

CITY OF FLAGSTAFF  
LICENSE FOR ACCESS AND SEISMIC TESTING  
ON RED GAP RANCH

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This License Agreement ("License") is entered into this 23 day of January, 2019 by and between the City of Flagstaff, a municipal property corporation ("City") and Desert Energy Corp., a Nevada for-profit corporation doing business as Desert Mountain Energy Corp. ("Licensee").

**RECITALS**

- A. City owns tracts of vacant land located east of the City of Flagstaff, and known as Red Gap Ranch. The lands were acquired for their water rights and are subject to grazing leases. The City lands are interspersed with State Land Department parcels ("state lands") in a checkerboard pattern.
- B. Desert Mountain Energy Corp. has obtained approximately 19 non-competitive oil and gas leases of state lands from the State Land Department to conduct seismic testing, drilling, and production of helium gas on state lands.
- C. City desires to grant Desert Mountain Energy Corp. a license across City lands so that Desert Mountain Energy Corp. is able to access State lands and conduct seismic testing.

NOW, THEREFORE, in consideration for the conditions of this License, the parties agree as follows:

1. **Term.** The License will commence on January 23, 2019 and continue for a period of one (1) year, unless sooner revoked or terminated pursuant to this License. The License may be renewed upon written approval of the City Manager and Licensee.

2. **License for Ingress and Egress, and Seismic Testing.** City hereby grants Licensee a non-exclusive license for ingress and egress, including the right to drive small equipment, four-wheelers, vibroseis rubber track vehicle and small trucks (collectively "Equipment"), across City lands identified as:

Township and Range section numbers: T20N R12E Sections 3, 11, 13; and T20N R13E Sections 18, 19, 21, 22, 27, 29, and 33 also identified respectively as Coconino County Assessor Parcel Nos. 40607002C (690.24 acres), 40607002B (754.24 acres), 40608001K (2,479.74 acres), collectively ("City Lands")

but only within the existing roads ("Existing Roads") and within the transect lines ("New Paths") identified in the documents attached hereto as Exhibit A. The New Paths and the crossings at state/city owned corners are fifteen feet (15') wide. The crossings at the corners run at 45' degree angle and are often referred to as butterfly easements. Licensee shall use the same access routes in and out of City Lands where possible, so as to minimize disturbance to the land.

City hereby further grants Licensee a non-exclusive license to conduct seismic testing on City Lands using Equipment operated on the Existing Roads and New Paths. The seismic testing

activities involve operating the Equipment and identifying the geologic structures at a depth of approximately 3,850 to 1,400 feet below surface by means of vibration. No explosives will be used.

**3. Fees.** In consideration of the grant, Licensee shall pay City:

- a. A One-time administration fee of **\$1,500.00**;
- b. A License fee for the initial term (one year) is waived in exchange for a copy of the report compiling seismic testing information on City Lands. Licensee will provide City with an electronic copy of both the underlying data and the report at no expense.
- c. A Security Deposit of **\$5,000** which may be drawn upon by City in the event Licensee does not promptly complete restoration work under this License, to pay for City costs in doing such restoration work. This deposit will not accrue interest to Licensee but will be refunded to Licensee upon conclusion of the License if not otherwise applied to restoration work. If the Security Deposit is drawn down, Licensee shall restore it to the original amount.

**4. Adjustments to License Fee.** Fees and deposits may be adjusted upon renewal of the License.

**5. Reserved.**

**6. City Representative.** The City of Flagstaff Water Services Director will serve as the City's representative and will have authority to approve Licensee's activities on City Lands. Any City approval shall not have the effect of waiving Licensee's obligation to comply with this License and other applicable laws and regulations. Contact information: Brad Hill, (928) 213-2400.

**7. Request to Use Other Areas.** Licensee shall submit a request to the City Representative at least 10 days prior to commencing any proposed activities on City Lands other than in the Access Ways and Butterfly Easements, except in case of an emergency and in such event, notice will be provided to City as soon as practicable (within 48 hours).

**8. Responsibility for Employees, Contractors, and Subcontractors.** Licensee shall ensure that all its employees, contractors and subcontractors ("Agents") comply with the terms and conditions of this License, and Licensee will be responsible for any violation of the License by an Agent. Prior to commencing any activities on City Lands, Licensee shall:

- a. Provide a copy of this License to each of its Agents who will be engaged in the maintenance; and
- b. Require compliance with this License as a condition of Licensee's contract with any contractor who will be engaged in the maintenance, and require each such contractor to include compliance with this License as a condition of its subcontracts.

**9. Access Across Adjacent Properties.** Licensee must obtain separate approval from adjacent property owners as necessary to access City Lands.

**10. Approvals.** Licensee shall acquire any necessary permits or approvals from the federal government, City of Flagstaff, Coconino County, Arizona Parks Department, Arizona Department of Transportation, Arizona State Museum and State Historic Preservation Office and/or the County Highway Department prior to grading or disturbing any City Lands.

