

8304478

Recorded at the request of  
Kern River Gas Transmission Company

When Recorded Mail to:  
Kern River Gas Transmission Company  
3683 W. 2270 South, Suite C  
Salt Lake City, UT 84120  
Attn: Cynthia Lowery

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07/29/2002 02:06 PM 32.00  
Book - 8624 Pg - 8602-8613  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
KERN RIVER GAS TRANSMISSION CO  
3683 W 2270 S STE.C  
SLC UT 84120  
BY: ZJM, DEPUTY - WI 12 P.

Assessor Parcel No. 26-24-100-001-0000  
and 26-24-300-001-0000

### RIGHT-OF-WAY AND EASEMENT AGREEMENT

This Right-of-Way and Easement Agreement ("Easement") is entered into this 26 day of July, 2002, by and between OM ENTERPRISES COMPANY, a Utah corporation ("Grantor"), whose address is 5295 South 300 West, Suite 475, Murray, UT 84107, KENNECOTT UTAH COPPER CORPORATION, a Delaware corporation ("Kennecott") and KERN RIVER GAS TRANSMISSION COMPANY, a Texas General Partnership ("Grantee") whose address is 295 Chipeta Way, Salt Lake City, UT 84108.

### RECITALS

NOW, THEREFORE, for good and valuable consideration and the mutual promises and covenants herein contained, the parties agree as follows:

#### 1. Conveyance of Easement.

- 1.1 Grant of Easement. Grantor hereby grants and conveys to Grantee a non-exclusive easement for the purpose of constructing, operating, maintaining, inspecting, surveying, including environmental and cultural surveys, installing cathodic protection equipment, repairing, modifying, altering, protecting, changing the size of, removing, replacing, and accessing two natural gas pipelines and appurtenances, including but not limited to valves, metering equipment, electrical cable, cathodic equipment, underground conduit, cables, splicing boxes and roads, over, under and within that certain area within Grantor's Land as more particularly described in Exhibit "A", attached hereto and by this reference made a part of this Easement (the "Easement Property").

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1.2 Ingress and Egress. Grantee shall have a reasonable right of ingress and egress over and across Grantor's Land in such locations as may be reasonably necessary or convenient in exercising the rights herein conveyed. Grantor expressly reserves the right to identify, limit, or relocate from time to time, the location of Grantee's ingress and egress to allow for and accommodate the future development and use of Grantor's Land, provided, however, that such limitations or relocations do not materially and unreasonably interfere with the use, operation and maintenance of Grantee's pipelines and facilities or other rights herein conveyed.

## 2. Construction.

2.1 Right to Construct Pipeline. Grantee shall have the right to install one additional gas pipeline within the Easement Property within that location described in Exhibit "A", provided that the additional pipeline shall be buried and maintained not less than 60 inches measured from the top of the pipeline to the average level of the original ground on the two sides of the ditch in which said pipeline is laid or at such depth as may be required by any state, federal, or local authority having jurisdiction.

2.2 Temporary Construction. In addition to the land within the Easement, Grantee shall have a temporary construction easement (the "Temporary Construction Easement") as more particularly described in Exhibit "A" and additional temporary work-space (the "Additional Temporary Work Space") as more particularly described in Exhibit "A". The Temporary Construction Easement and the Additional Temporary Work Space shall expire upon Grantee's final testing of the pipeline and the restoration of the surface of Grantor's Land impacted by the construction as provided in Paragraph 2.6 hereof or one year following the execution of this Easement, whichever event occurs first.

2.3 Crossings. Grantee agrees that during construction of the pipeline, or any subsequent altering, removing, or replacing of said pipeline or pipelines, Grantee will leave or allow for reasonable road and other utility crossings over the Easement Property for Grantor, its lessees, licensees, and tenants in such locations as may be reasonably requested by Grantor.

2.4 Interference with Agricultural Use or Drainage. In the event Grantor's Lands are being used for the growing of crops which require irrigation at the time the pipeline is under construction, Grantee agrees to install and operate flumes across the easement at all times during such construction operations. Grantee further agrees not to dam, block, or obstruct in any manner any irrigation canals, drainage ditches or creeks located on Grantor's Land and also agrees to replace or repairs any levees or banks disturbed or damaged by Grantee's construction or operations.

