

TC097SVR

TYPE OF RECORD: ACTIVE NON PERMANENT

CATEGORY OF RECORD: CONTRACT (PERMIT)

NAME OF AGENCY OR CONTRACTOR: TRANSCOLORADO GAS TRANSMISSION  
COMPANY

STREET ADDRESS/PARCEL NAME/SUBDIVISION: PERMIT TO REENTER  
SOMERVILLE RANCH TO PREPARE PLAN OF DEVELOPMENT

CITY DEPARTMENT: ADMINISTRATION

YEAR: 1997

EXPIRATION DATE: 08/29/97

DESTRUCTION DATE: 01/04

## PERMIT

THIS PERMIT is issued the 30<sup>th</sup> day of July, 1997, by the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as the "City", to TransColorado Gas Transmission Company, a general partnership organized and existing under the laws of the state of Colorado, hereinafter referred to as "TransColorado."

### RECITALS:

A. The City owns certain real property, made up of various distinct parcels and lots, commonly known as the Somerville Ranch in an area east of Whitewater and on the Grand Mesa in the County of Mesa, State of Colorado, hereinafter referred to as the "City Property." The City Property is the domestic supply watershed for municipal drinking water for the Town of Palisade. The City Property is the source of surface and ground water that is in the process of being developed, through long-range planning, capital construction, and water court adjudications, to be an integral part of the future municipal drinking water for the City of Grand Junction. The City Property is located within, and considered to be the most significant tract of land inside, the Grand Mesa Slopes Special Management Area. Because of its significance, the Colorado Riverfront Foundation has previously obtained an Option to Purchase Conservation Easements, encumbering the City's title to the City Property. The City makes no representations concerning whether the granting of this permit is sufficient, given that the Option exists, to allow TransColorado to obtain an easement or right of way or whether the consent of the Foundation is also required. The City has previously leased certain rights to the City Property to Cliff and Judy Davis. TransColorado acknowledges the existence of such prior rights.

B. TransColorado represents that it has, or is in the process of obtaining, all federal, state, county, local and other permits and approvals necessary to construct and operate the TransColorado pipeline project to transport natural gas from producing areas in western Colorado and the Rocky Mountain region to interconnections with interstate pipeline facilities located north of Bloomfield in San Juan County, New Mexico, hereinafter referred to as the "Proposed Project." TransColorado represents that it is aware of no impediments to construction and completion of the Proposed Project. TransColorado has informed the City Council that it will construct and operate the Proposed Project on, along, over, under, through and across portions of the City Property.

C. TransColorado has requested permission to reenter those portions of the City Property as described on **Exhibit "A"** attached hereto and incorporated herein by reference for the limited purpose of preparing a Plan of Development ("POD") and completing detailed engineering design. The elements of the POD and detailed design are preparation of a land survey of the proposed route, geological/geotechnical studies and surveys, threatened and endangered species studies and surveys, archeological and cultural resource evaluations, watershed studies and surveys, and investigating and collecting soil samples.

NOW, THEREFORE, in consideration of the recitals above and the mutual promises, terms, conditions and additional consideration herein stated, the City issues this permit under the terms set forth:

1. The City hereby grants to TransColorado a non-exclusive temporary privilege to enter upon and across those portions of the City Property described on **Exhibit "A"** for the term specified in Paragraph 2, subject to the terms hereof, and for the purposes herein set forth.
2. The term of the privilege herein granted shall commence on the date of execution hereof by the City, and, unless earlier terminated or revoked, shall expire at 11:59pm on August 29, 1997.
3. This Permit is issued solely so that TransColorado may, under the direct supervision of a City designee, enter City Property for the limited purposes of conducting land surveys and performing engineering studies and surveys, threatened and endangered species studies and surveys, geological studies and surveys, watershed studies and surveys, and investigating and collecting water and soil samples. No excavating, drilling or other invasive activities shall occur pursuant to this Permit without the City designee's consent.
4. TransColorado shall pay to the City, for the privilege herein granted, the sum of \$35,000.00. Said amount shall be due and payable on the date of acceptance hereof by TransColorado.
5. The source of vehicular access to and from the City Property described on Exhibit "A" is Rapid Creek and Cottonwood Creek Roads, which roads cross real property owned by the Town of Palisade. TransColorado has or will soon obtain written permission from the Town of Palisade to use Rapid Creek and Cottonwood Creek Roads to access the City Property on July 22, 1997.
6. TransColorado's activities and use of the privilege herein granted is subject to the prior rights of the City's lessees, Clifford and Judy Davis, doing business as Broken Spoke Ranch (the "Lessees"). The Lessees have a leasehold interest to conduct ranching operations on the City Property and a leasehold interest to conduct hunting operations on the City Property. TransColorado shall coordinate its activities with the Lessees and to at all time keep the Lessees informed of its operations and activities. TransColorado shall enter into a written agreement with the lessees and shall deliver a copy thereof to the City, prior to entry onto City Property pursuant to this Permit.
7. (a) TransColorado's activities and operations, and all employees, agents and representatives of TransColorado, shall at all times be monitored, inspected and accompanied by City employee(s) or agent(s) ("City designee").
  - (b) To ensure the City designee(s) is present and available as aforesaid, TransColorado shall provide the City with 24 hour prior notice of: (a) its intent to enter the City Property; (b) the type of work to be performed, so that the City designee with the proper expertise may be available.
  - (c) In the event the City's designee fails to be available when required by said notice TransColorado may conduct its activities and operations without a City designee being present.
  - (d) Other than ATV's, chain saws or other motorized equipment/tools are prohibited, without the consent of the City designee. No cutting or destruction of any tree or other woody plant will be necessary except that, with the approval of an on-site City designee, trees within a three (3) foot wide line-of-sight swath may be cut if the caliper is less than three (3) inches measured two inches from the ground.

