

MASTER ENCROACHMENT LICENSE AGREEMENT

THIS MASTER ENCROACHMENT LICENSE AGREEMENT (the "Agreement") is made and entered into this 8th day of January, 2019, (the "Effective Date") by and between the TOWN OF ERIE, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516 (the "Town") and Kerr-McGee Gathering LLC with an address of 1099 18th Street, Suite 1800, Denver, Colorado 80202 ("Licensee").

WHEREAS, the Town owns certain real property and controls certain public rights-of-way throughout the Town (the "Town Property");

WHEREAS, Licensee wishes to install certain oil and gas related improvements (the "Improvements"), which Improvements will encroach under, over, through, and on the Town Property in locations to be determined at a later time; and

WHEREAS, the Town desires to grant to Licensee certain Site Supplements for the installation of Improvements and to establish a method by which the Town may administratively permit the installation of the Improvements on the Town Property over time using a consistent process.

NOW THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. For purposes of this Agreement and in addition to the terms defined elsewhere herein, and in addition to the terms defined elsewhere herein, the following terms shall have the following meanings:

a. *"Affiliate"* means: (i) an entity in which Licensee holds a controlling interest; (ii) an entity which holds a controlling interest in Licensee; (iii) an entity under common control with Licensee; or (iv) an entity that is a successor by merger or other consolidation of Licensee.

b. *"For the life of every well"* means until every such well is plugged and abandoned and the Improvements are no longer used by Licensee or its successors or assigns.

c. *"Laws"* means any and all applicable federal, state, and local laws, statutes, constitutions, code, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the Town or other governmental entity, agency or judicial authority, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a hazardous material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a hazardous material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and

Health Act; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

d. *"Public Project"* means: any public work or improvement within the Town that is wholly owned by the Town; or any public work or improvement within the Town where at least 50% or more of the funding is provided by any combination of the Town, the federal government, the State of Colorado, any Colorado county, the Northern Colorado Water Conservancy District, and all entities established under Title 32 of the Colorado Revised Statutes.

e. *"Site"* means a location on Town Property selected and approved for Licensee's installation of Improvements.

f. *"Site Supplement"* means the form of site supplement set forth in **Exhibit A**, attached hereto and incorporated herein by this reference.

g. *"Well"* means any well that is connected to or serviced by any of the Improvements.

2. Grant of License.

a. *General.* The Town hereby grants to Licensee a non-exclusive license to use and occupy the Town Property to install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace Improvements at each approved Site in accordance with this Agreement (the "License"). The License granted herein shall entitle Licensee up to 10 Site Supplements.

b. *Non-exclusivity.* Because Licensee's right to use and occupy the Town Property is not exclusive, the Town reserves the right to grant a similar use to itself or any other person or entity at any time. The Parties understand and agree that this Agreement is a limited grant of authority subject in all respects to the Laws. Licensee acknowledges that the Town may permit others to install facilities and improvements in the Town Property; *provided, however*, such installation by others of facilities and improvements shall not unreasonably interfere with the rights granted to Licensee hereunder or prevent Licensee from exercising the rights granted to Licensee hereunder. The Parties shall coordinate their use and occupation of the Town Property and shall observe all applicable safety rules and industry practices as necessary for the safe and efficient operation of the Improvements.

c. *Conflict of Laws.* As of the Effective Date, this Agreement has been determined by the Town to be in conformity with, and to be authorized by, the Erie Municipal Code (the "Code"). To the extent that any ambiguity or conflict is subsequently identified between provisions of this Agreement and the Code, the provisions of the Code shall prevail, except as preempted by federal or state law. Notwithstanding the foregoing, no change, amendment, revision, reenactment, reinterpretation or restatement of the Code occurring after the Effective Date may substantially impair Licensee's rights under, or materially frustrate the purposes of, this Agreement.

