

**AGREEMENT  
PIPELINE RELOCATION & RIGHT-OF-WAY PROTECTION  
for  
LA PATA AVENUE GAP CLOSURE & CAMINO DEL RIO EXTENSION PROJECT**

This Pipeline Relocation & Right-of-Way Protection Agreement (“**Agreement**”) for the purposes of identification is hereby numbered **D15-004** and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between

**COUNTY OF ORANGE**, a Political Subdivision  
of the State of California, hereinafter referred to as  
“**County**”

AND

**SFPP, L.P.**, a Delaware Limited Partnership,  
hereinafter referred to as  
“**SFPP**”

which are sometimes individually referred to as “**Party**” or collectively as “**Parties**,” with reference to the following facts:

**RECITALS**

- A. WHEREAS, SFPP owns, operates and maintains 16-inch and 10-inch petroleum product pipelines and related appurtenances (“**Pipelines**”) located across La Pata Avenue within County right-of-way by way of a 1962 Franchise Agreement (Ordinance No. 1505) within the city of San Juan Capistrano, Orange County, CA (“**Subject Facilities**”);
- B. WHEREAS, County proposes the construction of La Pata Avenue Gap Closure and Camino Del Rio Extension (“**Project**”) which consists of three (3) separate and independent construction schedules. The Project construction schedules are as follows: 1) Schedule A which implements a gap closure by constructing four new lanes from the existing terminus at the intersection of Calle Saluda and Avenida La Pata to just south of Vista Montana; 2) Schedule B which will widen La Pata Avenue from three lanes to five lanes from approximately seven hundred fifty (750) feet south of Ortega Highway (SR-74) in the County of Orange to just south of Vista Montana; and 3) Schedule C which extends Camino Del Rio as a four-lane roadway from its existing terminus in the Forster Ranch Community of the City of San Clemente to the proposed La Pata Avenue roadway;
- C. WHEREAS, County has requested that SFPP relocate a portion of the Pipelines to facilitate construction of the Project, specifically all work related to Schedule B; and pursuant to the 1962 Franchise Agreement statutory authority found in Streets & Highways Code § 1460 et seq. and case law, believes that SFPP is fully responsible for the costs of relocating the Pipelines;
- D. WHEREAS, SFPP believes that all costs to relocate the Pipelines should be borne by the County because of the grant of easement entitled San Diego Pipeline Company right-of-way for the Pipelines from Crocker-Citizens National Bank and the Mission Viejo Company to San Diego

Pipeline Company (the predecessor-in-interest to SFPP), dated March 17, 1966, and recorded in the official records of Orange County on April 7, 1966 (Book 7894, Page 220);

- E. WHEREAS, In order to avoid the uncertainties and expenditures of time and resources attendant to administrative proceedings and litigation regarding the respective responsibilities of the Parties to bear the relocation and related costs, the Parties desire to resolve their differences through a negotiated settlement and relocation agreement whereby SFPP agrees to relocate a portion of the Pipelines to facilitate the Project, provided that County agrees to advance SFPP fifty percent (50%) of the Actual Cost (as defined in Section 2 of this Agreement) relating to all Pipeline Relocation Work; and
- F. WHEREAS, Pipeline relocation work is contingent on available County funds and issuance of Notice to Proceed (NTP) for Schedule B of the Project.

**AGREEMENT**

NOW, THEREFORE, in consideration of the terms and conditions contained herein, along with other good and valuable consideration, the sufficiency of which is hereby acknowledged, SFPP and County hereby agree as follows:

