



**NEW MEXICO GAS COMPANY
NATURAL GAS EASEMENT ENCROACHMENT AGREEMENT**

This Encroachment Agreement made this 5TH day of FEBRUARY 2021, by and

The Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA), a political subdivision of the State of New Mexico (his) between (hers) (theirs) (its) heirs, successors and assigns (hereinafter called "First Party"), and NEW MEXICO GAS COMPANY, INC., a Delaware Corporation (hereinafter called "NMGC"), and all collectively hereinafter called "Parties."

WITNESSETH:

WHEREAS, NMGC is the Grantee or successor in interest of a certain Easement defined as follows:

a strip of land fifty (50) feet in width, as the same is designated by that right-of-way and easement filed for record in the Office of the Clerk of Sandoval County, New Mexico, on September 16, 1930, in Misc. Book 3, folio 192 (hereinafter referred to as "Easement"); said Easement being a portion of the UTILITY EASEMENT (SOUTHERN UNION), as the same is shown and designated on the Plat of UNIT ELEVEN RIO RANCHO ESTATES, lying and being situate within the Town of Alameda Grant, within projected section 14, Township 12 North, Range 02 East of the New Mexico Principal Meridian, Sandoval County, State of New Mexico, as filed for record in the office of the Clerk of Sandoval County, New Mexico on April 22, 1963 in Vol. RR1, folio 50; and

WHEREAS, First Party desires to encroach upon the Easement as more particularly specified hereinafter; and

WHEREAS, NMGC has agreed to said encroachment;

NOW, THEREFORE, for and in valuable consideration, the receipt of which is hereby acknowledged, NMGC does hereby grant First Party the right to encroach upon the Easement only to the extent of, and for the purposes specified as follows:

The maintenance of erosion control protective measures along the Easement, Idalia Road, and First Party's adjoining property (hereinafter referred to as "Encroachment");

Said Encroachment being generally shown on Exhibit "A" and Exhibit "B", attached hereto and made a part hereof.

NOTE: Under no circumstances shall NMGC's natural gas pipelines be suspended for lengths greater than twelve (12) feet. If this cannot be avoided, First Party shall support NMGC's pipelines within said Easement with a strap either to a backhoe or to a steel beam lying across the entire width of the trench.

Special Provisions:

I. PIPELINE SAFETY

A. In accordance with Federal and State laws, NMGC requires a minimum of 36 inches of vertical clearance between NMGC's natural gas transmission facilities and other underground facilities crossing perpendicular to its high-pressure natural gas transmission facilities. Furthermore, NMGC does not allow other facilities to parallel (linear installations) within its high-pressure natural gas transmission pipeline easements. In addition, Federal law requires any excavation that will expose a natural gas pipeline or occur within 18 inches from a high-pressure natural gas pipeline must be done by Operator Qualified personnel and any such excavation must be done by hand. Therefore, First Party shall observe these requirements at a minimum and shall comply with any further requirements NMGC deems necessary in order to mitigate unsafe conditions that may result from third-party damage of high-pressure natural gas facilities. Prior to the commencement of any excavation activities within a NMGC natural gas pipeline right of way, NMGC shall be notified by First Party at least ten working days prior so that the natural gas transmission facilities can be properly marked using Operator Qualified personnel and to ensure that an Operator Qualified monitor shall be on site during all excavations near the natural gas transmission pipelines.

II. RESEEDING/EROSION CONTROL

- A. ~~All disturbed areas, with the exception of the road surface and shoulder, shall be reseeded with a NMGC and appropriate governing agency approved seed mixture and to the specifications given prior to the placement of slash, chipping or rocks on the disturbed areas.~~
- B. ~~The seeding of disturbed areas shall commence upon completion of the construction work at First Party's risk. If revegetation is not successful after two years, the disturbed areas will be reseeded by First Party at the discretion of NMGC. This will be guided by the goal of having a ground cover on the disturbed areas that is at least 70 percent compared to the surrounding areas.~~
- C. ~~All seeding shall be performed in accordance with the following:~~
 - 1. ~~The disturbed areas shall be scarified, disced or ripped to provide a roughed surface before seeding.~~
 - 2. ~~No surface preparation shall be performed when the surface is wet or muddy or when the soil moisture content is such that the soil is not fully loosened by the discing operation.~~
 - 3. ~~The areas shall be drill seeded where flat ground conditions (< 3:1) allow and broadcast on steeper areas (> 3:1) when size, irregular shape or slope angle prevents the use of a seed drill.~~
 - 4. ~~Seeds may be pre-mixed by a seed dealer.~~

