

**SURFACE DAMAGE AGREEMENT  
FOR  
GAS PIPELINE RIGHT-OF-WAY**

This Agreement, made and entered into this 26<sup>th</sup> day of JANUARY, 2008, by and between **Christine A. Carter, a single person and Kathryn A. Brown, a widow, of 831 Badger Creek Road, Sheridan, WY 82801**, hereinafter called "Owner" (whether one or more) and **Bitter Creek Pipelines, LLC**, of 1250 W. Century Avenue, Bismarck, North Dakota 58501, hereinafter called "Permittee."

WHEREAS, the parties wish to agree as to damages payable upon development of the lands of Owner by Permittee for the purposes of up to two gas pipelines, more particularly described in the Gas Pipeline Right-of-Way Easement across the below described lands, between the parties hereto, entered into contemporaneously with this Agreement. The right-of-way shall be along a route that will be staked by Permittee and subject to final approval by Owner prior to any construction. The general location of the proposed pipeline route is depicted on the attached **Exhibit A**. **Exhibit A** will be supplemented by Permittee filing an "as built" survey map depicting the final location of the pipelines as approved by Owner.

A right-of-way across:

Township 57 North, Range 81 West, 6<sup>th</sup> P.M.  
Section 8: S1/2NW1/4, N1/2SW1/4, SE1/4  
Section 9: S1/2SW1/4

more particularly described on the Right-of-Way Agreement between the parties hereto.

1. **Grant of Access.** Owner, for itself and its successors and assigns, hereby gives, grants, and conveys unto Permittee, its agents, employees, successors, and assigns, a private, nonexclusive right-to-enter upon and use the above described property of Owner for the purpose of surveying, clearing, and excavating, and for laying, constructing, operating, maintaining, inspecting, testing, repairing, protecting, removing, and, at Permittee's option, abandoning in place up to two pipelines, one being 12 inches in diameter and the other pipeline being 8 inches in diameter, and above and belowground valves, meters, markers, check stations, pigging equipment stations, and cathodic protection equipment, subject to the following terms and conditions.

2. **Notification Upon Entry.** Prior to commencement of initial construction, Permittee shall notify Owner 48 hours prior to entry upon Owner's lands or the pipeline right-of-way granted to Permittee. After completion of initial construction and in connection with continuing reclamation and/or maintenance operations, Permittee shall notify Owner prior to entry upon Owner's land or the pipeline right-of-way granted to Permittee; provided, however, in cases of emergency, Permittee will make reasonable attempts to notify Owner prior to entry but, in absence of notification, may make such entry as reasonably necessary to deal with the emergency.

3. A. **Payments.**

(i) Permittee shall pay Owner \$12.50 per rod for such right-of-way and \$12.50 per rod for surface damages totaling \$25.00 per lineal rod where a single pipeline is installed. Should Permittee re-enter the right-of-way to install a second pipeline Permittee shall pay Owner \$25.00 per lineal rod of additional pipeline installed. Should Permittee install up to two pipelines at the same time then Permittee shall pay Owner \$12.50 per rod for such right-of-way and \$25.00 per rod for surface damages totaling \$37.50 per lineal rod of easement. Payment shall be as follows:

a. 90.00% of the total estimated payment for the pipeline(s) will be paid to Owner prior to entry by Permittee to commence surface disturbing activities.

b. Permittee shall pay Owner the final payment for the right-of-way and surface damages promptly following the completion of each pipeline and the receipt of the final as-built survey(s). The final payment will be calculated at the rates as outlined above, less the 90% estimated payment(s) received by Owner prior to construction.

c. Permittee shall have two (2) years from the date of this Agreement within which to commence construction of the pipeline(s). In the event that Permittee does not commence actual construction activities on or before two (2) years after the date of this Agreement, this Agreement and the Gas Pipeline Right-of-Way Easement executed by the parties shall immediately terminate, the estimated payment previously made by Permittee shall become nonrefundable, and Permittee shall promptly record in the Sheridan County, Wyoming records a release and termination of the Gas Pipeline Right-of-Way Easement between the parties.

d. Notwithstanding anything contained herein to the contrary, any payments made to Owner are nonrefundable.

(ii) Within 30 days after installation of such surface facilities, Permittee shall pay Owner the sum of \$1,000.00 for each aboveground check station, aboveground valve, meter, cathodic protection site, or pigging equipment station located on the right-of-way. The wire leads placed approximately every one mile will not be considered a surface facility and no payments will be due.

