

Agreement for Pipeline Easement

This agreement is entered into by the **Bentley Family Limited Partnership**, an Arizona Partnership, whose address is 9280 South Bryerly, Hereford, AZ 85615, hereinafter referred to as "Grantor," and **Bitter Creek Pipelines, L.L.C.**, whose address is 1250 West Century Avenue, Bismarck, ND 58501, hereinafter referred to as "Grantee."

1. **Grant of Easement.** Grantor, for itself and its successors and assigns, hereby gives, grants, and conveys to Grantee, its successors and assigns, a private, nonexclusive right-to-enter upon and use the following described property of Grantor for the purpose of constructing, maintaining, surveying, operating, repairing, altering, replacing, and removing one twelve (12) inch natural gas (including coalbed methane gas) pipeline and above and below ground valves, meters, markers, check stations, pigging stations and cathodic protection equipment, subject to the terms and conditions set out in this document:

Township 54 North, Range 81 West, Sheridan County, Wyoming

Section 13: NE $\frac{1}{4}$ SW $\frac{1}{4}$

Section 23: NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$

This easement shall be for the sole purpose of Grantee constructing, maintaining, surveying, operating, repairing, altering, replacing, and removing one twelve inch (12") pipeline. Grantee may place no above ground facilities on the easement area other than valves, cathodic protection equipment and markers without the prior written consent of Grantor and agreement upon the compensation to be paid for such above ground facilities.

This Agreement replaces the Gas Pipeline Right of Way Agreement dated May 21, 2001 and recorded January 22, 2003 in Book 430, Page 287, and the parties agree that said agreement is hereby terminated and of no further force and effect.

2. **Description of Easement.** The center line of the easement is shown on the map which is attached as Exhibit A. Within forty-five (45) days following completion of the initial construction of the pipeline, Grantee shall provide Grantor with a survey of the center line of the pipeline, and Exhibit A shall be supplemented with the as-built survey map, but in no event shall the location of the easement materially change from the location shown on attached Exhibit A without the written consent of Grantor. The easement shall be seventy five (75) feet in width, being thirty-seven and one half (37 $\frac{1}{2}$) feet on each side of the center line during initial construction of the pipeline. After initial construction of the pipeline, the easement shall revert to thirty-five (35) feet in width being 17.50 feet on either side of the surveyed centerline. Grantee shall bury the pipeline to a minimum depth of forty-two (42) inches between the top of the pipe and the restored and reclaimed ground level.

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

4. **Payments.**

a. **Initial Payment.**

- (1) Upon the execution of this agreement, Grantee shall pay Owner and additional \$25.00 per lineal rod for the initial installation of the pipeline in the easement area.
- (2) Within thirty (30) days after installation of such surface facilities, Grantee shall pay Grantor a one time payment of five hundred dollars (\$500.00) for each above ground valve, marker, or cathodic protection device located on the easement. The location of each such above ground valve, marker, or cathodic protection device must be mutually agreed upon by Grantor and Grantee prior to installation. The wire leads placed approximately every 1 mile will not be considered a surface facility and no payments will be due

- (3) If during initial construction of the pipeline, Grantee uses or damages Grantor's property outside the easement area, Grantee shall pay Grantor \$10.00 per square rod or part thereof for all such property used or damaged and pay Grantee the replacement value of all improvements damaged by such use.
- (4) In the event Grantee is required to drill, bore or dig an excavation to lay the pipeline under a railroad track, road, highway or river, Grantee agrees to pay Grantor the sum of \$250.00 per drill site.