3. Term, Termination and Abandonment.

a. *Term.* The term of this Agreement shall commence on the Effective Date and shall continue and remain in full force and effect for the life of every Well (the "Term").

b. *Termination.* The Town may terminate this Agreement only upon an uncured breach by Licensee pursuant to Section 9.b., upon 30 days prior written notice to Licensee. Upon such termination, any prepaid fees shall be retained by the Town.

c. *Abandonment.* Licensee may abandon any or all of the Improvements on Town Property by delivering written notice of its intent to abandon such Improvements to the Town. If all of the wells connected to any Improvements are plugged and abandoned or have failed to produce oil or gas for a period of one year that is not the result of *force majeure*, and Licensee has not included such wells on a Form 7, Monthly Report of Operations, filed with the COGCC for the same year, then the Town shall send written notice to Licensee that it believes such Improvements are abandoned. If Licensee responds with evidence of its intent not to abandon such Improvements, then the Improvements shall not be deemed abandoned. If Licensee fails to respond to the Town within 60 days of receipt of such notice, such Improvements shall be deemed abandoned. .

d. *Removal or Abandonment in Place.* When any Improvements have been abandoned pursuant to subsection (c) hereof, or upon the expiration or termination of any Site Supplement, the Town shall determine within 30 days whether the affected Town Property is needed for a Public Project. If so, Licensee shall, within 180 days of the Town's determination, remove all Improvements, repair any damage to the Town Property caused by such removal, and restore the Town Property to its condition prior to the installation of the Improvements, reasonable wear and tear excepted. If the Town determines that the Town Property is not needed for a Public Project, or that removal is not in the best interest of the public health, safety or welfare, Licensee may abandon the Improvements in place. If Licensee abandons any Improvements in place, they shall be abandoned in compliance with COGCC Rule 1105 or any amendment thereto. At Licensee's own expense, it shall hire a consultant to determine whether Licensee has complied with COGCC Rule 1105, when applicable, and provide a copy of such determination to the Town.\

e. *Relocation.* The Town shall consult with the Licensee and minimize to the extent practicable the need to relocate any Improvements previously approved pursuant to a Site Supplement and the extent and distance of any such relocation. If the Town determines that Licensee must relocate the Improvements for a Public Project, Licensee shall, after conferring with the Town: (1) relocate such Improvements at Licensee's sole expense, within 180 days of written notice from the Town, to a relocation site within the lands subject to the Site Supplement, or if such relocation site is not available or is not capable of a safe installation and operation of such relocated Improvements, to an alternative relocation site provided by the Town that is immediately adjacent and in close proximity to the original site of such Improvements; (2) with the Town's approval, abandon the Improvements as provided in subsection (c) hereof; or (3) with the Town's approval, take other steps to accommodate the Public Project. The new location of any relocated Improvements shall be subject to the existing Site Supplement, with the updated location. If the Improvements are abandoned pursuant to this subsection, the Licensee may

replace them with hydrocarbon storage tanks, which the Town hereby authorizes Licensee to do subject to the Town's right to participate in the COGCC's review of such tanks.

4. Installations.

a. *Inventory.* At all times during the term of this Agreement, Licensee shall maintain a current inventory of Sites governed by this Agreement, and within 30 days of request, Licensee shall provide to the Town a copy of such inventory.

b. *Site Supplement.* Installation of any Improvements on any Town Property shall require a Site Supplement in the form attached hereto as **Exhibit A**. Each Site Supplement shall be approved by the Town Administrator or designee, subject to compliance with this Agreement, and then recorded with the Weld County Clerk and Recorder against the Property subject to the Site Supplement. Such approval shall not be unreasonably withheld, conditioned, or delayed, and the Town Administrator shall make a decision within 60 days of Licensee's submission of all of the required information for the Site Supplement. Within 3 days of approval, the Town Administrator shall notify Licensee of the Town Administrator's decision. Licensee shall submit an application for a Site Supplement, which shall include the following information, at a minimum:

i. Plans prepared by a Colorado-licensed engineer showing engineering design, and specifications for installation of the Improvements; and

ii. Plans showing existing sidewalks, utilities, trees and other existing improvements;

c. *Monumentation.* During construction, at all locations where the Improvements enter or exit the Town Property, permanent at and above grade monumentation and marking shall be placed in a manner and at a location approved by the Town Engineer. Licensee shall maintain all monumentation and marking for as long as the Improvements remain on the Town Property.