(e) The use of motorized vehicles is restricted as follows: No motorized vehicles or motorized equipment are allowed on the City Property during the term of this Permit, except on the roads shown in red on Exhibits A-1 and A-2.

(f) In order to ensure that activities under this permit do not inadvertently destroy "Lady-tresses" or disturb eagles, hawks, or other animals or plants identified in the Final EIS, as supplemented or amended, or the Record of Decision dated December, 1992, COC-51280, before surveying or other activities may occur, City selected environmental compliance specialists who are under the *direction and control* of the City may complete such investigations and Property inspection.

8. (a) In order to protect the City, TransColorado agrees to deposit, prior to actual entry onto City Property, the sum of \$100,000.00 with the City's Finance Director to be placed by him in a fund to be designated the "Performance Fund." The City may, upon the mailing of written notice to TransColorado, make expenditures from such fund to implement or enforce any term(s) hereof or to correct any damage caused by or resulting from the acts or omissions of TransColorado, its agents and employees. Upon the anniversary of the creation of the Performance Fund any remaining moneys which are not encumbered by the City to implement or enforce any term hereof or needed to correct any damage as provided for in this Permit, the City shall return the balance to TransColorado, plus any interest which has accrued on the moneys in the Performance Fund.

(b) The establishment of the Performance Fund, or the expenditures therefrom, shall not constitute a limitation on the liability or duty of TransColorado to pay for damages or costs associated with its activities, or failure to act, nor shall the Fund limit any remedy of the City or constitute satisfaction by TransColorado of any obligation or duty imposed by this Permit.

(c) The City shall invest the moneys in the Performance Fund in a manner similar to the City's investments of the City's other short-term moneys.

9. TransColorado agrees to:

a. Use reasonable care or any other higher standard of care as may be applicable to keep the City Property free from all litter, debris and human waste, and to not allow any such human waste to remain upon the surface of the ground or to enter into any water course or water way, including, but not limited to, streams, creeks, ponds, springs, ditches and reservoirs;

b. (i) Waive and forego any claim, cause of action or demand TransColorado may have against the City, its officers, employees and agents, for injury to or destruction of any property of TransColorado or any third party which may be lost, injured, damaged, destroyed or devalued as a result of the act, or failure to act, of TransColorado or any third party; and to indemnify the City, its officers, employees, designees, and agents, and to hold the City, its officers, employees, designees, and agents, harmless from any and all claims, damages, actions, personal injury (including death), costs and expenses of every kind in any manner arising out of or resulting from TransColorado's, or its agents employees' use of or presence upon the City Property:

(ii) The primary water supply source for the Town of Palisade ("Town") is located on City Property (commonly known as Kruzen Springs). If, during the period of activities by TransColorado on City Property pursuant to this Permit, the historic volume, quality, location or flow of Kruzen Springs changes to the detriment of the Town, TransColorado agrees to indemnify the City, its

employees, officers, designees and agents with respect to any claims by any person, including the Town, arising out of or relating to such detrimental change(s).

c. Pay for all costs for damage or harm to livestock which are caused by or result from the acts of TransColorado;

d. Pay for all costs for damage or harm to soils, vegetation or water courses (including water quality), which are caused by or result from the acts of TransColorado;

e. Return gates which are closed at the time of TransColorado's arrival to a closed position immediately after passing through said closed gates; and to leave open gates which are open at the time of TransColorado's arrival;

f. At all times cause its employees and agents to conduct themselves in a proper, reasonable and professional manner.