- ~~5. Each bag of seed shall be sealed and labeled by the seed dealer in accordance with federal seed laws and NM Department of Agriculture Labeling Laws.~~
- ~~6. All seed shall be certified weed free and analyzed for purity.~~
- ~~7. A Rangeland type seed drill shall be used to insure proper seed placement to promote establishment.~~
- ~~8. Direction of seeding shall be perpendicular to the slopes and on the contour whenever possible.~~
- ~~9. Following seeding, grass hay or fine gravel mulch shall be spread at the rate of 1.5 ton per acre.~~
- ~~10. All hay shall be certified noxious weed free.~~
- ~~11. The mulch shall have stems 10" in length or longer, enough to anchor into the soil, leaving 5" to 8" protrusions for erosion control.~~
- ~~12. The mulch shall not be applied when local winds exceed 15 miles per hour.~~
- ~~13. The mulch shall then be anchored with a straight harrow crimper specially designed to properly secure stems.~~
- ~~14. The mulch crimping operation shall be across the slope where practical and at an angle to the drilled rows.~~
- ~~15. Seeding activities shall be performed in accordance to all applicable rules and regulations of the area they are to be performed in.~~
- D. Erosion control devices such as rock, water bars, silt fence and gabion structures may be required to prevent damage to the Easement as determined by NMGC.
- E. The First Party plans to build improvements for erosion control within the above-identified Easement. The First Party shall provide all design and engineering specifications to NMGC for NMGC approval prior to commencing construction of any improvements. The First Party shall be responsible for any erosion within the Easement occurring in any way due to the improvements constructed by the First Party. The First Party agrees to indemnify and hold NMGC harmless from any damages in any way related to the improvements constructed by the First Party, including but not limited to any damages or issues caused by erosion (for example any lowering of NMGC's pipeline necessitated by erosion or other safety control measures deemed necessary by NMGC).
- III. FENCES
- A. No posts for fences crossing the Easement shall be installed directly over the pipeline. Fences installed parallel to the pipeline shall not be closer than ten feet (10') to the pipeline.
- IV. LANDSCAPING
- A. Trees shall not be planted or permitted to remain between, over or within eight feet (8') horizontally of any pipeline placed in the Easement and shall be horizontally separated from each other by at least forty feet (40').
- B. No large growing trees (i.e., trees which would reach a natural final height of over fifteen feet (15') tall) shall be allowed within the Easement.
- C. Landscaping utilizing small shrubs and plants, lawns, berms or hilling within a height of thirty-six inches (36") or less and grveled or rocked areas shall be permissible.
- V. PIPELINE COVER
- A. Any change in the amount of existing material (soil) on and over the Easement must be approved in advance.
- VI. STREETS AND ROADS
- A. The pipeline must be covered a minimum of five-and-a-half feet (5 1/2') in the center of the roadway and four feet (4') in the borrow ditch. The grade of cover shall be maintained across the full width of the Easement.
- B. Roads shall not run lengthwise within the Easement and must cross such that the angle measured between the proposed road and the Easement is not less than forty-five degrees (45°).
- ~~VII. PRIVATE DRIVEWAYS~~
- ~~A. Driveways to any one single family dwelling must have a minimum of three and a half (3 1/2') feet of cover over the pipeline.~~
- ~~B. Driveways shall meet all of Special Provision IV, STREETS AND ROADS.~~
- ~~C. Driveways to multiple dwellings will be considered on an individual basis.~~
- VIII. EQUIPMENT CROSSINGS
- A. Normal loads which do not exceed the applicable State Highway Department load bearing standards, may cross the pipeline where a minimum of five-and-a-half feet (5 1/2') of cover is provided. Heavy equipment such as construction equipment, logging equipment, etc., must cross pipeline only at approved crossing locations where the cover has been checked by NMGC and determined adequate to meet load bearing requirements.
- ~~IX. OPEN WATERWAYS~~
- ~~A. Open waterways smaller than three feet (3') wide at the bottom are defined as "ditches" and must have a minimum of three and a half feet (3 1/2') of cover from the top of the pipe to the bottom of the ditch or the ditch must be lined using an approved method and material.~~
- ~~B. Larger open waterways are defined as "canals" and will be considered on an individual basis.~~
- X. EXCAVATION
- A. Plans for excavation on the Easement must be approved prior to commencing any work. Excavating closer than eighteen inches (18") to the pipeline shall be done by hand until the pipeline is exposed and shall be done only under supervision of an authorized NMGC representative. Excavation equipment must be positioned so that from the point of operation the equipment will not reach within eighteen inches (18") of the pipeline.
- B. Any plowing or ripping of soil on the Easement, including agricultural, at depths greater than one foot (1') will be considered on an individual basis.
- ~~XI. BURIED LINE CROSSINGS~~
- ~~A. GENERAL REQUIREMENTS~~
- ~~1. An authorized NMGC representative must be on site during all excavation, backfill and clean up work performed on the Easement.~~
- ~~2. All buried lines crossing the Easement must cross such that the angle measured between the proposed buried line and the Easement is not less than 45 degrees (45°).~~
- ~~3. All buried lines should cross under the pipeline(s). If infeasible because of underground structures, heavy rock or extreme depth of NMGC pipeline(s), approval must be granted by the appropriate NMGC Engineer/Manager.~~
- ~~4. All buried lines crossing the pipeline shall maintain a minimum separation of thirty six inches (36") between the two lines, with the same grade depth carried across the entire Easement.~~
- ~~5. Any exceptions will be considered on an individual basis by the appropriate NMGC Engineer/Manager.~~
- ~~B. COMMUNICATION LINES (PHONE, TV, OTHER DATA LINES)~~
- ~~1. Shall be installed in accordance with guidelines of the National Electrical Safety Codes.~~
- ~~2. Shall meet provisions #1, #2, and #4 of Special Provision IX (A), BURIED LINE CROSSINGS, GENERAL REQUIREMENTS.~~
- ~~3. Shall be encased in a rigid nonmetallic conduit across the full width of the Easement.~~