d. *Record Drawings.* Not more than 60 days after installation of any Improvements, Licensee shall provide to the Town detailed digital record drawings of the Improvements.

e. *"As is" Condition.* Licensee accepts the Town Property in its "as is" condition.

f. *Title.* At all times, Title to and control of the Improvements shall remain with Licensee and shall constitute Licensee's personal property, and not fixtures or improvements attached to the land. This Agreement shall not create or vest in Licensee any ownership or property rights in any Town Property. Additionally, Licensee acknowledges that this Agreement does not constitute or create a leasehold interest.

g. *Modifications.*

i. Minor. Modifications to the Improvements with like-kind or similar Improvements may be made without additional Town approval (other than any permits required by the Erie Municipal Code).

ii. Substantial. If Licensee proposes to install Improvements which are different from the existing Improvements in any substantial way, then Licensee shall first obtain the Town's written approval for the use and installation of the new Improvements.

5. Existing Licenses. On the Effective Date, the following two existing encroachment licenses (collectively, the "Existing Licenses") shall be replaced with Site Supplements, and the Existing Licenses shall terminate: (1) the license granted to Licensee by the Town on June 27, 2017 (the "Existing Whooley-Morgan License"); and (2) the license to Licensee granted by the Town on March 26, 2018 (the "Existing Mt. Evans License"). Because the Town has already received all of the necessary information for such locations and because the Improvements associated with such Existing Licenses have already been installed in such locations, the two Site Supplements replacing the Existing Licenses are hereby deemed approved by the Town as of the Effective Date (each an "Approved Site Supplement and collectively the "Approved Site Supplements"). Licensee shall record the Approved Site Supplements with the Weld County Clerk and Recorder. For the Approved Site Supplements, Sections 4.b, 4.b.i., 4.b.ii, 4.c, and 4.d. of this Agreement and Section 5 of the Site Supplement Form are hereby deemed satisfied.

6. Fees.

a. *Site Supplement Fee*. The fee for each Site Supplement shall be \$5,000, payable upon execution of each Site Supplement (the "Site Supplement Fee").

b. *Mt. Evans License Fee*. For the Mt. Evans Approved Site Supplement, Owner shall pay to the Town an annual license fee of \$250,000 for a period of 10 years (the "Mt. Evans License Fee"). The Mt. Evans License Fee shall be due on January 15, 2019, and then on the yearly anniversary of such date for a period of 10 years, ending on January 15, 2029; provided, however, that should this Agreement terminate for any reason prior to the end of such 10 year period, Owner shall not be obligated to pay the Mt. Evans License Fee to the Town; and further provided that any fees already paid to the Town as of the date of termination shall be nonrefundable.

c. *Other License Fees*. Pursuant to the Annexation Agreement among the Town, Licensee's corporate affiliate Anadarko E&P Onshore LLC, and the Town of Erie Urban Renewal Authority dated January 8, 2019, to reimburse Licensee for the costs associated with such annexation, the Town hereby waives any license fees for any Improvements other than the Mt. Evans License Fee.

7. Insurance.

a. *Coverages*. Licensee agrees to procure and maintain or self-insure, at its own cost, a policy or policies of insurance sufficient to insure against, claims, demands, and other obligations assumed by Licensee pursuant to this Agreement. All of Licensee's contractors shall be insured pursuant to their master service contracts with Licensee.

i. Worker's Compensation insurance as required by law.

ii. Commercial General Liability insurance with minimum combined single limits of \$2,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general

aggregate including premises and operations, personal and advertising injury, blanket contractual liability, and products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees and contractors as additional insureds to the extent of the liabilities assumed by Licensee herein. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

iii. Excess or Umbrella Liability insurance, on an occurrence basis, in excess of the Commercial General Liability insurance, with coverage as broad as such policy, with a limit of \$2,000,000.

