

**RESOLUTION NO. 12-75**

**A RESOLUTION AUTHORIZING THE TOWN OF ERIE, COLORADO, TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH ANADARKO PETROLEUM CORPORATION; AUTHORIZING AND DIRECTING THE APPROPRIATE TOWN OFFICERS TO SIGN SAID MEMORANDUM OF UNDERSTANDING; AND, SETTING FORTH DETAILS IN RELATION THERETO.**

**WHEREAS**, the Town of Erie, Colorado wishes to enter into a Memorandum of Understanding for the purpose of identifying the best management practices for Anadarko Petroleum Corporation's ("Anadarko") future operations within Erie's town limits; and

**WHEREAS**, the Board of Trustees of the Town of Erie believes it is in the best interest of the Town to enter into such a Memorandum of Understanding.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:**

Section 1. That the Memorandum of Understanding between the Town of Erie and Anadarko, a copy of which is attached hereto and incorporated herein by reference, is found to be a reasonable and acceptable Memorandum of Understanding for the purpose of identifying the best management practices for Anadarko's future operations within Erie's town limits.

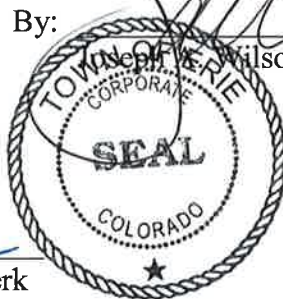
Section 2. That the Town of Erie be and is hereby authorized and directed to enter into the Memorandum of Understanding, and the appropriate Town officers are hereby authorized and directed to sign and bind the Town of Erie to said Memorandum of Understanding.

Section 3. That entering into the Memorandum of Understanding is found to be in the best interest of the Town of Erie, and necessary for the preservation of the public health and safety.

**ADOPTED AND APPROVED THIS 28<sup>TH</sup> DAY OF AUGUST, 2012, BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO.**

**TOWN OF ERIE,**  
a Colorado municipal corporation

By:  Wilson, Mayor



ATTEST:

By:   
Nancy Parker, CMC, Town Clerk

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "MOU") is made and entered into this 28<sup>th</sup> day of August, 2012 by and between the Town of Erie, a Colorado municipal corporation ("Erie"), whose address is 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516, and Kerr-McGee Oil & Gas Onshore LP, a Delaware corporation ("KMOGO"), whose address is 1099 18<sup>th</sup> Street, Suite 1800, Denver, Colorado 80202. KMOGO and Erie may be referred to individually as a "Party" or collectively as the "Parties."

### BACKGROUND

A. KMOGO is the owner of oil and gas leasehold interests within Erie's town limits. KMOGO currently operates oil and gas wells within Erie's town limits and has the right to develop its current and future oil and gas leasehold interests by drilling additional wells within Erie's town limits.

B. Erie and KMOGO value a balanced approach to oil and gas development that is protective of human health, safety and welfare, as well as the environment and wildlife. To that end, in order to achieve such goals in a cooperative manner, Erie and KMOGO enter into this MOU to identify best management practices for KMOGO's future operations within Erie's town limits ("BMPs").

NOW THEREFORE, the Parties agree as follows:

1. **Effective Date.** On March 7, 2012, by Ordinance 09-2012, the Board of Trustees of Erie imposed a temporary 180 day moratorium on the acceptance, processing, and approval of any land use applications, including special review use applications and site plan applications, related to mining and mineral extraction. This MOU shall not be effective unless and until such moratorium (including any extensions) expires or is terminated in its entirety. The date of such expiration or termination shall be the "Effective Date" of this MOU.

2. **Intent to Supplement Commission Rules and Regulations.** The Parties recognize that pursuant to the Colorado Oil and Gas Conservation Act, Colo. Rev. Stat. §34-60-101 et seq. (the "Act"), the Colorado Oil and Gas Conservation Commission (the "Commission") regulates the development and production of oil and gas resources in Colorado, and the Act authorizes the Commission to adopt statewide rules and regulations, which the Commission has done. The BMPs identified in this MOU are intended to supplement and are in addition to Commission rules and regulations.

3. **KMOGO's Best Management Practices within Erie Town Limits.** KMOGO shall include the BMPs listed in Appendix A on all Form 2s, Application for Permit to Drill and Form 2As; Oil and Gas Location Assessments (for new wellsites only) submitted to the Commission for new wells KMOGO drills after the Effective Date within Erie's town limits. For purposes of this MOU, Erie's "town limits" shall mean the legal corporate limits of Erie as of the Effective Date. If, after the Effective Date, Erie annexes into its town limits lands on which KMOGO has then-existing operations, then this MOU shall also apply to new wells KMOGO drills on such lands after annexation is completed.