2.5 Restoration. Prior to the construction of the pipeline and for any and all construction or maintenance work thereafter, Grantee shall segregate all of the topsoil material from other landfill material removed or disturbed in the construction area and

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shall, within 60 days from the date of completion of the work performed within the Easement, refill all excavations made by Grantee, grade and replace the topsoil, reseed the area impacted by construction with native grass seed or otherwise restore the land as near as reasonably possible to its pre-construction condition and to Grantor's satisfaction. Grantee's obligations hereunder shall include the replacement, at its sole cost and expense, the restoration of any roads, curb, gutter or sidewalks, pipelines, landscaping or any other Grantor improvements that are disturbed or damaged by Grantee.

2.6 Interference with Grantor's Uses of its Land. Grantee shall use reasonable commercial efforts to limit the disturbance to Grantor, its lessees, licensees, and tenants during the construction or maintenance of its pipelines and facilities to the extent reasonably possible and shall comply with all reasonable requests by Grantor to limit or alter its construction work and timing of such construction and maintenance work to minimize disturbance to Grantor's use of Grantor's land.

2.7 As-Built Drawings. Within one year following the completion of the construction of the pipeline, Grantee will complete and provide to Grantor at no cost an as-built survey of the pipeline and any other facilities within the Easement Property.

2.8 Signs. Grantee shall install and maintain signs or markers identifying the location of the pipelines and any other related appurtenances at the property boundaries, crossings, (where the pipelines enter and exit Grantor's Land), or any other locations where Grantor may reasonably designate or as may be required by the Utah Department of Transportation or other governmental entity.

2.9 Buildings. Grantor shall not build or construct nor permit to be built or constructed any buildings within the Easement Property without the written consent of Grantee, which consent shall not be unreasonably withheld.

2.10 Damages. Grantee shall pay damages to crops, landscaping, fences and other improvements of Grantor, its tenants and lessees, which may arise from Grantee's exercise of its rights herein.

3. Grantor's Reserved Rights. 3.1 Landscaping. Grantor expressly reserves the right to use and enjoy the surface and subsurface of the Easement Property for its own purposes and without Grantee's consent for landscaping, provided, however, that Grantor agrees not to: 1) plant any trees or deep-rooted shrubs within the Easement Property without Grantee's consent; and 2) any irrigation or sprinkling systems installed within the Easement Property shall be buried no greater than two (2) feet below the surface elevation of the Easement Property or one (1) foot above the pipelines whichever distance is greater. Grantor agrees to give Grantee notice at least 72 hours in advance of excavating within the Easement Property.

3.2 Improvements. Grantor expressly reserves the right to cross Grantee's pipelines with ditches, culverts, pipelines, and other drainage works, utilities, rail

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trackage, roadways, and related improvements, upon, over and across the Easement Property; provided, however, that Grantor shall comply with applicable safety standards common in the natural gas pipeline industry or required by applicable laws or regulations and such use does not unreasonably and materially conflict with or impair Grantee's rights hereunder. Grantor agrees to give Grantee 30 days notice before excavating below two feet from the surface elevation of the Easement Property if such excavation is for the purpose of installing any of the facilities described in this Paragraph 3.2. Such 30 days notice shall also include a copy of Grantor's construction drawings or plans. Grantee shall give Grantor notice of its objections, if any, with the proposed improvements prior to the expiration of such 30 days. Grantee's objections shall be made in writing and shall describe the nature of its concerns and a proposed resolution of the conflict.

3.1 Discharge. Grantor, its successors, licensees, and assigns expressly reserves the right to discharge, in accordance with the laws and regulations which apply to discharges, on Grantor's Land through the medium of air upon each and every portion of said lands, any and all gases, dust, dirt, fumes, and other substances and matter which may be released, given or thrown or blown off emitted or discharges in the occurs of or by or through the existence of operation of each or all the smelting plants, reduction works, mills, refineries, power plants, manufacturies, tailing deposits, and other works or factories which are now or which may hereafter at any time be established or operated by Grantor, its successors, lessees, licensees, or assigns.