- 1. Pipeline Relocation Work. SFPP will review the Project drawings, provide field inspection as needed during County's other construction activities near the Pipelines, and relocate those portions of the Pipelines within the Project area as more specifically described in Exhibit A, "SFPP La Pata Ave Relocation Plans," (collectively, "**Pipeline Relocation Work**"). SFPP will conduct the Pipeline Relocation Work in a good and workmanlike manner and in compliance with all applicable federal, state, and local laws, rules and regulations.
  - 1.1. Plans & Specifications. County shall review the plans and specifications for the Pipeline Relocation Work for consistency with the Project and provide timely comments, and SFPP shall incorporate all relevant County comments. The County shall be entitled to a reproducible copy of the plans and specifications as well as a copy of all Project-related documents.
  - 1.2. Encroachment Permit. Prior to the construction of the Pipeline Relocation Work, SFPP shall obtain a permit from the County for relocation work within County's public road right-of-way. The permit's terms and conditions shall be consistent with this Agreement. All encroachment permit filing and processing fees, relating solely to these Pipelines and Pipeline Relocation Work, shall be paid for by County.
  - 1.3. Construction Obligations. SFPP shall be solely responsible for the design, advertisement and award of construction contract, and will oversee the contractor and administration of the Pipeline Relocation Work. SFPP shall require and ensure that its contractor name the County as an additional insured and that the contractor's indemnity, defense, hold harmless and insurance obligations under the construction contract benefit the County in the same manner and to the same extent as SFPP.
  - 1.4. Coordination. Each Party shall appoint a representative who shall inspect all construction activities relating solely to the Pipeline Relocation Work and shall have rights of access to the

Project site for purpose of inspection. SFPP's representative shall at all times coordinate activities with and cooperate with the County's representative to ensure timely review of all matters and issues pertaining to the relocation work.

- 1.5. Contract Change Orders. County shall review and approve all Contract Change Orders (CCO) issued by SFPP related to the Pipeline Relocation Work, and shall be fifty percent (50%) responsible for all CCO costs. County shall not unreasonably withhold consent and shall approve CCOs within five (5) working days from receipt. Failure to approve a CCO within the five (5) working day period shall be deemed acceptance by County. County shall pay SFPP the County's fifty percent (50%) share of the total cost of such CCOs within fifteen (15) calendar days of receipt of a written request for such payment from SFPP. The request for payment shall be included with the request for approval of the CCO. If County and SFPP disagree as to the need for a CCO, the dispute resolution provision of Section 16 shall apply.

County staff shall have the authority to approve all individual CCOs that do not exceed twenty five (25) percent of the Estimated Cost (as defined in Section 2). Any individual CCO that exceeds twenty five (25) percent of the Estimated Cost shall require approval of the Orange County Board of Supervisors as an amendment to this Agreement.

2. Reimbursement for Costs. SFPP intends to commence the Pipeline Relocation Work after it has received a written Notice To Proceed ("NTP") from County along with a deposit in the amount of **\$1,310,000** ("**Initial Deposit**") for fifty percent (50%) of the estimated material, engineering, SFPP labor, construction, ROW protection cost for an estimated period of 9 months, and the associated contingency and administrative overhead costs (collectively, "**Estimated Cost**"). The Estimated Cost as of the date of this Agreement is **\$2,620,000** as shown on Exhibit B, "KMEP Pipeline Relocation Work Estimate." Payment of the Initial Deposit must be received by SFPP prior to performance of any Pipeline Relocation Work under this Agreement. The Initial Deposit shall be made payable to SFPP, L.P.

SFPP and County shall each be obligated for fifty percent (50%) of the actual costs and related costs associated with the Pipeline Relocation Work as well as for SFPP right-of-way protection work, plus SFPP's normal additives for reimbursable projects, excluding costs related to any enhancement or improvement beyond the minimum necessary for relocation (collectively, "**Actual Cost**"). The Actual Cost shall include (i) engineering consultant charges, (ii) equipment and material costs, (iii) contracted engineering, construction, and inspection work related to the Pipeline Relocation Work, as well as SFPP ROW protection work, (iv) company labor and company engineering (including 42% for labor additives), and (v) 19.4% for administrative overhead costs.