b. *Form.* Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days' prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Licensee. Licensee shall be solely responsible for any deductible losses under any policy.

c. *Certificate.* Licensee shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

8. Assignment and Transfer.

a. *Consent.* Licensee shall not assign or otherwise transfer all or any part of Licensee's interest, rights or duties in this Agreement, or sublet the area licensed hereunder or any portion thereof to be occupied by anyone other than Licensee, without the Town's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. Any assignment or transfer that is not in compliance with this Section shall be void.

b. *Permitted Assignments.* Notwithstanding the foregoing, Licensee may, without the consent of the Town, assign or transfer this Agreement or any Site Supplement to an Affiliate or any entity that acquires all or substantially all of Licensee's assets, provided that such entity agrees to bound by all of the terms and conditions of this Agreement. Licensee shall provide the Town with notice of any such assignment within 30 days.

c. *Consideration.* In considering an assignment, the Town may consider the following in relation to the proposed assignee:

i. Whether it has ever been convicted or held liable for acts involving deceit including any violation of any Laws, or is currently under an indictment, investigation or complaint charging such acts;

ii. Whether a judgment has been entered against it by any court of competent jurisdiction in an action for fraud, deceit, or misrepresentation;

iii. Whether there is pending any material legal claim, law suit, or administrative proceeding between the Town and such proposed assignee arising out of or involving the Improvements subject to this Agreement, except claims, suits or proceedings relating to insurance claims or employment matters;

iv. Whether it is financially solvent, based on financial statements that are audited or reviewed by a certified public accountant who may also be an officer of the parent corporation; and

v. Whether it has the financial and technical capability to maintain and operate the Improvements for the remainder of the Term.

d. *Change of Control.* The following shall not constitute a transfer or assignment pursuant to this Section, and shall not require consent: a change of name, stock ownership, partnership interest or control of Licensee or transfer upon partnership or corporate dissolution of Licensee; or a mortgage or grant of security interest to any mortgagees or holders of security interest, including their successors or assigns, provided such holders of interests are subject to all of the terms of this License.

9. Default.

a. *By Licensee.* The Town shall provide Licensee with a detailed written notice of any violation of this Agreement, and a 30-day period within which Licensee may: demonstrate that a violation does not exist; cure the alleged violation; or if the nature of the alleged violation prevents correction thereof within 30 days, initiate a reasonable corrective action plan to correct such violation, subject to the Town's written approval, which will not be unreasonably withheld, conditioned, or delayed. If Licensee fails to disprove or correct the violation within 30 days or the timeframe set forth in the approved action plan, then the Town may declare in writing that Licensee is in default.

b. *By the Town.* Licensee shall provide the Town with a detailed written notice of any violation of this Agreement, and a 30 day period within which the Town may: demonstrate that a violation does not exist; cure the alleged violation; or if the nature of the alleged violation prevents correction thereof within 30 days; initiate a reasonable corrective action plan to correct such violation, subject to Licensee's written approval, which will not be unreasonably withheld, conditioned, or delayed. If the Town fails to disprove or correct the violation within 30 days the timeframe set forth in the corrective action plan, then Licensee may declare in writing that the Town is in default.

c. *Termination.* In the event of a default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate this Agreement. The non-defaulting Party shall have all remedies available at law and in equity, provided that specific performance shall never be an available remedy against the Town-

d. *Bankruptcy.* The Parties expressly agree and acknowledge that in the event Licensee becomes a debtor in any voluntary or involuntary bankruptcy proceeding under the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the "Bankruptcy Code"), for the

purposes of proceeding under the Bankruptcy Code, this Agreement shall be treated as an unexpired lease of nonresidential real property under 11 U.S.C. § 365, as amended, and, accordingly, shall be subject to the provisions of 11 U.S.C. § 365(d)(3) and (d)(4). Any person or entity to which Licensee's rights, duties and obligations under this Agreement are assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act to have assumed all of the obligations of Licensee under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the Town an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to the Town, shall be the exclusive property of the Town, and shall not constitute property of Licensee or of the estate of Licensee within the meaning of the Bankruptcy Code. Any monies or other considerations constituting the Town's property under the preceding sentence not paid or delivered to the Town shall be held in trust for the benefit of the Town and be promptly paid to the Town.