- b. **Re-entry Payment.** Following completion of initial construction and in order to compensate Grantor for surface damage caused by re-entry, Grantee shall pay to Grantor a "re-entry payment" for each rod of pipeline removed, repaired, or replaced. The re-entry payment shall be \$25.00 per lineal rod of the pipeline removed, repaired, or replaced. Re-entry payments shall not be due for on-going inspections, testing or other maintenance operations not requiring excavation to remove, repair or replace the pipeline. Following completion of such removal, repair, or replacement, Grantee shall restore, reclaim, and reseed the surface and any roads used by Grantee as provided in this Agreement.
- c. **Roads.** Grantee may access the easement area along county roads or along the easement itself. Both during and after construction, Grantee may access the easement area on Grantor's existing private roads only upon written consent of Grantor. Before using such roads, Grantee shall pay Grantor the sum of ten dollars (\$10.00) per lineal rod for the road used by Grantor. In each year thereafter that Grantee uses the road to access the easement area, Grantee shall pay to Grantor five dollars (\$5.00) per lineal rod, which payment shall be made at the beginning of the one-year period of time for which the payment is due. If the easement area is not accessible by county road or an existing private road, Grantee may construct a new road across Grantor's land only upon written consent of Grantor. The location of any new road shall be mutually agreed upon by Grantee and Grantor, and Grantee shall compensate Grantor at the rate of ten dollars (\$10.00) per lineal rod for such road as an initial payment before constructing the road and ten dollars (\$10.00) per lineal rod in each year thereafter, which payment shall be made at the beginning of the one-year period of time for which the payment is due, that Grantee uses the road to access the easement area.
- d. **Damages Crops and Improvements; Fires.** Damage to crops and native grasses caused by Grantee's operation shall be paid for by Grantee at their market value. Buildings, fences, and other improvements damaged or destroyed as a result of Grantee's operation shall be paid for at replacement cost. In the event of other damage to Grantor's property caused by Grantee (including damages resulting from fire caused by Grantee, its personnel, agents, employees, or contractors), Grantee shall compensate Grantor for all actual loss incurred by the Grantor. With respect to damages caused by fire, Grantor's losses may include costs for rental of replacement pasture or the value thereof, 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.
- e. **Construction Season.** Grantee shall only conduct construction operations on the land during the period of May 15 to September 15 of any year unless otherwise agreed to in writing by Grantor. Grantee shall not operate a vehicle on Grantor's lands during conditions when the vehicle would cut a rut of 3 inches or deeper due to the moisture content of the soil.

5. ~~**Term of Easement.** Unless sooner terminated by intentional act of Grantee or by nonuse, the initial term of this easement (herein called "Initial Term") of this easement shall be perpetual.~~

6. **Duties of Restoration.**

- a. **Contours.** Following construction or repair and in any event no later than one (1) year following completion of such construction or repair activity (unless extended to a later date by agreement of the Grantor), Grantee shall fully restore and level the

surface of said land 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 the easement area. Operator shall conserve and preserve topsoil. Topsoil from any disturbed area shall be separated and shall be returned as topsoil as a part of the reclamation. Preserved topsoil will be marked or documented as such and protected from erosion while stockpiled. If, at the time of reclamation or restoration, insufficient topsoil is present due to loss, degradation, contamination, or in order to ensure an appropriate revegetation of the disturbed area, Operator will supply appropriate soil at Operator's cost. All rocks greater than three inches in diameter uncovered or exposed during Grantee's operations shall be buried or removed. If the earth covering the pipeline settles or sinks, Grantee will, upon the request of Grantor, return to compact, recontour and reseed such area. Grantee shall fully restore all private roads, drainage, irrigation ditches and canals, and reservoirs disturbed by Grantee's operations as near as reasonably possible to their condition prior to such operations and during construction shall provide Grantor access across any such right-of-way where the same crosses private roads. All surface restoration, including vegetation restoration shall be accomplished to the reasonable satisfaction of Grantor.

- b. **Roads.** During construction of the pipeline, Grantee shall maintain the existing roads on Grantor's land used by Grantee for access to the easement area. Within one month following completion of construction activities, Grantee shall repair and restore all such existing roads as near as reasonably possible to their condition prior to construction. After initial construction, Grantee shall repair all damage to roads used by Grantee to the extent caused by Grantee. New roads or trails constructed or created by Grantee for installation purposes shall be fully reclaimed, restored, and reseeded to as near as reasonably possible the same condition as existed prior to construction unless Grantor agrees otherwise.
- c. **Fences.** Grantee shall fully restore and replace any and all damage done to any fences of Grantor cut or otherwise damaged by Grantee 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 capable of managing livestock. All gates shall be closed and fences shall be temporarily repaired at night or during any period when construction is not taking place. Grantee shall not construct any gates or allow others to enter upon the lands of the Grantor, whether owned or leased or permitted, other than the agents or representatives of the Grantee (such representatives to include employees of Grantee's construction contractor). All fences constructed by Grantee hereunder shall be "lawful fences" as defined in W.S. § 11-28-102(a), or if reconstructed or repaired, shall be restored to nearly as possible the same condition as existed before Grantee's activities. All cattle guards and fences installed by Grantee shall be kept clean and in good repair during this Agreement.
- d. **Vegetation.** Grantee will reseed all disturbed areas with a seed mixture reasonably acceptable to Grantor. All reseeded will be done at appropriate times in the season in order to facilitate growth. It shall be the duty of the Grantee to inspect and control all noxious or undesirable weeds as may become established within areas disturbed by the Grantee. Grantee shall inspect the easement area at such times as Grantor shall reasonably request in order to determine the growth of noxious or undesirable weeds. Grantee recognizes that this shall be a continuing obligation and Grantee shall control noxious or undesirable weeds from time to time to the extent necessary. Grantor shall be responsible for providing any necessary ground cover until the vegetation is established and performing any subsequent reseeded efforts required to restore the land.
- e. **Erosion.** Grantee shall monitor and promptly deter or correct any erosion caused by Grantee's activities.