~~C. ELECTRIC POWER LINES~~

- ~~1. Shall meet all of Special Provision IX (A), BURIED LINE CROSSINGS, GENERAL REQUIREMENTS.~~
- ~~2. Shall be installed in accordance with guidelines of the National Safety Code (public utility power and light companies) or the National Electric Code (private power and light companies).~~
- ~~3. Shall be encased in rigid nonmetallic conduit.~~
- ~~4. Shall have minimum ground cover as follows: Twenty-four inches (24") for 0 to 600 volts; Thirty inches (30") for 601 to 22,000 volts; Thirty-six inches (36") for 22,001 to 40,000 volts; and Forty-two inches (42") for 40,000 volts and above.~~
- ~~5. A vinyl direct buried warning tape shall be placed twelve inches (12") to eighteen inches (18") above the buried line and extend across the entire width of the Easement.~~
- ~~6. Should have signs placed at each edge of the Easement to mark the underground cable angle and path of crossing. If the underground cable crosses above the pipeline, the signs shall so indicate. These signs are to be furnished by the power company, or encroaching party.~~
- ~~7. If the power cable has an exposed concentric neutral, a test point from the ground wire shall be installed by the power company.~~

~~D. SEWER AND WATER LINES~~

- ~~1. Shall meet all of Special Provision IX (A), BURIED LINE CROSSING, GENERAL REQUIREMENTS.~~
- ~~2. Nonmetallic water lines are required. Any exceptions will be considered on an individual basis by the appropriate NMGC Engineer/Manager.~~
- ~~3. Sewer line crossings are limited to tight lines only. Distribution lines (perforated or non-enclosed lines) are not permitted.~~

~~E. SUBSURFACE (PLASTIC) DRAIN TILE~~

- ~~1. Shall meet #1, #2, and #4 of Special Provision IX (A), BURIED LINE CROSSINGS, GENERAL REQUIREMENTS.~~

~~F. METALLIC PIPE CROSSINGS~~

- ~~1. All metallic pipe crossings shall have two corrosion test leads installed on NMGC pipeline and two on the crossing pipe at the point of the intersection.~~
- ~~2. NMGC personnel must install the leads on NMGC pipeline and shall inspect the leads on the crossing pipe to verify proper installation.~~
- ~~3. Metallic pipe crossing shall have an electrical insulation coating for the full width of the Easement.~~

~~XII. ABOVEGROUND LINE CROSSINGS~~

- ~~A. Shall maintain a minimum of thirty feet (30') clearance across the Easement.~~
 - ~~B. Shall have no poles or appurtenances located on the Easement.~~
- ~~Aboveground crossings shall not be above or closer than twenty-five feet (25') horizontally to any gas escape vent (e.g. relief valve vent, station blowdown).~~

NOTE:

As a protective measure for buried lines crossing NMGC Easements, vinyl direct buried warning tape shall be placed above the crossing line when specified or as directed at the discretion of the District Engineer/Manager.