**11. Archaeological and Historic Preservation.** City is not aware of any archaeological resources along Existing Roads, and has not conducted an assessment of all City Lands. If Licensee detects or finds any archaeological resources or historical artifacts on City Lands, all work shall cease, and Licensee shall notify the City Representative with the location, observations, and photographs. City Representative shall notify the Arizona State Museum and all work must comply with the Arizona Antiquities Act.

**12. Flora and Native Plants.** Prior to driving on New Paths, Licensee shall submit a request to the City of the amount of flora, if any, proposed to be cut, removed, or destroyed by use of the Equipment and shall pay the City such sum of money as the City may determine to be the full value of the flora to be so cut, removed or destroyed.

If the removal of plants protected under the Arizona Native Plant Law is necessary to enjoy the privilege of this License, the Licensee hereunder must previously acquire the written permission of the Arizona State Land Department and the Arizona Department of Agriculture to remove those plants.

**13. Grazing.** City has grazing leases across City Lands: Lease Agreement dated February 20, 2007 with Manterola Sheep Company, Inc., an Arizona corporation ("Grazing Lease"), a copy of which has been provided to Licensee.

- a. Licensee or its Agents shall notify the grazing lessee(s) at least 10 days prior to entering City Lands.
- b. If Licensee activities on City Lands occur during periods of livestock grazing, Licensee will take the necessary measures to insure livestock protection and containment. This may require temporary fencing.
- c. Any damage to rangeland improvements by the Licensee or its Agents (i.e., fencing, gates, pipelines, earthen structures, etc.) will be replaced and/or reconstructed with new material to grazing lessee's satisfaction and at Licensee's expense.
- d. Licensee shall provide City with documentation of the grazing lessee's consent prior to making any alterations to existing improvements.
- e. Licensee shall not engage in any activity that will substantially interfere with or otherwise cause a breach of the Grazing Lease.

**14. Materials.** Licensee shall not remove or allow removal of any materials (including but not limited to dirt and rocks) from City lands without the prior written consent of the City.

**15. Public Use.** Licensee shall not exclude from use of U.S. Forest Service, State of Arizona, City of Flagstaff its lessees or licensees, or the general public the right of ingress and egress over

City lands. City may approve temporary fencing to protect work areas.

**16. Soil.** Licensee shall conduct all maintenance activities in a manner that will minimize disturbance to all land values including, but not limited to, vegetation, drainage channels, and streambanks. Work methods shall be designed to prevent degradation of soil conditions in areas where such degradation would result in detrimental erosion or subsidence. Licensee shall take such other soil and resource conservation and protection measures on the land under grant or permit as determined necessary by the City.

**17. Trees.** Licensee shall not cut nor allow to be cut or removed any timber or standing trees on City lands, without the prior written consent of the City.

**18. Restoration following Activities.** Within thirty (30) days of completion of any activities on City Lands, Licensee shall submit to City a statement of work completed and thereafter shall restore any land or improvements it has disturbed including, but not limited to, restoration of the surface, revegetation, and fencing as determined necessary by the City. Licensee shall reseed any disturbed surface area with native seed sourced from the Colorado Plateau. In the event Licensee does not promptly complete restoration work, City reserves the right to do such restoration work and Licensee shall pay for the City's costs. City will apply the Security Deposit towards City's costs and invoice Licensee for any remaining balance.

**19. Compliance with Laws.** Licensee shall adhere to all applicable laws, rules, regulations, ordinances and building codes related to use of the City Lands.

**20. Indemnification.** Licensee shall indemnify, defend and hold harmless the City, its council, boards and commissions, officers, employees from all losses, claims, suits, payments and judgments, demands, expenses, attorney's fees or actions of any kind resulting from personal injury to any person, including employees, subcontractors or agents, guests or invitees of Licensee or damages to any property arising or alleged to have arisen out of the negligent performance of the License, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. This indemnification provision shall survive termination or expiration of the License.

**21. Environmental Indemnification.** Licensee shall protect, defend, indemnify and hold harmless the City from and against all liabilities, costs, charges and expenses, including attorneys' fees and court costs arising out of or related to the presence of or existence of any substance regulated under any applicable federal, state or local environmental laws, regulations, ordinances or amendments thereto because of: (a) any substance that came to be located on the City Lands due to Licensee's use or occupancy of the lands by the Licensee before or after the issuance of the License; or (b) any release, threatened release or escape of any substance in, on, under or from said City Lands that is caused, in whole or in part, by any conduct, actions or negligence of the Licensee, regardless of when such substance came to be located on the City Lands.

