maintenance:** In the areas North and East of the access road on the Lands as shown Amended Exhibit A, Operator shall be responsible for mowing and weed control of noxious and invasive species in order to maintain this area on the Lands to a standard which is similar to the lands adjacent thereto, provided that KMOG shall only be required to apply such weed treatment or mowing activities in accordance with the governing agency’ weed control policy for noxious and invasive species.

5. Release; Indemnity. Owner and KMOG hereby agree that the following sentence shall be added to Section 10 of the SUA and read as follows:

“Neither Party shall be liable in an action initiated by one against the other for special, punitive, indirect or consequential damages resulting from or arising out of this agreement, including, without limitation, loss of value, loss of production, loss of financial advantage, loss of profit or business interruptions, however same may be caused.”

6. Governing Law and Venue. Owner and KMOG hereby agree that Section 20 of the SUA shall be deleted in its entirety and replaced with the following:

“This Amendment shall be governed by and construed in accordance with the laws of the State of Colorado without regard to conflicts of laws principles that would require the application of the laws of any other jurisdiction. Any dispute arising out of or relating to this Amendment which cannot be amicably resolved by the Parties shall be brought in a federal or state court of competent jurisdiction sitting in the State of Colorado and the Parties irrevocably submit to the jurisdiction of any such court solely for the purpose of any such suit, action or proceeding.”

7. Ratification/Superseding Effect. Except as modified herein, the parties hereby ratify and affirm the terms of the SUA. In the event of a conflict between the terms of the SUA and the terms of this Amendment, the terms of this Amendment shall control. Any term not defined herein shall be given meaning ascribed to such term in the SUA.

8. Counterparts. The Parties may execute and deliver this Amendment in any number of counterparts, including facsimile and .pdf format counterparts, each of which is deemed an original, but all of which constitute the same instrument.

9. Recording. KMOG may record this Amendment or a Memorandum of this Amendment with the Clerk and Recorder of Weld County, Colorado.

DATED as first set forth above.

TOM SCHMERGE

By: Tom Schmerge  
Name: Tom Schmerge  
Title: Owner

KERR-MCGEE OIL & GAS ONSHORE LP

By: Don C. Fobbe III  
Name: Don C. Fobbe III  
Title: Attorney-in-fact

ACKNOWLEDGEMENTS

STATE OF COLORADO )  
 )ss.  
COUNTY OF Weld )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of November, 2022 by Tom Schmerge.

Witness my hand and official seal.  
My commission expires: 01/22/2023

Robert Evan Johnson  
Notary Public

**ROBERT EVAN JOHNSON**  
NOTARY PUBLIC - STATE OF COLORADO  
Notary ID #20194002546  
My Commission Expires 1/22/2023

STATE OF COLORADO )  
 )ss.  
COUNTY OF Denver )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of November, 2022 by Don C. Jobe III as Attorney-in-Fact of Kerr-McGee Oil & Gas Onshore LP.