10. Any attempt by TransColorado to assign, transfer or convey any of the privileges granted by this Permit shall work as an immediate revocation or voiding of this Permit without further action by the City.

11. TransColorado agrees that the City shall not be or become responsible for the success or failure, profit or loss of profits, loss of opportunities, or any debts contracted by TransColorado, but rather, TransColorado shall save, indemnify and hold the City, its officers, employees, designees, and agents harmless against all liability and loss, and against all claims or actions based upon or arising from any claim, lien, damage or injury (including death), to persons or property caused by TransColorado or sustained in connection with TransColorado's performance under this Permit, the violation of any statute, ordinance, code or regulation, and the defense of any such claims or actions, including any and all attorney's fees and litigation costs.

12. In the event the City uses its City Attorney, or engages any other attorney, to enforce or construe the City's rights hereunder, TransColorado agrees to pay for the costs of such attorneys, plus all costs, including the fees and costs of any experts. The terms and conditions of this Permit shall be governed by, construed and enforced in accordance with the laws of the State of Colorado. Venue for any action arising out of or related to the Permit shall be, to the extent authorized by law, in the district court for Mesa County.

13. TransColorado's use and occupancy of the City Property is not exclusive. Without liability or cause having been stated, the City shall have the right to occupy and use the City Property for any purpose and to permit others to occupy and use the City Property for any purpose.

14. All fees and other payments to be paid by TransColorado to the City shall be delivered, either by mail or by personal delivery to:

City of Grand Junction Finance Department  
Accounts Receivable  
250 North 5th Street  
Grand Junction, Colorado 81501-2668

All fees and other payments deposited by TransColorado shall be clearly marked "Somerville Ranch Temporary Entry Permit".

15. Notices and communications required hereunder shall be in writing and shall be delivered to the parties hereto, either by facsimile transmission, personally by hand, courier service, United States mail or Express mail, or by first class mail, postage prepaid, as follows:

To the City: Mr. Tim Woodmansee, City Property Agent  
250 North 5th Street  
Grand Junction, CO 81501-2668  
Tel: (970) 244-1565  
Fax: (970) 244-1599

With copy to: Mr. Greg Trainor, City Utilities Manager  
250 North 5th Street  
Grand Junction, CO 81501-2668  
Tel: (970) 244-1564  
Fax: (970) 244-1599

With copy to: Mr. Dan Wilson, City Attorney  
250 North 5th Street  
Grand Junction, CO 81501-2668  
Tel: (970) 244-1505  
Fax: (970) 244-1456

To the Lessees: Clifford and Judy Davis  
4250 Whitewater Creek Road  
Whitewater, CO 81527  
Tel: (970) 241-3949  
Fax: (970)

To TransColorado: Mr. Thomas E. Boita  
KN Energy Field Services, Inc.  
825 21-1/2 Road  
Grand Junction, CO 81505  
Tel: (970) 255-7522  
Fax: (970) 255-7546

With copy to: Mr. Kim Blair, P.E.  
Questar Pipeline Company  
79 South State Street  
P.O. Box 11450  
Salt Lake City, UT 84147  
Tel: (801) 530-2517  
Fax: (801) 530-2684

All notices shall be deemed given: (a) if sent by mail, when deposited in the mail; (b) if delivered by hand or courier service, when delivered, or; (c) if transmitted by facsimile, when transmitted. The parties may, by notice as provided above, designate a different person or address to which notice shall be given.

16. This Permit and the privilege herein granted shall not be construed as any form of waiver, consent or authorization by the City that TransColorado will be allowed or authorized to construct and operate the Proposed Project on the City Property. The parties agree that, in the event TransColorado formally requests permission and authorization from the City to construct and operate the Proposed Project on the City Property, such request will be considered separately from this Permit.

17. This Permit embodies the complete agreement between the parties hereto and cannot be changed or modified except by a written instrument subsequently executed by both parties. This Permit and the terms and conditions hereof apply to and are binding upon the successors and assigns of both parties.

18. TransColorado, by its acceptance of this Permit as evidenced below, agrees to the terms, promises, obligations, duties, liabilities and burdens provided for herein.

19. This Permit is a legal instrument. Each party has sought the advice, or has had the opportunity to seek the advice, of such party's own legal and other professional counsel prior to the execution of this Permit.