4. **KMOGO's Hydraulic Fracturing Practice.** KMOGO has developed and is implementing a company-wide practice to manage the fluid products used in its hydraulic fracturing operations. This practice helps KMOGO evaluate the hydraulic fracturing fluid products KMOGO uses in its operations for safety, effectiveness and potential environmental impacts. As part of this practice, KMOGO has informed its hydraulic fracturing fluid products suppliers that any product containing diesel fuel as defined by the Clean Air Act and/or anything with benzene, cannot be used in hydraulic fracturing operations within the Erie Town limits. KMOGO will continue to conduct its hydraulic fracturing operations within the Erie town limits in accordance with this practice.

5. **Water Supply.** In an effort to reduce truck traffic, Erie and KMOGO will continue their discussions to identify a water resource close to the wellsite location to be utilized by KMOGO and its suppliers, which may include Erie municipal water, when determined feasible by KMOGO.

6. **Erie Regulatory Approvals.** Erie will endeavor to process any and all permits, licenses, applications and other approval requests ("Filings") properly submitted by KMOGO within thirty (30) days or the time period required by applicable law, code, rule, regulation or ordinance, whichever is shorter, including those Filings for which the corresponding Form 2, Application for Permit to Drill and/or Form 2A, Oil and Gas Location Assessment is pending approval with the Commission. In all cases, Erie shall process Filings within the time period required by applicable law, code, rule, regulation or ordinance. In addition, Erie shall not include any conditions of approval, best management practices or similar conditions or requirements on any Filings submitted by KMOGO to Erie related to operations within Erie's town limits, including site plan applications and special review use applications, provided KMOGO has included the BMPs listed in Appendix A on the corresponding Form 2, Application for Permit to Drill and/or Form 2A, Oil and Gas Location Assessment (for new wellsites only).

7. **Applicability.** This MOU shall apply only to new wells which KMOGO drills after the Effective Date within Erie's town limits. This MOU shall not apply to any wells or operations: (i) not within Erie's town limits, (ii) in which KMOGO may have an interest but for which KMOGO is not the operator, or (iii) drilled by KMOGO prior to the Effective Date or during any period this MOU is suspended. Further, this MOU shall not apply to any successor owners/operators of any wells initially drilled and operated by KMOGO, nor shall this MOU be binding upon KMOGO's successor or assigns.

8. **Term.** This MOU is effective upon the Effective Date and shall remain in effect for three (3) years from the Effective Date, at which time this MOU shall terminate. If, after the Effective Date, Erie passes, adopts or imposes an additional moratorium related to oil and gas operations or any ordinances, rules or regulations having the effect of a moratorium or which would restrict or prevent KMOGO from receiving approval of Filings in accordance with Section 6 of this MOU, then the applicability of this MOU shall be suspended until the expiration or termination of such moratorium or ordinances, rules or regulations. If this MOU is suspended for more than thirty (30) days, then KMOGO shall have the right to immediately terminate this MOU upon written notice to Erie. Portions of this MOU directly affected shall immediately terminate if (i) the Commission implements any rules, regulations, ordinances or best management practice guidelines regarding oil and gas development specifically in Erie town

limits or in an area that includes Erie town limits which provide for higher standards than the BMPs or (ii) Erie and the Commission enter into any agreements binding on KMOGO regarding oil and gas development specifically in Erie town limits or in an area that includes Erie town limits. Those portions of this MOU not directly affected by such Commission actions or agreements shall remain in effect. Notwithstanding the foregoing, the terms of Section 6 of this MOU shall not terminate and shall continue to apply and remain in effect even if directly affected by such Commission actions or agreements.

9. **No Waiver of Rights.** KMOGO, nor any affiliate or parent, does not waive the rights it has pursuant to its current and future oil and gas interests to explore for, drill and produce the oil and gas underlying Erie's town limits. Except as set forth in this MOU, Erie does not waive the rights it has pursuant to the laws of the State of Colorado or the Town of Erie Municipal Code.

10. **Force Majeure.** Neither Party will be liable for any delay or failure in performing under this MOU in the event and to the extent that the delay or failure arises out of causes beyond a Party's reasonable control, including, without limitation, war, civil commotion, act of God, strike or other stoppage (whether partial or total) of labor, or any law, decree, regulation or order of any government or governmental body (including any court or tribunal).

11. **Authority to Execute MOU.** Each Party represents that it has the full right and authority to enter into this MOU.