(iii) In the event Permittee is required to drill, bore, or dig an excavation to lay the pipeline under a railroad track, road, highway, or river, Permittee agrees to pay Owner the sum of \$250.00 per drill site or bore site for

surface damages, such payment to entitle Permittee to use a space of 200 feet by 200 feet in connection with such drilling and/or boring operations. Additional temporary workspace, if any, shall be compensated as provided in subparagraph (iv) below.

(iv) During construction, Permittee shall be entitled to use additional work space outside the temporary right-of-way and the bore sites described in subparagraph (iii) above, including additional space reasonably necessary for boring under railroad tracks, roads, highways, or creeks; provided, however, that Permittee shall consult with Owner as to the location of such additional work space and Permittee shall pay Owner \$10.00 per square rod for use of and damage to the lands outside the temporary right-of-way. Payment for additional space, if any, shall be made within 30 days from the date of completion of such activity.

**B. Reentry Payment.** Following completion of initial construction and in order to compensate Owner for surface damage caused as a result of such activity, Permittee shall pay to Owner a "reentry payment" for each rod of pipeline removed, repaired, or replaced. The reentry payment shall be equal to \$12.50 per lineal rod of such removed, repaired, or replaced length of pipeline(s). Reentry payments shall not be due for ongoing inspections, testing, or other maintenance operations not requiring excavation to remove, repair, or replace the pipeline(s). Following completion of such removal, repair, or replacement, Permittee shall restore, reclaim, and reseed the surface and any roads used by Permittee as provided in this Agreement.

**C. Roads.** Permittee may access the right-of-way along county roads or along the right-of-way itself. Both during and after construction, Permittee may also access the right-of-way on Owner's existing private roads, which Owner and Permittee designate and agree upon. In the event, after construction and restoration, Permittee requires permanent access to the pipeline easement on Owner's private roads, a separate road agreement will be required.

**D. Damages to Livestock, Crops, and Improvements; Fires.** Damage to Owner's livestock caused by Permittee's operations, shall be paid for by Permittee at replacement cost. Damage to crops caused by Permittee's operations shall be paid for at current market value. Buildings, fences, and other improvements damaged or destroyed as a result of Permittee's operation shall be paid for at replacement cost. In the event of other damage to Owner's property caused by Permittee (including damages resulting from fire caused by Permittee, its personnel, agents, employees, or contractors), Permittee shall compensate Owner for actual loss incurred by the Owner. With respect to damages caused by fire, Owner's grazing losses may include costs for rental of replacement pasture, cost of moving livestock to the replacement pasture (whether by trailing or trucking), and costs to repair or replace (as applicable) all personal property or improvements destroyed or damaged by such fire. Payment for damages shall be reasonably negotiated by Permittee and Owner.

4. **Term of Easement.** Unless sooner terminated by intentional act of Permittee or by nonuse, the terms of this Easement shall be perpetual.

5. **Description of Right-of-Way.** The right-of-way shall be 100 feet in width during the period of construction for a single pipeline, and 200 feet in width where Permittee installs two pipelines in the same right-of-way at the same time. After construction has been completed for one or both pipelines, the right-of-way shall revert to 50 feet in width, being 25 feet on either side of the surveyed centerline of the right-of-way. Except as otherwise provided herein, Permittee shall bury the pipeline to a minimum depth of 48 inches between the top of the pipe and the present ground level.

6. **Duties of Restoration.**

A. **Contours.** Following construction or repair and, in any event, no later than six months following completion of such connection or repair activity (unless extended to a later date by agreement of the Owner), Permittee shall reasonably restore and level the surface of said land to as nearly as reasonably possible to the same contours as existed prior to any such operations so that there shall not be any permanent mounds, ridges, sinks, or trenches along said right-of-way. Topsoil shall be separated from fill and shall be returned to the top upon completion of reclamation. All rocks greater than four inches in diameter uncovered or exposed during Permittee's operations on any wheat, other grain or hay fields shall be buried or removed. Rocks uncovered or exposed on the right-of-way construction easement on rangeland shall be buried or removed to the extent that rocks on the construction easement are not in proportion to the rocks on the adjoining rangeland. If the earth covering a pipeline settles or sinks, Permittee will, upon the request of Owner, return to recontour such area. Permittee shall fully restore all private roads, drainage, and irrigation ditches and canals disturbed by Permittee's operations as near as reasonably possible to their condition prior to such operations and during construction shall provide Owner access across any such right-of-way where the same crosses private roads. All surface restoration shall be accomplished to the reasonable satisfaction of Owner.