- 2.1. Revised Cost Estimate for Schedule B Work. In view of the fact that the County has yet to secure funding and issue an NTP for Schedule B of the Project beyond the year 2015, the Parties agree that SFPP will review the above estimated cost before the Schedule B NTP date and will advise County of the changes, if any, in the Pipeline Relocation Work cost. Upon approval of the new cost estimate by the County, the latter, revised estimate will be used as the basis of payment by County in lieu of the above Initial Deposit and Estimated Cost.
- 2.2. Final Accounting. Within thirty (30) days of the filing of a Notice of Completion by SFPP, SFPP shall prepare a final cost accounting and submit to County for review and approval. County shall review and approve the final cost accounting within thirty (30) days of receipt,

When the final accounting of the Actual Cost of the Pipeline Relocation Work is completed, SFPP will submit an itemized billing to County for review and approval, together with either: (i) an invoice, to the extent the Actual Cost exceeded the Estimated Cost; or (ii) a check from SFPP, to the extent the Estimated Cost exceeded the Actual Cost. If the Actual Cost was greater than the Estimated Cost, County shall pay SFPP the invoiced amount within sixty (60) days after receipt of valid invoice from SFPP. Interest accrual shall not be earned, factored, disbursed, or implied. SFPP shall maintain records for a minimum of five (5) years of the Actual Costs incurred and charged or allocated to the Pipeline Relocation Work in accordance with generally accepted accounting principles. SFPP agrees to make all accounting records available to County Auditor-Controller or any County representative for inspection during Project and after completion of Project up to five (5) years, during regular business hours.

3. No Prior Rights. Upon execution of this Agreement, SFPP agrees that it is subject to the terms of the County's franchise agreement and the relocation and other provisions that apply to franchised entities and encroachments within County highways in accordance with the Streets & Highways Code, Public Utilities Code and relevant statutory and case law. SFPP shall not be deemed to have prior rights over the County.
4. Right-of-Way Protection Inspection. Subsequent to completion of the relocation work by SFPP, and subject to Clause 2, County will start its construction of Schedule B plans. SFPP shall assign inspector(s) to the job site to monitor County construction activities within SFPP's pipeline right-of-way. County shall advise and provide written notice to SFPP of the start and completion dates of its construction activities within SFPP pipeline right-of-way beforehand. The cost of providing the inspector(s) per County's schedule is calculated and incorporated in Exhibit B, "KMEP Pipeline Relocation Work Estimate," fifty percent (50%) of which shall be borne by County, and advanced by County to SFPP.

County shall provide SFPP with at least then (10) days written notice prior to start of any construction activities within twenty-five (25) feet of the Pipelines. Upon receipt of notice from County, SFPP shall coordinate with County to provide inspectors during that time when County is performing construction activities within twenty-five (25) feet of the Pipelines. Notices shall be delivered by courier, overnight mail, certified mail or facsimile to the attention of SFPP ROW Specialist Jordan Neuner, 2000 E. Sepulveda Blvd. Carson, CA. 90810-1995, Phone: (310) 628-7350, Fax: (310) 549-5708.

In the event that the projected schedule for County construction activities within twenty-five (25) feet of the Pipelines extends beyond the initially assumed 9 month period, the County shall advance SFPP for 50% of the cost of ROW protection inspection until the County Schedule B Project construction activities, within twenty-five (25) feet of the SFPP Pipelines, are completed. Should the period of the SFPP ROW protection exceeds the 9 month assumed period such that the total Project cost exceeded more than 25% of the Estimated Cost (as defined in Section 2), it will be handled per last paragraph of Section 1.5. In the event that the projected schedule for County construction activities within twenty-five (25) feet of the Pipelines falls under the initially assumed 9 month period, SFPP shall reduce the ROW protection inspection costs accordingly and shall reflect the reduction in the Final Accounting.

5. Contingencies. The Agreement is contingent on the County ensuring that SFPP receives an acceptable, updated and recordable grant of easement from the fee holder of Rancho Mission Viejo

(“**RMV**”) necessary to accommodate the relocation of the pipelines on RMV property, and the requisite permits and/or licenses necessary to accommodate the relocation of the pipelines on County property. Once SFPP is in possession of RMV signed and acceptable easement documents and prior to any Pipeline Relocation Work, SFPP shall record the grant of Temporary Construction Easement and Right of Way Easement Agreement and provide recorded copies to both RMV and the County.