12. **Governing Law.** This MOU shall be governed and construed in accordance with the laws of the State of Colorado without reference to its conflicts of laws provisions.

13. **No Third Party Beneficiaries.** Except for the rights of enforcement by the Commission with respect to the BMPs, this MOU is not intended to, and does not, create any right, benefit, responsibility or obligation that may be enforced by any non-party. Additionally, nothing in this MOU shall entitle any third party to any claims, rights or remedies of any kind.

14. **Notices.** All notices and other correspondence related to this MOU shall be in writing and shall be delivered by: (i) certified mail with return receipt, (ii) hand delivery with signature or delivery receipt provided by a third party courier service (such as FedEx, UPS, etc.), (iii) fax transmission if verification of receipt is obtained, or (iv) email with return receipt, to the designated representative of the Party as indicated below. A Party may change its designated representative for notice purposes at any time by written notice to the other Party. The initial representatives of the Parties are as follows:

Erie:                   Town of Erie  
                              645 Holbrook Street  
                              P.O. Box 750  
                              Erie, Colorado 80516  
                              Attn: Town Administrator  
                              Telephone: 303.926.2710  
                              Fax: 303-926-2706  
                              Email: ajkrieger@erieco.gov

KMOGO: Kerr-McGee Oil & Gas Onshore LP  
1099 18<sup>th</sup> Street, Suite 1800  
Denver, CO 80202  
Attn: Wattenberg Land, USR Group

With copy to: Kerr-McGee Oil & Gas Onshore LP  
1099 18<sup>th</sup> Street, Suite 600  
Denver, CO 80202  
Attn: Counsel  
Fax: 720-929-7505

**15. Default.** If a Party defaults in the performance under this MOU, the defaulting Party shall have thirty (30) days to cure the default after receipt of written notice of such default from the non-defaulting Party, provided the defaulting Party shall be entitled to a longer cure period if the default cannot reasonably be cured within thirty (30) days and the defaulting Party commences the cure within such thirty (30) day period and diligently pursues its completion. If the defaulting Party fails to cure the default within the applicable cure period, then the non-defaulting Party shall have the right to immediately terminate this MOU upon written notice to the defaulting Party.

*[Remainder of Page Intentionally Blank]*

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by a duly authorized representative on the day and year first above written.

**ERIE:**

**THE TOWN OF ERIE**

By: Joseph A. Wilson  
Name: JOSEPH A WILSON  
Title: MAYOR, ERIE

**KMOGO:**

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

By: Michael A. Nixon  
Name: Michael A. Nixon  
Title: Agent and Attorney-in-Fact

Approved

Law Dept.

## APPENDIX A

### **BEST MANAGEMENT PRACTICES FOR LOCATIONS WITHIN ERIE TOWN LIMITS**

Pursuant to the terms of this MOU, KMOGO shall include the best management practices listed below on all Form 2s, Application for Permit to Drill, and Form 2As, Oil and Gas Location Assessment (for new wellsites only), submitted to the Commission for new wells KMOGO drills after the Effective Date within Erie's town limits.

1. Maximize equipment and wellhead setbacks from occupied buildings and residences to the extent feasible and practicable, as determined by KMOGO.
2. Prior to commencement of any new drilling or completion operations, provide notification to landowners within one-half (1/2) mile of the planned location, as that location is reflected on KMOGO's Form 2A filed with the COGCC ("Oil and Gas Location").
3. Prior to commencement of any new drilling or completion operations, provide to an Erie designated staff member the following for the Oil and Gas Location for informational purposes only, which KMOGO may revise from time to time during operations:
  - (a) a summary of planned operations, including identified access points and operational timeline, for posting to a local community information web-page;
  - (b) a site plan for site preparation, mobilization and demobilization;
  - (c) a plan for interim reclamation and revegetation of the site and final reclamation of the site;
  - (d) a plan for noise, light and dust mitigation, to the extent feasible and where applicable;
  - (e) a traffic management plan; and
  - (f) updates of this information if any plans change during operations.
4. Utilize steel-rim berms around tanks and separators instead of sand or soil berms, unless requested otherwise by surface owner or because of operational reasons.
5. Utilize closed-loop systems for drilling and completion operations to minimize the need for earthen pits.
6. Utilize multistage pressure separation in conjunction with a vapor recovery unit (VRU) for new wells drilled. KMOGO may remove the VRU system at such time KMOGO determines that the VRU system is no longer necessary due to reduced emission recoveries and/or efficiencies, but no earlier than one (1) year after the new well is drilled.