B. **Roads.** During construction of the pipeline(s), Permittee shall maintain the existing roads on Owner's land used by Permittee for access to the right-of-way. After completion of construction activities, Permittee shall repair and restore all such existing roads as near as reasonably possible to their condition prior to construction. After initial construction, Permittee shall repair all damage to existing roads to the extent caused by Permittee in connection with inspection or testing of the pipeline(s). New roads or trails constructed or created by Permittee during construction shall be fully reclaimed, restored, and reseeded to as near as reasonably possible the same condition as existed prior to construction unless owner agrees otherwise. Except for emergencies no vehicle travel will be allowed on Owners lands during periods when the soil is too wet to adequately support such travel. If such use creates ruts in excess of three (3) inches deep, the soil shall be deemed too wet to adequately support vehicle travel.

C. **Fences.** Permittee shall fully restore and replace any and all

damage done to any fences of Owner cut or otherwise damaged by Permittee in exercising any of the rights granted hereby. Fences and gates shall not be left open unless construction is actively taking place and construction personnel are on site and within sight of the open fences or gates. All gates shall be closed and fences shall be temporarily repaired at night or during any period when construction is not taking place.

**D. Vegetation.** All reseeding shall be done with a certified seed mix reasonably designated by the Owner and during a planting season (spring or fall) selected by Owner; but in any event, initial reseeding shall be undertaken no later than one year following completion of a pipeline(s). Reseeding shall be done at the rate and in a manner to restore the vegetation as existed prior to disturbance by Permittee. No reseeding (except for borrow pits) will be required on any existing access road. It shall be the duty of the Permittee to ensure that a growing ground cover is established upon the disturbed soils, and Permittee shall reseed as necessary to accomplish that duty. It shall be the duty of the Permittee to inspect and control all noxious or undesirable weeds as may become established within areas used by the Permittee by mowing or herbicides approved by Owner. Permittee shall inspect the pipeline right-of-way at such times as Owner shall reasonably request in order to determine the growth of ground cover and/or noxious or undesirable weeds. Permittee recognizes that this shall be a continuing obligation and Permittee shall reseed ground cover and/or control noxious or undesirable weeds from time to time to the extent necessary to accomplish its obligations hereunder until the pipeline right-of-way is returned as nearly as reasonably possible to the same condition as existed prior to construction.

In the event Owner elects to reseed that portion of Owner's lands disturbed by pipeline construction activities, either on Owner's hay or grain fields or rangeland or both, Permittee agrees to pay Owner the sum of \$250.00 per acre for such reseeding plus the actual cost of the seed reasonably selected once reseeding has been accomplished. In the event Owner elects to reseed, Owner agrees that Permittee will have no further obligation to reseed that portion of the construction easement reseeded by Owner.

**7. Gas Pipeline Only.** The right-of-way granted by Owner to Permittee is for up to two (2) pipelines to transport natural gas, including coalbed methane. If the existing in place pipeline(s) are converted to crude oil, liquid petroleum, water, carbon dioxide, or any other substance (except for injection of such substances as are necessary to test the pipelines), Permittee shall notify Owner prior to conversion and compensate Owner \$6.25 per lineal rod of pipeline right-of-way converted, plus any reentry payments as incurred.

**8. No Storage of Equipment or Construction of Surface Facilities.** Permittee shall not allow any equipment to be stored on the Owner's property outside of the right-of-way; provided, however, Owner may grant to Permittee the right to use a specific location outside the right-of-way on Owner's property (such location to be specifically determined by Owner in its

sole and absolute discretion) for the storage of additional pipe for the pipeline(s), in which event Permittee shall pay to Owner compensation in an amount to be agreed upon by Owner and Permittee. No compressors or other surface facilities of any kind (except for aboveground check station, aboveground valve, meter, cathodic protection site, or pigging equipment station and aboveground markers) may be constructed on Owner's land without Owner's express permission and execution of a separate agreement for the construction of the same. Any markers on Owner's land will be placed directly within the fence lines. No markers will be placed in any cultivated field except directly within a fence line. In the event no fence lines are available for a line of sight marker, Permittee may place a line of site marker on rangeland.

9. **Additional Pipelines.** Construction of additional pipelines or gathering systems on Owner's land in addition to the two pipelines permitted herein shall be subject to Permittee obtaining additional easements or other rights permitting construction of such additional pipelines and/or gathering systems.

10. **Stray Livestock.** If as a result of construction, inspecting or testing of the pipelines, livestock owned by Owner's grazing Lessee escape from their pastures and mix with livestock owned by adjacent landowners or with livestock owned by grazing Lessee and held in separate pastures, Permittee shall pay the reasonable costs of gathering, sorting, and moving such livestock, including payment for riders calculated by the number of riders required to conduct such work times the number of hours such work is conducted, times \$100.00 per hour, not to exceed \$2,000.00 per incident, such payment to be made within 30 days of the date Permittee receives the payment request from Owner.