By granting the aforesaid right to encroach, NMGC does not waive or relinquish any rights or benefits that it may have, either expressed or implied, under or by reason of the Easement, including, but not limited to, the right to build, rebuild, construct, reconstruct, locate, relocate, change, remove, replace, modify, renew, operate and maintain its gas lines and other gas equipment, fixtures, appurtenances and structures that are now located, or may in the future be located, on, over, beneath, through and across the Easement. First Party, at its sole cost and expense, agrees to remove or relocate its encroachment upon the written request of NMGC within 90 days of such written request. First Party appoints NMGC its agent to accomplish said removal or relocation at First Party's expense if First Party fails to remove or relocate such encroachment within such time period.

In consideration of NMGC granting First Party the right to encroach upon the Easement, First Party hereby agrees to indemnify and hold harmless NMGC, its officers, employees or agents, from any and all claims whatsoever when such claims directly or indirectly arise out of the existence, construction, maintenance, operation, repair, condition, use or presence of the encroachment upon the Easement, or are caused by, or arise out of, the acts or omissions of First Party, its officers, employees or agents; **provided**, however, that notwithstanding anything to the contrary in this paragraph, First Party shall not be required to indemnify NMGC, its employees or agents against those claims for personal injuries or damages to property caused by or resulting from, in whole or in part, the negligence, act or omission of NMGC, its officers, employees or agents. Furthermore, NMGC shall not be responsible for any damage caused to facilities, equipment, structures or other property of First Party if damaged by reason of NMGC's use of the Easement.

First Party shall comply with all applicable laws, ordinances, rules and regulations enacted or promulgated by any federal, state or local governmental body having jurisdiction over First Party's encroachment.

The provisions hereof shall inure to the benefit of and bind the heirs, executors, administrators, personal representatives, mortgages, lessees, tenants, successors and assigns of the Parties hereto; **provided**, however, that no such heir, executor, administrator, personal representative, mortgagee, lessee, tenant, successor or assign of First Party shall have the right to use, alter or modify the encroachment in a manner which will increase the burden of the encroachment on the Easement.

IN WITNESS WHEREOF, the Parties have executed this Encroachment Agreement on the day and year first written above.

SSCAFCA

NEW MEXICO GAS COMPANY

By: *Charles Thomas*
Title: *EXECUTIVE ENGINEER*

By: *Brandon Kauffman*, Supervisor of Right of Way Department

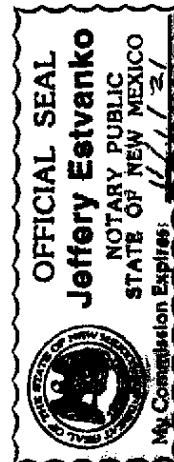
NMGC USE ONLY

STATE OF NEW MEXICO)
) SS
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on FEBRUARY 5, 2021
By Brandon Kauffman, Supervisor of Right of Way Department of the New Mexico Gas Company, Inc., a Delaware corporation, on behalf of said corporation.

My commission expires:
(Seal) NOVEMBER 1, 2021

Jeffery Estvanko
Notary Public



ACKNOWLEDGEMENT

STATE OF New Mexico)
) SS
COUNTY OF Sandoval)

This instrument was acknowledged before me on January 5th, 2021
By *Charles Thomas, Executive Engineer, SSCAFCA*
Amanda Wolf
Notary Public

My commission expires: 02/2/2022

ACKNOWLEDGEMENT FOR CORPORATIONS

STATE OF _____)
) SS
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20____.