10. Use of Licensed Premises by Others. Licensee may permit its Affiliates, employees, business invitees, contractors, tenants, subcontractors, lessees, agents, customers and others to use the portion of the Town's Property for which the License has been executed, so long as such use complies with this Agreement.

11. Waiver of Claims. As a part of the consideration under this Agreement, Licensee hereby waives any and all claims which it may or might hereafter have or acquire against the Town for loss or damage to the Improvements.

12. Indemnification. Licensee agrees to indemnify and hold harmless the Town, its officers, employees, insurers, and insurer, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the use of the Town Property pursuant to this Agreement. Licensee agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at its sole expense.

13. Mechanics' Liens. Licensee shall not allow any mechanics' or similar liens to be filed against the Town Property. If any mechanics' or other liens shall be created or filed against any Town Property by reason of labor performed by, or materials furnished for, Licensee, Licensee shall, within 10 days thereafter, at its own cost and expense, cause such lien or liens to be satisfied and discharged of record.

14. Miscellaneous.

a. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

b. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

c. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

d. Third Parties. There are no intended third-party beneficiaries to this Agreement.

e. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

f. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

g. Modification. This Agreement may only be modified upon written agreement of the Parties.

h. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

i. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

j. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF ERIE, COLORADO

Jennifer Carroll, Mayor

ATTEST:

Jessica Koenig, Town Clerk

LICENSEE

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____
day of _____, 2019, by _____ as _____
of Kerr McGee Gathering LLC.

My commission expires:

(S E A L)

Notary Public

EXHIBIT A
FORM OF SITE SUPPLEMENT

This SITE SUPPLEMENT (the "Site Supplement") is made this _____ day of _____, 20__ (the "Effective Date") by and between the TOWN OF ERIE, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516 (the "Town") and Kerr McGee Gathering, LLC ("Licensee").

1. **Site Supplement.** This is a Site Supplement as referenced in the Master Encroachment License Agreement between the Town and Licensee dated January 8, 2019 (the "Agreement"). All of the terms and conditions of the Agreement are incorporated herein by reference. In the event of any inconsistency between the terms of the Agreement and this Site Supplement, the terms of the Agreement shall govern. Capitalized terms used in this Site Supplement shall have the same meaning as in the Agreement.

2. **Project Description and Locations.** Licensee shall have the right to use the Town Property in the designated areas described in **Exhibit 1**, attached hereto and incorporated herein by this reference (the "Licensed Area");

3. **Improvements.** The Improvements to be installed in the Licensed Area are described in **Exhibit 2**.

4. **Term.** The term of this Site Supplement shall commence on the Effective Date and continue until termination of the Agreement.

5. **Approvals.** Licensee's ability to use the Licensed Area is contingent upon its obtaining all of the certificates, permits and other approvals from entities other than the Town (collectively the "Governmental Approvals") that may be required by any Laws, as well as a satisfactory fiber and electrical connection which will permit Licensee to use the Licensed area. In the event that: (i) any application for such Governmental Approvals is denied; (ii) any Governmental Approval issued to Licensee is canceled, expired, lapsed, or is otherwise withdrawn or terminated; (iii) Licensee determines that such Governmental Approvals may not be obtained in a timely manner; (iv) Licensee determines that it will be unable to obtain or maintain, in a satisfactory manner, any fiber or power connection; or (v) Licensee determines that the Licensed Area is no longer technically compatible for its use, Licensee shall have the right to terminate this Site Supplement.

6. **Termination.** Licensee shall provide written notice to the Town of any termination of this Site Supplement. Upon such termination, this Site Supplement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder.

IN WITNESS WHEREOF, the Parties have executed this Site Supplement as of the Effective Date.