11. **No Repair or Maintenance of Equipment.** There shall be no repair or maintenance of construction equipment on Owner's land outside of the right-of-way unless Owner expressly agrees, in which case Owner shall designate a specific area outside of the right-of-way for repair or maintenance of equipment and Permittee shall pay to Owner compensation in an amount, and at the times, to be agreed upon by Owner and Permittee. Permittee shall completely clean up, restore, and reclaim any spills of fuels, grease, or other materials resulting from Permittee's repair or maintenance activities (whether such spills occur on or off the right-of-way).

12. **No Fencing of Right-of-Way.** Except on a temporary basis during construction as required in order to protect livestock from open trenches or ditches or as otherwise required herein, Permittee shall not fence the right-of-way granted herein.

13. **Owner's Use of Right-of-Way.** Owner may cross the right-of-way and construct such facilities as water lines, roads, fences, and other improvements which will not unreasonably interfere with Permittee's rights granted herein. Owner will notify Permittee prior to any digging or excavation in excess of two feet deep which might interfere with Permittee's pipeline(s) and Permittee shall, at its expense, provide personnel to locate the pipeline(s) and to supervise the construction to insure that Permittee's pipeline(s) are not damaged by Owner's excavation activities; provided, however, Owner shall not construct any buildings, structures, or reservoirs over or across the right-of-way and will not alter the contour or elevation of the land above the right-of-way.



14. **No Living Quarters.** Permittee shall not cause to be constructed or parked any living quarters or house trailers on any of Owner's property.

15. **No Weapons/Explosives/Dogs/Alcohol/Controlled Substances.** Permittee shall not permit or allow its agents, employees, successors, or assigns to carry any firearms, explosives, crossbows, or other weapons while on owner's lands. Permittee, its agents, employees, successors, or assigns are not permitted to hunt or camp on said premises or use the lands for any recreational purpose. No dogs will be permitted on Owner's land at any time. Permittee, its agents, employees, successors, or assigns are not permitted to consume, be under the influence of, or possess alcohol or controlled substances on said premises.

16. **Open Ditches and Trenches.** Permittee shall take all reasonable precautions to keep Owner's livestock from being injured by any open ditch or trench constructed by Permittee. No open ditches or trenches shall be left unsupervised or left open during any periods of time while construction is not actively taking place without being temporarily fenced if livestock are in the pasture where construction is taking place.

17. **Artifacts.** All artifacts, fossils, relics, or other items discovered on the deeded lands of Owner by Permittee during construction and operation of the pipelines are protected under federal laws and regulation, including the Archaeological Resources Protection Act, the Antiquities Act of 1906, the National Historic Preservation Act, and the Native American Graves Protection and Repatriation Act. These laws make it illegal to collect, remove, disturb, damage, destroy or dig for archaeological resources on federal lands without authorization. These resources are defined as any evidence of remains of past human life, anything made by people that are more than 50 years old. Such remains, sites and artifacts include, but are not limited to burials and human remains, habitation and activity areas, buildings, corrals, ruins, foundations, bottles, cans, coins, bullets, tools, jewelry, arrowheads, pottery and beads, and petroglyphs and pictographs.

18. **Nondisturbance.** Except as expressly provided for herein, Permittee and its employees and agents shall not disturb, use, or travel upon any of the land of Owner not covered by the construction right-of-way provided for herein. In the event that Permittee's construction, inspection, or testing activities result in use by Permittee of Owner's lands outside the pipeline right-of-way granted herein, Permittee shall pay to Owner for each such use or disturbance the sum of \$10.00 per square rod.

19. **No Warranty.** Owner makes no warranty of title or otherwise in entering into this Agreement, provided, however, if it is determined that Owner does not have the right to authorize Permittee to use the lands affected by this Agreement for the purposes set forth herein, then Permittee's sole remedy shall be to recover from Owner those payments made by Permittee for the rights which Owner did not have the right to grant to Permittee.

20. **Notices, Contact Person.** Notices by either party hereto shall be promptly given orally, if possible, and in writing immediately mailed to:

**OWNER:** Christine A. Carter  
Kathryn A. Brown  
831 Badger Creek Road  
Sheridan, WY 82801  
307-750-2474

**PERMITTEE:** Bitter Creek Pipelines, LLC.  
Nancy Senger  
1250 W. Century Avenue  
P.O. BOX 5601  
Bismarck, ND 58506-5601  
Phone: 710-530-1500

or such other addresses and numbers as the parties may designate from time to time.