By _____ (Name of Officer) _____ (Title of Officer)

of _____ (Corporation Acknowledgement)

a _____ corporation, on behalf of said corporation.
(State of Incorporation)

My commission expires:
(Seal) _____ Notary Public

NMGC REFERENCE NUMBER 876-010-

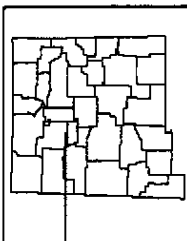
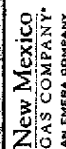
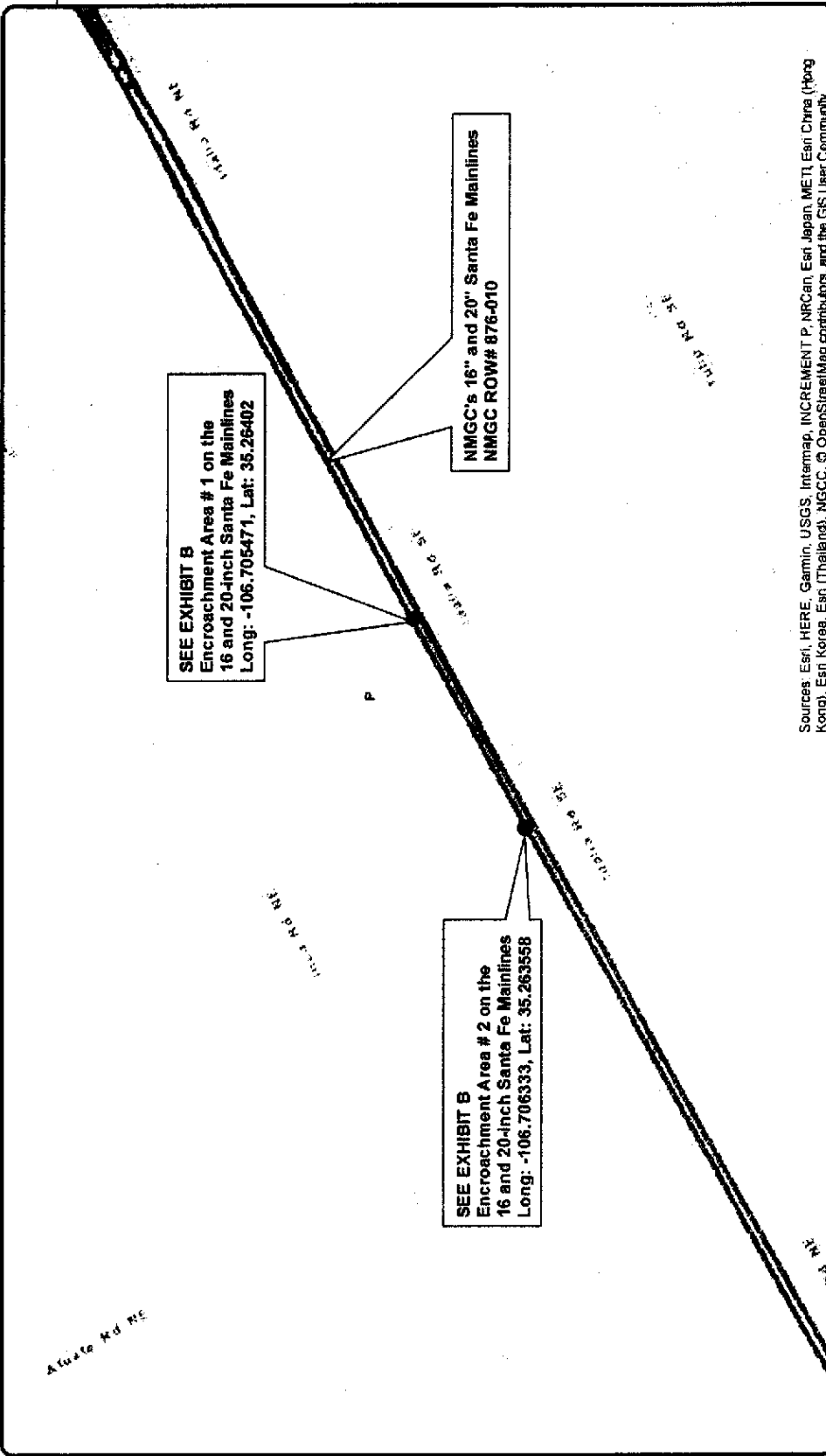


Exhibit "A"
SSCAPCA's Encroachment of
NMGC's 16" and 20" Santa Fe Mainlines NMGC ROW# 876-010
Section 14, Township 12 North, Range 1 East, T.12N.R.1E
Rio Rancho, Sandoval County



New Mexico
GAS COMPANY
 AN EMERA COMPANY



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community

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FOR INFORMATION ONLY.
DO NOT USE FOR LINE LOCATING.
 Location of NMGC facilities are not survey accurate.
 Instead, NMGC facilities are generally shown.

Exhibit B