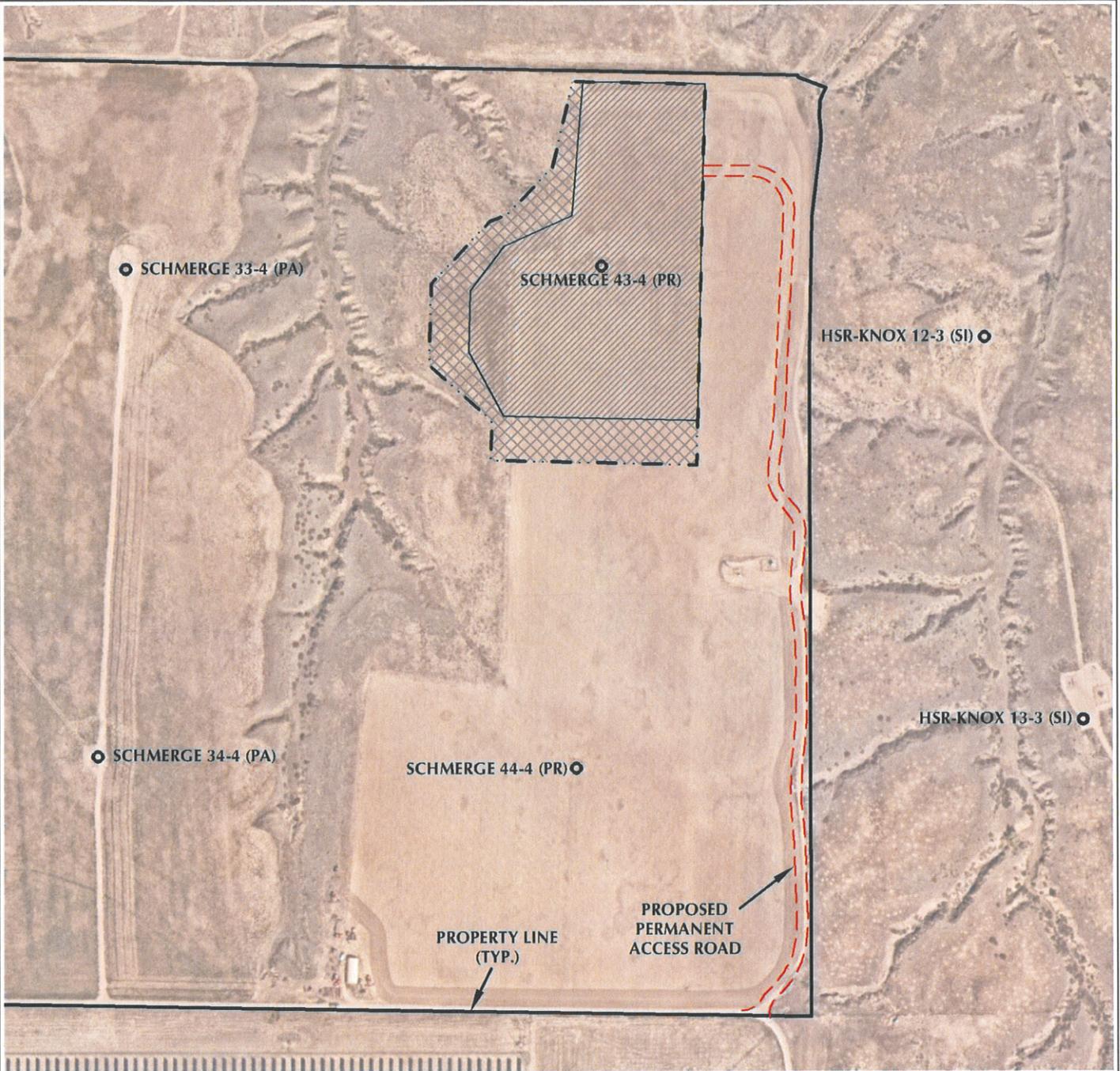
Witness my hand and official seal.  
My commission expires: 01/22/2023

Robert Evan Johnson  
Notary Public

**ROBERT EVAN JOHNSON**  
NOTARY PUBLIC - STATE OF COLORADO  
Notary ID #20194002546  
My Commission Expires 1/22/2023

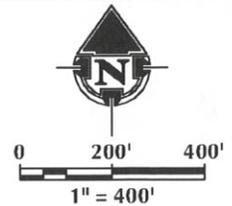
# AMENDED EXHIBIT A SCHMERGE

NE1/4 SE1/4 SECTION 4, TOWNSHIP 5 NORTH, RANGE 67 WEST, 6TH P.M.



**LEGEND**

- PERMANENT OPERATIONS AREA ACRES (±10.35 ACRES)
- TEMPORARY OPERATIONS AREA ACRES (±3.64 ACRES)
- EXISTING WELL
- PROPOSED PERMANENT ACCESS ROAD
- PROPERTY LINE



**609 CONSULTING, LLC**  
 LOVELAND OFFICE  
 6706 North Franklin Avenue  
 Loveland, Colorado 80538  
 Phone: 970-776-4331

SHERIDAN OFFICE  
 1095 Suburban Avenue  
 Sheridan, Wyoming 82801  
 Phone: 307-674-9609

DATE SURVEYED: N/A  
 DATE: 9/1/22  
 DRAFTER: SRS  
 REVISED: 11/3/22

DATA SOURCES:  
 - AERIAL COURTESY OF NEARMAP

PREPARED FOR:  
**Kerr-McGee Oil & Gas Onshore LP**