7. **Gas Pipeline Only.** The easement granted by Grantor to Grantee is for one pipeline for the transportation of natural gas, including coalbed methane. If an additional pipeline is installed in the easement, or if the existing pipeline is converted to crude oil, liquid petroleum, water, carbon dioxide, or any other substance (except for injection of such non-toxic and non-hazardous substances as are necessary to test the pipeline), this easement granted by Grantor to Grantee shall immediately terminate.

8. **No Storage of Equipment or Construction of Surface Facilities.** Grantee shall not allow any equipment to be stored on the Grantor's property outside of the easement; provided, however, Grantor may grant to Grantee the right to use a specific location outside the easement on Grantor's property (such location to be specifically determined by Grantor in its sole and absolute discretion) for the storage of additional pipe for the pipeline, in which event Grantee shall pay to Grantor compensation in an amount to be agreed upon by Grantor and Grantee. No compressors or other surface facilities of any kind (except for above ground valves, markers, or cathodic protection) may be constructed on Grantor's land without Grantor's express permission and execution of a separate agreement for the construction of the same. Following construction, all above ground valves, markers, or cathodic protection shall be fenced by Grantee if requested by Grantor.

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

10. **Livestock.** Grantee shall pay Grantor the market value of any livestock injured or killed as a result of Grantee's activities. Grantee shall be responsible for all costs associated with herding and recapturing livestock that may escape as a result of Grantor's use of the easement area. Any livestock herding, recapturing or sorting required as a result of Grantor's activities shall be compensated at the rate of \$100 per hour not to exceed \$2,000.00 per incident, such payment to be made within thirty (30) days after Grantor invoices Grantee for compensation. If pastures historically used for livestock are made substantially unusable or interfered with because of Grantee's activities such that Grantor's livestock cannot access adequate food or water, Grantee shall either adjust its operations so as to enable livestock to have access to adequate food or water within the pasture or to fairly and reasonably compensate Grantor to temporarily relocate Grantor's livestock to the nearest adequate pasture.

11. **No Repair or Maintenance of Equipment.** There shall be no repair or maintenance of construction equipment on Grantor's land outside of the easement area unless Grantor expressly agrees, in which case Grantor shall designate a specific area outside of the easement area for repair or maintenance of equipment and Grantee shall pay to Grantor compensation in an amount, and at the times, to be agreed upon by Grantor and Grantee. Grantee shall completely clean up and reclaim any spills of fuel, grease, or other materials resulting from Grantee's repair or maintenance activities (whether such spills occur on or off the easement area) and restore the property as required in paragraph 6.

12. **No Fencing of Easement Area.** Except on a temporary basis during construction as required in order to protect livestock from open trenches or ditches or as otherwise required herein, Grantee shall not fence the easement area.

13. **Grantor's Use of Easement Area.** Grantor expressly reserves the right to use and enjoy the land covered by this easement for any purposes whatsoever, except insofar as said use and enjoyment interferes with the rights granted to Grantee herein. Grantor may cross the easement area and construct such facilities as water lines, roads, fences, and other improvements which will not unreasonably interfere with Grantee's rights granted. Grantee shall at its expense provide personnel to locate the pipeline and to supervise the construction undertaken by Grantor to insure that Grantee's pipeline is not damaged by Grantor's activities; provided, however, Grantor shall not construct any buildings, structures, or reservoirs over or across the easement.