3.2 Mineral Rights. In addition to all other rights and privileges which are reserved to Grantor herein, there is expressly reserved to Grantor all mineral, oil, and gas in, on and under the Easement Property.

4. Abandonment. In the event of abandonment by Grantee of the pipelines for a period of five (5) years and upon approval from the appropriate governmental entity, Grantee agrees to notify Grantor of the abandonment. Grantee shall have the right to remove or abandon its pipelines in place and agrees to execute and record a document of reconveyance and release whereupon this Easement and all rights and privileges herein granted shall be fully cancelled and terminated. Grantee shall be responsible for all reclamation of the Operations of the Facilities required by law.

5. Compliance with Law. Grantee shall observe and comply with all rules, regulations, and laws now in effect or which may hereafter be enacted during the continuance of this Easement by any governmental authority having jurisdiction over Grantee and its business as conducted upon Grantor's Land and the Easement Property.

6. Taxes. Grantee shall pay when due all taxes and assessments levied against its improvements built upon Grantor's Land and the Easement Property, all taxes

on personal property brought upon Grantor's Land and the Easement Property and any taxes that may become due because of the conveyance of this Easement. Grantee shall indemnify and hold Grantor harmless from any liability for the payment of such taxes. Grantor shall continue to pay all real property taxes and assessments levied against Grantor's Land and the Easement Property not caused by Grantee's improvements thereon and shall indemnify and hold Grantee harmless from any and all liability for the payment of any such taxes or assessments.

7. Indemnification. Grantee shall protect, defend, indemnify and hold harmless Grantor, its officers, directors, employees, subsidiaries, and affiliates (collectively "Indemnities") from and against any and all losses, claims, liens, demands, and causes of action of every kind and nature, including but not limited to the amount of any judgment, penalty, interest, court cost or legal fee incurred by the Indemnities or any of them in the defense of same, arising in favor of any party, including governmental agencies or bodies, on account of taxes, claims, liens debts, personal injuries, death, or damages to property, violations of Environmental Laws and Regulations, and all other claims or demands of every character arising directly or indirectly out of Grantee's use of the Easement and Easement Property, provided that all of the indemnification and save harmless provisions of this Easement exclude any pro rata liability attributable to Grantor's negligence or resulting from acts creating strict liability of Grantor or caused by Grantor's breach of this Easement. This Paragraph shall survive the termination of the Easement.

For purposes of this Easement, "Environmental Laws and Regulations" shall mean all present and future federal, state, and local laws and all rules and regulations promulgated hereunder, relating to pollution or protection of the environment.

8. Insurance. Grantee shall procure and maintain, or cause to be maintained by its contractors, during the construction period or during the performance of any maintenance: a) Statutory Workmen's Compensation Insurance for all of its employees while on Grantor's Land and the Easement Property; b) Employer's Liability Insurance; and c) Comprehensive Automobile Liability Insurance; all in the amount of at least \$5,000,000.00 each occurrence. In addition, the comprehensive automobile liability policy shall be endorsed to include Grantor as an additional insured thereunder as respects any liabilities arising out of the performance of any work on Grantor's Land and the Easement Property. Evidence of such policies shall be given to Grantor, upon request, prior to any construction activities.

9. Attorney's Fees and Costs. ~~If any suit or action arising out of or related to this Easement is brought by any party, the prevailing party shall be entitled to recover the costs and fees, including without limitation, reasonable attorneys' fees, the fees and costs of experts and consultants, copying, courier and telecommunication costs, and deposition costs and all other costs of discovery, incurred by such party in such suit or action, including, without limitation, any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action.~~ PP JFC

10. Integration. It is mutually understood and agreed that this Easement as written covers and includes all of the agreements and stipulations between the parties and that no representations or statements, verbal or written, have been made modifying, adding to or changing the terms hereof.