For the purposes of this License, the term "regulated substances" shall include substances defined as "regulated substances", "hazardous waste", hazardous substances", "hazardous materials", "toxic substances" or "pesticides" in the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the relevant local and state environmental laws, and the regulations, rules and

ordinances adopted and publications promulgated pursuant to the local, state and federal laws. This indemnification shall include, without limitation, claims or damages arising out of any violations of applicable environmental laws, regulations, ordinances or subdivisions thereof, regardless of any real or alleged strict liability on the part of City. This environmental indemnity shall survive the expiration or termination of this License and/or any transfer of all or any portion of the City Lands and shall be governed by the laws of the State of Arizona.

In the event any such action or claim is brought or asserted against the City, the Licensee shall have the right, subject to the right of the City to make all final decisions with respect to City's liability for claims or damages, (i) to participate with City in the conduct of any further required cleanup, removal or remedial actions and/or negotiation and defense of any claim indemnifiable under this environmental indemnity provision, having reasonable regard to the continuing conduct of the operation/business located on the City Lands and (ii) to participate with the City in negotiating and finalizing any agreement or settlement with respect to any such claim or cleanup.

**22. Termination by Licensee.** Licensee may terminate this License upon at least thirty (30) days written notice to City for convenience. In such event Licensee shall provide City with a copy of any seismic testing on City Lands completed as of the termination date.

**23. Revocation by City.** City may revoke this License in the event of any of the following:

- a. Licensee has violated a term or condition of this License, City has provided written notice and reasonable opportunity to cure, and Licensee has failed to cure the same; or
- b. Licensee has engaged in activities that will have the effect of causing City to violate its Grazing Leases as determined in the discretion of City after consultation with the Lessee; or
- c. The City Manager shall have the right to revoke this License upon at least six (6) months' advance written notice to Licensee for convenience.

The City of Flagstaff shall be forever wholly absolved from any liability for damages which might result to the Licensee upon cancellation or revocation.

**24. Restoration upon Conclusion of License.** Within thirty (30) days after cancellation, revocation, expiration or termination of the License, Licensee shall, as far as is reasonably possible, restore and/or rehabilitate the land to its natural condition to the satisfaction of the City. Licensee shall reseed any disturbed surface area with native seed sourced from the Colorado Plateau. Licensee may, with written permission of City, allow abandonment of improvements in place. If improvements are not removed and/or restoration is not completed within thirty (30) days or other reasonable time allowed by City, City shall do such work and charge the actual costs of such work against the Security Deposit and invoice Licensee for any balance of the costs incurred.

**25. Reserved.**

**26. Fire Treatment Use.** City reserves the right to engage in or allow fire treatment (including but not limited to, cutting of timber, clearing, prescribed burns, and fire-fighting) in the City Lands and such Fire Treatment Use shall have priority rights over any use permitted pursuant to this License.

**27. Other Non-Fire Treatment Uses.** City reserves the right to execute licenses or grants within the City Lands for other non-fire treatment uses, so long as the same do not interfere with Licensee's proper use of the Access Ways and Butterfly Easements.

**28. Laws.** City reserves the right to amend this License to conform with current law, including any amendments or repeals of existing laws as may hereafter be made, and no provisions of this License shall create any vested right in conflict with the same.

**29. Governing Law.** This License shall be construed in accordance with laws of Arizona. The courts of Arizona shall have exclusive jurisdiction and Coconino County shall be the venue.

**30. Nondiscrimination.** The parties agree to be bound by applicable State and Federal rules governing Equal Employment Opportunity, Non-discrimination and Disabilities, including Executive Order No. 99-4.

**31. Conflict of Interest.** This contract is subject to cancellation pursuant to A.R.S. § 38-511.

**32. Assignment.** Licensee may assign this License with prior written consent of City, and upon assignee's assumption of all rights and obligations of the License.

**33. Notices.** All notices or other communications under this License shall be in writing and shall be deemed to be delivered on the date of delivery if delivered in person or on the date of receipt indicated on the return receipt if delivered by U.S. Mail, certified or registered, return receipt requested, postage prepaid and addressed as follows:

<b>If to Licensee:</b> Robert W. Rohlfing, Director Desert Mountain Energy Corp. 1153 56 <sup>th</sup> Street Delta, B.C. V4L 2P8 Canada	<b>With a copy to:</b> Arizona Statutory Agent per Arizona Corporation Commission records
<b>If to City:</b> City Flagstaff Water Services Director City of Flagstaff 211 W. Aspen Avenue Flagstaff, AZ 86001	<b>With a copy to:</b> City Real Estate Manager City of Flagstaff 211 W. Aspen Avenue Flagstaff, Arizona 86001

Or such other person designated by the party in writing.

In witness whereof, the parties have caused this License to be executed by their duly authorized representatives on the date(s) set forth below.

**CITY OF FLAGSTAFF**

*Darwin Salich*  
City Manager

**LICENSEE**

*Robert W. Pollock*  
Title:  
*Executive Vice President*

**ATTEST:**

*Stacy Saltzburg*  
City Clerk

**APPROVED AS TO FORM:**

*Angie Wendel for*  
City Attorney

**Attachments:**

Exhibit A – Documents showing Access Ways and New Paths