20. This instrument is the result of negotiation between the parties; therefore, the rule, or variations thereof, which state that ambiguities will be construed against the drafter shall not apply.

Dated the day and year first above written



Stephanie Hyl  
City Clerk

For the City of Grand Junction,  
a Colorado home rule municipality

Mark K. Achen  
Mark K. Achen, City Manager

Attest:

For TransColorado Gas Transmission  
Company, a Colorado general partnership  
By KN Energy, Inc., partner

By: J. Wesley Haun  
Senior Vice President

**EXHIBIT "A"**

**Property Description**

Township 11 South, Range 97 West of the Sixth Principal Meridian

- Section 19: The South  $\frac{1}{2}$  of the SE $\frac{1}{4}$ , the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$ , and Lot 4;
- Section 20: The South  $\frac{1}{2}$  of the SW $\frac{1}{4}$ ;
- Section 25: The South  $\frac{1}{4}$ , EXCEPT the South  $\frac{1}{2}$  of the SE $\frac{1}{4}$  and  $\frac{1}{2}$  of the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  lying North and East of a diagonal line running from the Northeast corner to the Southeast corner of said SE $\frac{1}{4}$  SW $\frac{1}{4}$ ;
- Section 26: The SE $\frac{1}{4}$  of the SE $\frac{1}{4}$ , the West  $\frac{1}{2}$  of the SE $\frac{1}{4}$ , and SW $\frac{1}{4}$ ;
- Section 27: The West  $\frac{1}{2}$  and the SE $\frac{1}{4}$ ;
- Section 28: The South  $\frac{1}{2}$ ;
- Section 29: The North  $\frac{1}{2}$  of the NE $\frac{1}{4}$ , the SE $\frac{1}{4}$  of the SE $\frac{1}{4}$ , and the West  $\frac{1}{2}$ ;
- Section 30: The East  $\frac{3}{4}$ ;
- Section 31: The NE $\frac{1}{4}$  and the East  $\frac{1}{2}$  of the SE $\frac{1}{4}$ ;
- Section 32: The East  $\frac{1}{2}$  of the NE $\frac{1}{4}$ , the West  $\frac{1}{2}$  of the SE $\frac{1}{4}$ , and the West  $\frac{1}{2}$ ;
- Section 33: The North  $\frac{1}{2}$ , the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$ , and the SE $\frac{1}{4}$ ;
- Section 34: All;
- Section 35: All.

Township 12 South, Range 98 West of the Sixth Principal Meridian

- Section 14: Lots 2 and 3.

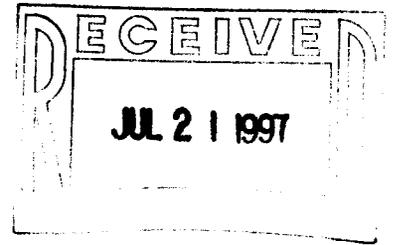
Township 2 South, Range 2 East of the Ute Principal Meridian

- Section 1: NW $\frac{1}{4}$ ;
- Section 2: NE $\frac{1}{4}$ SE $\frac{1}{4}$ ;
- Section 4: NW $\frac{1}{4}$ ;
- Section 8: SW $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$ ;
- Section 17: W $\frac{1}{2}$ NE $\frac{1}{4}$  and N $\frac{1}{2}$ NW $\frac{1}{4}$ .

All in the County of Mesa, State of Colorado

# TransColorado

Gas Transmission Company



July 18, 1997

Dan Wilson, Esq.  
City of Grand Junction  
250 North Fifth Street  
Grand Junction, CO 81501-2668

Re: Sommerville Ranch Survey Damage

Dear Dan:

The City Council of Grand Junction approved the settlement offer of \$20,000.00 at its regularly scheduled meeting on July 16, 1997. This offer is in full settlement of any and all liabilities and claims connected with the access by TransColorado in 1991 for survey activities on that certain real property commonly known as the Grand Mesa in the County of Mesa, State of Colorado. A check in the amount of \$20,000.00 is enclosed.

Please accept TransColorado's check (# 1385) in full settlement of this matter. Thank you for your assistance in bringing this matter to closure.

Very Truly Yours,

Robert H. Lovell  
Project Attorney

*original to Stephen  
copy letter to our file  
c letter + check to  
Kandy B.  
th*

Enclosure

Mailing Address:  
PO Box 281304  
Lakewood, CO 80228-8304

Phone: (303) 763-3673  
Fax: (303) 763-3102

Street Address:  
141 Union, Ste. 240  
Lakewood, CO 80228

A Joint Venture of Subsidiaries of K N Energy, Inc., Questar Pipeline Company