11. Succession. This Easement shall run with the land and shall be binding upon and shall inure to the benefit of the successors, assigns, heirs, executors, and administrators of the parties. Grantee shall not transfer its rights under this Easement to any person or entity without the prior written consent of Grantor.

12. Subject to Existing Rights. This Easement is made subject to any existing easements or rights-of-way or other interests or record and is made without any warranties or representations from Grantor, other than those expressly set forth herein.

13. Tap Connection.

13.1 Connection for Grantor. Grantee, upon request of Grantor after completion of Grantee's pipeline, irrevocably commits to provide Grantor with a tap and meter to be installed and located on Grantee's pipeline at locations to be mutually agreed upon by Grantee and Grantor for the delivery of gas to or for the account of Grantor. Grantee's installation and operation of the tap and meter shall be subject to Grantee's satisfactory receipt of all necessary regulatory authorization, which Grantor shall diligently pursue at the request of Grantor. Grantor hereby reserves the right to intervene in any such proceeding. Grantee further agrees to inform Grantor of the progress of any proceeding on such application and to give Grantor prior written notice of its intention to take any significant action in connection there with. In the event the regulations in effect at the time of Grantor's request allow automatic authorization of such tap and meter facilities sufficient to serve Grantor's gas needs, Grantee agrees to act pursuant to the automatic authorization regulations. Grantee's transportation service, if any, to Grantor shall be subject to Grantee's terms of service on file with the Federal Energy Regulatory Commission ("FERC"), including, without limitation, Grantor's participation in any procedures prescribed thereby for the nondiscriminatory allocation of capacity on the pipeline. For such purposes, this Easement shall not establish Grantor's priority of service date but Grantee agrees to provide Grantor notice and documents as are necessary to request a contract for interruptible transportation service equal to that afforded other customers seeking interruptible service in accordance with Grantee's FERC tariff. Grantor shall upon demand fully and promptly pay Grantee for all of Grantee's costs and expenses of installing such tap and meter, and for any necessary regulatory or court filing fees, and for reasonable outside attorneys' fees; and shall also fully and promptly reimburse Grantee for all of Grantee's necessary costs and expenses, for any necessary regulatory or court filing fees, associated with any challenge or protest related to Grantee's authority to provide, or Grantor's right to use, such tap and meter for the delivery of gas.

13.2 Third Party Rights. Grantor may, at its option, also request that Grantee install and operate an additional tap and meter for the use of third party, or if feasible,

permit a third party to use the tap and meter installed for Grantor; provided however, that any such installation, operation and/or service for such third party shall be subject to, and contingent upon such third party's satisfaction of, the same terms and conditions as are set forth in the preceding paragraph for the provision of a tap and meter for Grantor and the rendering of transportation service to Grantor. Upon timely and adequate notice from Grantor and such third party, Grantee shall pursue any necessary regulatory authorizations to provide such tap, meter and/or service to such third party separately or, at the option of Grantor, on a concurrent basis, with its pursuit of regulatory authorization for service to Grantor. This third-party service option may be exercised only once by Grantor and shall automatically expire if not exercised by Grantor within 365 days after the commencement of service to Grantor.

14. Authorization. Each individual executing this Easement does thereby represent and warrant to each other so signing (and to each other entity for which another person may be signing) that he or she had been duly authorized to sign this Easement in the capacity and for the entities set forth where he or she signs.

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Right-of-Way and Easement Agreement on the date and year first above written.

**OM ENTERPRISES COMPANY,  
a Utah Corporation**

By: 

Title: VP Reservoir Development

**GRANTOR**

**KERN RIVER GAS TRANSMISSION  
COMPANY**

By: 

Attorney-in-Fact

**GRANTEE**

ALL PURPOSE ACKNOWLEDGMENT

STATE OF UTAH )

COUNTY OF SALT LAKE )

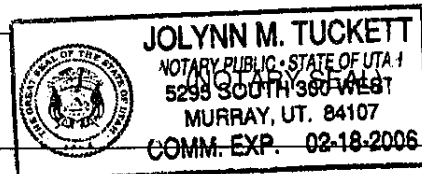
On July 26, 2002, before me, \_\_\_\_\_

Jonathan F. Callender personally appeared \_\_\_\_\_

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



ALL PURPOSE ACKNOWLEDGMENT

STATE OF UTAH )