14. **No Living Quarters/Toilet facilities.** Grantee shall not cause to be constructed or parked, any living quarters or house trailers on any of Grantor's property. Grantee shall insure that portable toilet facilities are provided and serviced for all persons using the easement area or constructing, installing, repairing, replacing and maintaining the pipeline and shall require all contractors and their employees to use those facilities.

15. **No Public Benefit or Dedication Intended.** The easement is not intended and shall not be construed as conferring any benefit on the general public or to any party other than Grantor and Grantee and their respective successors and assigns. The parties do not hereby dedicate or offer for dedication to the public any real property or improvements whatsoever.

16. **Restrictions.** Grantee shall keep the easement area free of trash and debris. Grantee shall not permit or allow its agents, employees, successors, or assigns to carry any firearms, explosives, crossbows, or other weapons while on Grantor's lands. Grantee, its agents, employees, successors, or assigns are not permitted to hunt, fish or camp on said premises or use the lands for any recreational purpose. No dogs will be permitted on Grantor's land at any time. Grantee, 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. Grantee shall not permit the release or discharge of any petroleum products or toxic or hazardous chemicals or wastes on the Lands.

Grantee shall take reasonable steps to prevent fire and to promptly extinguish fire. Grantee may not construct open fires on the property. No trash or timber slash will be burned by Grantee on the lands. Grantee shall promptly and fully compensate Grantor for damage caused by fire arising out of Grantee's operations at the rate of \$40.00 per acre, plus time suppression charges incurred.

17. **Open Ditches and Trenches.** Grantee shall also take all reasonable precautions to keep wildlife and Grantor's livestock from being injured by any open ditch or trench constructed by Grantee. 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 and/or wildlife are in the pasture where construction is taking place.

18. **Artifacts.** All artifacts, fossils, relics, or other items discovered on the lands of Grantor by Grantee during construction and operation of the pipeline belong to Grantor. Upon discovery, such findings shall be reported to Grantor and shall be left in place or turned over to Grantor, as Grantor shall direct to the extent permitted by law. Teepee rings and other evidence of prehistoric life shall not be disturbed.

19. **Nondisturbance.** Grantee and its employees and agents shall not disturb, use, or travel upon any of the land of Grantor outside the easement area described herein.

20. **No Warranty.** Grantor makes no warranty of title or otherwise in entering into this Agreement, provided, however, if it is determined that Grantor does not have the right to authorize Grantee to use the lands affected by this Agreement for the purposes set forth herein, then Grantee's sole remedy shall be to recover from Grantor those payments made by Grantee for the rights which Grantor did not have the right to grant to Grantee. In the event of default by Grantor, Grantee shall have the right to discharge or redeem for Grantor, in whole or in part, any mortgage tax or other lien on the above described lands and be subrogated to such lien and rights incident thereto.

21. **Notices/ Contact Person.** Notices shall be given to the addresses set out above or to such other addresses as the parties may designate from time to time. Any notice required or permitted hereunder shall be given by overnight courier delivery, certified mail (return receipt requested) or hand delivery.

22. **Remedies on Default.** In the event of any default or breach by Grantee, Grantor shall give Grantee written notice of the default. If the default is not cured by Grantee within thirty (30) days after the date of the notice, Grantor may at any time thereafter, with or without further notice of demand and without limiting Grantor in the exercise of any right or remedy which Grantor may have by reason of such default or breach:

- a. Terminate Grantee's right to possession of the premises by any lawful means, in which case this Agreement shall terminate and Grantee shall immediately surrender possession of the premises to Grantor. In such event, Grantor shall be entitled to recover from Grantee all damages incurred by Grantor by reason of Grantee's default.
- b. Pursue any other remedy now or hereafter available to Grantor under the laws or judicial decisions of the state of Wyoming.

23. **Enforcement Costs.** If Grantee defaults under this agreement, Grantee shall pay all costs and expenses, including a reasonable attorney's fee, incurred by Grantor in enforcing this agreement.