In relation to this Agreement, it is further anticipated that the County, in the proper exercise of its discretion, will grant a new and updated franchise agreement to SFPP for the Pipeline Relocation and operation of SFPP pipelines on County property.

6. Entire Agreement. This Agreement contains the entire agreement between County and SFPP with respect to the Pipeline Relocation Work in connection with the Project. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto. Further, none of the Parties to this Agreement shall be bound by any representation, warranty, promise, statement or information provided by any Party unless expressly set forth herein. The Parties expressly agree that this Agreement shall not in any way alter, modify or terminate any provision of SFPP’s easement in connection with the Pipelines.
7. Assignment. The terms and provisions of this Agreement shall be binding upon and to the benefit of the Parties hereto and their respective successors, assigns and legal representatives. However, no assignment of this Agreement shall be made or otherwise be valid without the written consent of both Parties.
8. Counterparts. This Agreement may be executed in two (2) or more counterparts, and each such counterpart shall be deemed to be an original.
9. Notices. Any notice or other written instrument required or permitted by this Agreement to be given to either Party shall be deemed received when either personally served or forty-eight (48) hours after being deposited in the U.S. Mail, postage prepaid, registered or certified and addressed as follows:

COUNTY: County of Orange  
OC Public Works  
PO Box 4048  
Santa Ana, CA 92702-4048  
Attn: Nardy Khan, Manager, Project Management

SFPP, LP: Kinder Morgan  
1100 Town and Country Road  
Orange, CA 92868  
Attention: Mark K. Sabeti

10. Indemnity. SFPP agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the Orange County Board of Supervisors acts as the governing Board harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to SFPP’s acts and/or omissions arising from or related to its performance under this Agreement.

County agrees to indemnify, defend with counsel approved in writing by SFPP, and hold SFPP, its officers, directors, agents, affiliates, parents and subsidiaries, harmless from any claims demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to Orange County's acts and/or omissions arising from or related to its performance under this Agreement.

If judgment is entered against County and SFPP by a court of competent jurisdiction because of the concurrent active negligence of SFPP and/or County, SFPP and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

11. Severability. If any part of this Agreement is held, determined or adjudicated to be illegal, void or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.
12. Governing Law & Venue. The Parties hereto agree that this Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another County.
13. Attorneys' Fees. In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, the Parties shall bear their own attorney's fees, costs and expenses.
14. Waiver of Jury Trial. Each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Agreement and/or any other claim of injury or damage.
15. Availability of Funds and Execution of Schedule B. This Agreement is subject to the availability of funds appropriated for this purpose as well as the issuance of a Notice to Proceed for Schedule B of the Project, and nothing herein shall be construed as obligating the Parties to expend funds or as involving the Parties in any contract or other obligation for future payment of money in excess of appropriations authorized by law. Notwithstanding the foregoing, if the County authorizes SFPP to commence the relocation work it shall be obligated to pay its proportionate share of said costs as identified herein.
16. Dispute Resolution. In the event of any disagreement or dispute between County and SFPP concerning any matter, issue, cost (including all CCOs), and/or payment pertaining to the Pipeline Relocation Work, the Parties shall meet to confer and attempt, in good faith, to resolve the disagreement. If resolution can still not be reached, the matter will be elevated within five (5) days to a dispute resolution committee composed of the Director of County's OC Public Works (or designee) and a representative of SFPP management for resolution. Should the dispute resolution

committee fail to agree on a resolution of the matter, the unresolved matter shall concurrently be referred to a mutually approved third Party mediator. Notwithstanding the foregoing, neither Party by agreeing to this dispute resolution process agrees to waive any claims, rights or entitlements, including the right to pursue any claim or dispute in a court of competent jurisdiction.