**21. Enforcement Costs.** If either party is in default under this Agreement, in any action to enforce this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including a reasonable attorney's fee, incurred in enforcing this Agreement.

**22. Waiver and Indemnification..**

**A. Acknowledgment.** Permittee acknowledges that Owner is conducting ranching/farming activities upon the land.

**B. Release and Waiver.** Permittee releases, waives and discharges Owner and Owner's employees, officers, directors, agents, successors and assigns from any and all claims for damage to Permittee's personal property arising out of Permittee's operations on or use of Owner's property.

**C. Indemnification.** Permittee will indemnify, defend and hold Owner, and if applicable, Owner's officers, directors, employees, agents, successors and assigns, harmless from any and all claims, liabilities, demands, suits, losses, damages and costs (including, without limitation, any attorney fees) which may arise out of or be related to Permittee's activities on Owner's Lands (including, without limitation, any claims that Permittee's operations hereunder are either illegal, unauthorized, or constitute an improper interference with any parties' rights, or have damaged the lands or operations of adjacent landowners), and including any claims based on the alleged concurrent negligence of Owner or the activities of Owner's contractors, agents, or employees.

**D. Responsibility for Agents.** Permittee assumes responsibility for all those who accompany Permittee on the lands or who are upon the lands at the request of or for the benefit of Permittee.



23. **Insurance.** Permittee shall maintain in force at all times a commercial general liability insurance policy with coverage limits of at least \$1,000,000 per occurrence.

24. **Termination by Nonuse.** The grant of access shall automatically terminate and the right-of-way be deemed abandoned after 60 continuous months of nonuse of the pipeline(s) by Permittee or upon abandonment of the pipeline(s) by Permittee. Upon abandonment of the pipeline(s) by Permittee, whether by intentional act or by nonuse, Permittee shall promptly take all actions necessary or desirable to clean up, mitigate the effects of use, and render the pipelines and pipeline right-of-way environmentally safe and fit for abandonment in place. All such cleanup and mitigation shall be performed in compliance with all federal, state, and local laws and regulations. All surface facilities shall be removed and the surface location of such facilities reclaimed and restored upon abandonment of the pipeline(s). Upon termination, Permittee shall file a release of its rights under the Gas Pipeline Right-of-Way Easement in the records of Sheridan County, Wyoming.

25. **Nonexclusive Rights.** Permittee understands and agrees that the pipeline right-of-way and all rights granted hereunder are nonexclusive and that Owner shall have the right to use the lands burdened by the pipeline right-of-way, or to grant to others the right to use such land, in any manner which does not unreasonably interfere with the rights granted to Permittee hereunder; provided, however, Owner shall not construct any buildings or reservoirs over or across the right-of-way and will not alter the contour or elevation of the land above the right-of-way.

26. **Environmental Clause.** Permittee agrees to indemnify and hold Owner harmless from and against any environmental contamination caused by the construction, installation, operation, repair or removal of the pipeline facilities of Permittee.

27. **Improvements.** Upon final termination of Permittee's rights under this Agreement, Permittee shall return all roads and other rights-of-way or sites, as near as practical, to the condition which they were in prior to Permittee's use. All cattle guards and fences installed by Permittee shall be kept clean and in good repair.

28. **Recording.** This Agreement shall not be recorded without the written consent of both parties.

29. **Compliance with Law.** Permittee shall conduct operations and activities in accordance with existing local, state, and federal laws, rules and regulations.

30. **Construction of Agreement.** This Agreement shall be construed under the laws of the State of Wyoming.

31. **Binding Effect.** This Agreement is binding upon and inures to the benefit of the successors and assigns of the parties. The right-of-way grant, including the benefits and burdens, is appurtenant to and runs with the land. This right-of-way grant burdens the lands of Owner on which the right-of-way is located.

This instrument is executed as of the date first above written.

**OWNER**

  
\_\_\_\_\_  
Christine A. Carter

Tax ID Number: 521-90-0871


  
\_\_\_\_\_  
Kathryn A. Brown

Tax ID Number: 522-78-1141

**PERMITTEE:**

**BITTER CREEK PIPELINES, LLC**

By:

  
\_\_\_\_\_  
Paul Hopfauf  
Executive Vice President and Chief Operating  
Officer

Address: Bitter Creek Pipelines, LLC  
1250 W. Century Ave.  
Bismarck, ND 58503