24. **Waiver and Indemnification.**

- a. **Acknowledgment.** Grantee acknowledges that Grantor is currently conducting ranching/farming and hunting activities upon the land and also acknowledges that other activities may also commence and occur during the term of this Agreement.
- b. **Release and Waiver.** To the maximum extent permitted by law, Grantee releases, waives and discharges Grantor and Grantor's employees and tenants from any and all claims for damage to Grantee's property arising out of Grantee's operations on or use of Grantor's property.

- c. **Indemnification.** Grantee shall indemnify, defend and hold Grantor and Grantor's employees, agents, tenants, successors, and assigns harmless from any and all claims, liabilities, demands, suits, losses, damages, and costs (including, but not limited to, any attorney's fees) which may be caused by Grantee's activities or exercise of its rights hereunder (including, but not limited to, any claims that Grantee's operations hereunder are either illegal, unauthorized, or improper and including but not limited to claims asserted by any person or state or federal agency for environmental damage resulting from Grantee's activities or its use of the pipeline or the pipeline easement).
- d. **Responsibility for Agents.** Grantee assumes responsibility for all those who accompany Grantee on the lands or who are upon the lands at the request or benefit of Grantee.

25. **Insurance.** Grantee shall maintain in force at all times a commercial general liability insurance policy, with coverage limits of at least \$1,000,000 per occurrence and provide evidence of the existence of such insurance to Grantor upon request.

26. **Term.** Unless sooner terminated by intentional act of Grantee or as otherwise provided in this agreement, the term of this easement shall be perpetual.

27. **Nonexclusive Rights.** The easement and all rights granted hereunder are nonexclusive and Grantor shall have the right to use the lands burdened by the easement or to grant to others the right to use such land, in any manner which does not unreasonably interfere with the rights granted to Grantee hereunder; provided, however, Grantor shall not construct any buildings, structures, or reservoirs over or across the easement.

28. **Environmental Clause.** Grantee agrees to indemnify and hold Grantor and Grantor's tenants and employees harmless from and against any environmental contamination caused by the construction, installation, operation, repairs or removal of the pipeline facilities of Grantee.

29. **Improvements.** Upon final termination of Grantee's rights under this Agreement, Grantee shall return all roads and other rights-of-way or sites, as near as practical, to the condition which they were in prior to Grantee's use.

30. **Recording.** This Agreement shall not be recorded without the written consent of both parties, however, either party may execute a memorandum of this easement reciting that this easement exists and containing a legal description of the easement, and that memorandum may be recorded by either party in the county in which the easement area is located.

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

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

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

34. **Grantor Responsibility.** Grantor assumes no responsibility to Grantee or its agents, employees, contractors or subcontractors for any type of injuries or damages arising out of the condition of Grantor's lands, including any latent or undisclosed defect, whether known or unknown, while such parties are working, crossing, inspecting, or at any other time while on Grantor's lands.

35. **Assignment.** Grantee shall have the right to assign this easement in whole or in part; provided, however, Grantee shall provide written notice of the assignment to Grantor within thirty (30) days after the effective date of such assignment. Such assignment shall not relieve Grantee of its obligation under the terms of this agreement.

36. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the easement. No representations or statements, verbal or written have been made modifying, adding to, or changing the terms of this agreement. This easement may be modified or amended only in writing signed by each of the parties or their successors and assigns.

Dated this 22 day of October, 2008.

Grantor:

Bentley Family Limited Partnership, an Arizona Limited Partnership

Barbara Bentley Pisaneschi
Barbara Bentley Pisaneschi, Partner

Grantee:

Bitter Creek Pipelines, L.L.C

[Signature]
By: _____
**EXECUTIVE VICE PRESIDENT
& CHIEF OPERATING OFFICER**
Title: _____

STATE OF Arizona)
) ss.
COUNTY OF Cochise)

The foregoing instrument was acknowledged before me this 22 day of October, 2008, by Barbara Bentley Pisaneschi, partner of Bentley Family Limited Partnership, an Arizona Limited Partnership.

Witness my hand and official seal.

My Commission Expires: 11/24/11

[Signature]
Notary Public

STATE OF North Dakota)
) ss.
COUNTY OF Burleigh)

⁹ The foregoing instrument was acknowledged before me this 13th day of January, 2008, by Paw Hopfauf, the Chief Vice President & COO of Bitter Creek Pipelines, L.L.C.

Witness my hand and official seal.

My Commission Expires: 8/21/2010

Nancy K. Senger
Notary Public