17. Delay & Force Majeure. Neither Party to this Agreement shall be responsible to the other for damages resulting from delays in the performance of obligations hereunder resulting from action of the elements, fire, flood, acts of God, strikes, lockouts, permit delays or any other such causes beyond said Parties' reasonable control.
18. Termination. This Agreement may not be terminated by either Party upon award of construction contract for the Pipeline Relocation Work. In the event County terminates this Agreement, County shall pay all direct costs incurred by SFPP to the date of termination.

**IN WITNESS WHEREOF**, the Parties hereto have caused their duly authorized representatives to execute this AGREEMENT in counterparts as of the day first written above and each such counterpart shall be deemed original.

**SFPP, L.P., a Delaware limited partnership**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mike Outlaw, Vice President  
Engineering and Operations

**County of Orange, a political subdivision of the State of California**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chairman of the Board of Supervisors  
County of Orange, California

SIGNED AND CERTIFIED THAT A COPY OF THIS AGREEMENT HAS BEEN DELIVERED TO THE CHAIR OF THE BOARD PER G.C. SEC. 25103, RESO 79-1535

Attest:

Date: \_\_\_\_\_

\_\_\_\_\_  
Robin Stieler  
Interim Clerk of the Board  
County of Orange, California

Approved as to Form:  
Office of the County Counsel  
County of Orange, California

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Ryan M. F. Baron  
Senior Deputy



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Date: \_\_\_\_\_

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Mike Outlaw, Vice President  
Engineering and Operations

**County of Orange, a political subdivision of the State of California**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chairman of the Board of Supervisors  
County of Orange, California

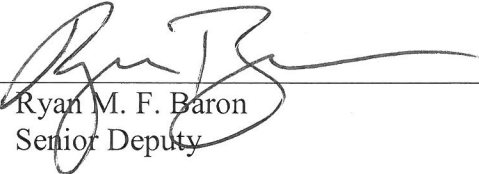
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Interim Clerk of the Board  
County of Orange, California

Approved as to Form:  
Office of the County Counsel  
County of Orange, California

Date: 8/13/15

By:  \_\_\_\_\_  
Ryan M. F. Baron  
Senior Deputy

**EXHIBIT A**

**SFPP La Pata Ave Relocation Plans**

Relocation plans are protected per the Non-Disclosure and Use Agreement  
between OC Public Works and SFPP, L.P.

**EXHIBIT B**

KMEP Pipeline Relocation Work Estimate

**EXHIBIT-B**  
**SFPP,LP.(KMEP) PIPELINE RELOCATION WORK ESTIMATE**

**La Pat Ave. Expansion**  
**SFPP Cost Estimate for**  
**Pipeline Relocation and ROW Protection.**  
August, 2015

No.	Cost Item Description	Cost Estimate \$
1	Engineering, Environmental Surveys/Supports	\$ 240,000
2	Material	\$ 155,000
3	Construction	\$ 1,300,000
4	SFPP Personnel, Construction Inspection	\$ 95,000
5	Contingency	\$ 260,000
6	SFPP General Admin Charges (19.4%)	\$ 390,000
7	SFPP ROW Protection Inspection (9 Months)	\$ 180,000
<b>TOTAL</b>		<b>\$ 2,620,000</b>
	<b>OC Share -- 50%</b>	<b>1,310,000</b>
	<b>SFPP,LP (Kinder Morgan ) Share-- 50%</b>	<b>1,310,000</b>

**Assumptions:**

- 1 Company Labor includes 42% burden for benefits
- 2 16" Pipe Relocation by Open Cut except for 160 ft. of Cased Bore under existing pavement
- 3 OSHA shoring cost was assumed
- 4 Environmental Permitting is provided under Orange County's EIR
- 5 Removal of the 10" pipeline will be done by Kinder Morgan.
- 6 No contaminated soil or water to be encountered.
- 7 Kinder Morgan ROW protection inspection cost which will incur when County construction starts included .
- 8 This estimate is valid only if the construction of KM pipeline is started and completed in the year 2015.
- 9 AFUDC is the cost of financing applicable to the budget allocated to the job by SFPP, LP (Kinder Morgan).