COUNTY OF SALT LAKE )

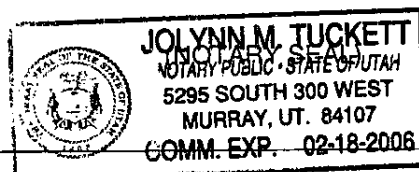
On July 26, 2002, before me, \_\_\_\_\_

PAULA RUETER personally appeared \_\_\_\_\_

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_





**ALL PURPOSE ACKNOWLEDGMENT**

STATE OF UTAH )

COUNTY OF SALT LAKE )

On July \_\_\_\_\_, 2002, before me, \_\_\_\_\_ personally appeared \_\_\_\_\_,

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(NOTARY SEAL)



OM ENTERPRISES COMPANY  
SALT LAKE COUNTY, UTAH  
L.L. No. K-UT-SL-244.01-244.02W  
SHEET 1 OF 2

**A TWENTY FIVE (25) FOOT WIDE PERMANENT EASEMENT**

Being a twenty five (25) foot wide permanent easement lying twenty five (25) feet Southwesterly of the following described Survey line, also following an existing Kern River 36" pipeline.

Said twenty five (25) foot wide permanent easement extending over, through and across a portion of a certain tract conveyed to OM Enterprises Company, and being located in the West Half of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian, Salt Lake County, Utah. Said tract being more particularly described in Deed Book 8536, Page 682 of the Deed Records of Salt Lake County, Utah, said Survey line being more particularly described as follows:

Beginning at a point on the West line of Section 24, from which an Standard Salt Lake County Brass Cap marked "1961" found marking the Northwest corner of said Section 24 bears North 00°19'30" East, a distance of 1462.98 feet;

THENCE South 37°04'05" East, a distance of 4408.57 feet to a point of terminus on the East line of said tract, from which an Standard Salt Lake County Brass Cap marked "1961" found marking the South Quarter corner of said Section 24 bears South 00°28'07" West, a distance of 317.60 feet, and contains 2.53 acres of land.

**TEMPORARY CONSTRUCTION EASEMENT**

Being a twenty five (25) foot wide strip of land, adjoined to and parallel with the Southwesterly line of the herein described permanent easement and a twenty five (25) foot wide strip of land, adjoined to and parallel with the Survey line of the herein described permanent easement, extending and shortening the side lines of the temporary construction easement at the beginning to intersect with the West line of said Section 24 and at the termination to intersect with the East line of said tract, and containing a total of 5.06 acres of land.

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OM ENTERPRISES COMPANY (Continued)  
SALT LAKE COUNTY, UTAH  
L.L. No. K-UT-SL-244.01-244.02W  
SHEET 2 OF 2

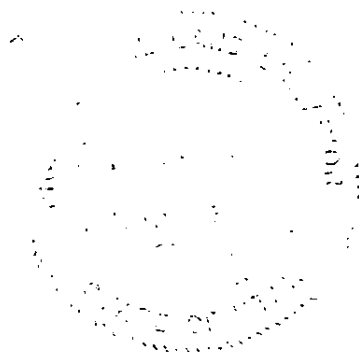
**ADDITIONAL TEMPORARY WORK SPACE**

Being a twenty five (25) foot wide strip of land, adjoined to and parallel with the Southwesterly line of the herein described temporary construction easement, beginning at a point 1676.99 feet Southeasterly from the intersection of the West line of said Section 24 and the Southwesterly line of the herein described temporary construction easement, and extending 248.00 feet in a Southeasterly direction, and contains 0.14 acres of land.

Job #4701.700  
Reference Drawing K-UT-SL-244.01-244.02W  
Basis of Bearing South line of Section 24 being S 89°39'22" E

Date: 2-27-02

  
Gary Henry Greer PLS #373234  
Professional Land Surveyor



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