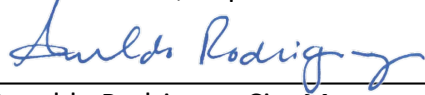


## REPORT TO CITY COUNCIL

**Approved by:**

  
\_\_\_\_\_  
Keith Helmuth, Department Director

  
\_\_\_\_\_  
Arnaldo Rodriguez, City Manager

**Council Meeting of:** July 15, 2020

**Agenda Number:** D-2

**SUBJECT:**

Pipeline Protection and Inspection Agreement with SFPP, L.P. (SFPP) for Inspection Services related to the Fresno River Trail Undercrossings at Gateway Drive and Union Pacific Railroad Project

**RECOMMENDATION:**

Adopt a Resolution Approving a Pipeline Protection and Inspection Services Agreement with SFPP for Inspection Services related to the Fresno River Trail Undercrossings at Gateway Drive and Union Pacific Railroad Project near the Kinder Morgan Pipeline.

**SUMMARY:**

The Pipeline Protection and Inspection Agreement is a standard agreement prepared by Kinder Morgan Energy Partners, L.P. (Kinder Morgan) on behalf of SFPP. The agreement specifies the work for inspection services during the City's construction activities within their pipeline easement upon Union Pacific Railroad (UPRR) right of way to avoid conflict with the construction of the proposed trail and protective canopy. The agreement specifies payments to SFPP for the actual cost for inspection services that is estimated at \$10,000.

**DISCUSSION:**

The Fresno River Trail Undercrossing Project, City Project No. PK-08, crosses over a Kinder Morgan gas pipeline that is located within UPRR right of way and parallels the tracks on the west side. During construction, after potholing for the exact location of the Kinder Morgan pipeline, it was determined that the footings for the railroad protective canopy are within Kinder Morgan's pipeline easement. In a separate Council action item, Staff is requesting additional engineering support to mitigate a conflict between the current trail configuration, including the protective canopy, and the required clearances for the Kinder Morgan pipeline. The trail and canopy cannot

be constructed as designed due to the presence of the Kinder Morgan pipeline. City is working with Kinder Morgan for allowable options.

Presuming a resolution to the conflict with Kinder Morgan is successful, having the executed agreement with Kinder Morgan in place will allow the project to continue construction. The agreement specifies the work necessary to provide protection and inspection services during construction activities for the project near their pipeline. The cost estimate for this work is \$10,000. The final payment to SFPP will be based on a final invoice for the actual cost of the work.

**FINANCIAL IMPACT:**

The estimated cost for the agreement is \$10,000 and will be funded from unallocated funds in the Capital Project Account for PK-00008.

There will be no impact to the City's General Fund by approving this amendment.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

*Strategy 121:* Develop a city-wide multi-modal transportation plan to ensure safe, affordable and convenient transportation modes for residents and businesses within Madera.

*Strategy 132:* Neighborhood Connectivity: Connect Madera's neighborhoods through streets, trails and walkways that promote community interaction.

*Strategy 401:* Walkable Community: Develop and promote Madera as a walkable community with an emphasis on improving the quality of the natural resources.

**ALTERNATIVES:**

Should Council not approve the Pipeline and Inspection Services Agreement, the City would need to pursue design alternatives that would minimize construction activities in the vicinity of the Kinder Morgan pipeline.

**ATTACHMENTS:**

1. Resolution
  - a. Exhibit 1
2. Location Map

**ATTACHMENT 1**

**Resolution**

**RESOLUTION NO. 20-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,  
CALIFORNIA APPROVING A PIPELINE AND INSPECTION SERVICES  
AGREEMENT WITH SFPP, L.P. FOR INSPECTION SERVICES RELATED TO THE  
FRESNO RIVER TRAIL UNDERCROSSINGS AT GATEWAY DRIVE AND  
UNION PACIFIC RAILROAD**

**WHEREAS**, the City of Madera awarded a contract for construction of that portion of the Fresno River Trail along the north bank of the Fresno River underneath the Union Pacific Railroad (UPRR) and Gateway Drive bridges, hereinafter referred to as “the Project”, on October 9, 2019; and

**WHEREAS**, funding for Project, City Project No. PK-08, that was programmed in the Capital Improvement Projects Budget for Fiscal Year 2019/20 will roll over to Fiscal Year 2020/21; and

**WHEREAS**, a Pipeline and Inspection Services Agreement has been prepared by SFPP, L.P. (SFPP) that specifies the services and estimate costs for inspection of their pipeline in conflict with the construction of the Project.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY** finds, orders and resolves as follows:

1. The above recitals are true and correct.
2. The Pipeline Protection and Inspection Services Agreement with SFPP, a copy of which is attached hereto as Exhibit 1 and referred to for particulars, is approved.
3. The payment of the estimated cost of \$10,000 is approved.
4. The Mayor is authorized to execute the Amendment as approved.
5. This Resolution is effective immediately upon adoption.

\*\*\*\*\*

**EXHIBIT 1**

**Pipeline Protection and Inspection Agreement**

## PIPELINE PROTECTION AND INSPECTION AGREEMENT

This PIPELINE PROTECTION AND INSPECTION AGREEMENT (the "Agreement") is made and entered into this 15th day of July, 2020 (the "*Effective Date*"), by and between the City of Madera \_\_\_\_\_ (the "*Company*") and, SFPP, L.P. ("*SFPP*"), with reference to the following facts:

- A. WHEREAS, the Company is planning to Construct a bike path near SFPP (the "*Works*");
- B. WHEREAS, SFPP has installed and operates pipeline located within an SFPP right-of-way (the "*Facilities*");
- C. WHEREAS, SFPP intends to Provide the required manpower and resources to protect SFPP right-of way, and monitor Company's construction at the vicinity of SFPP pipelines; and
- D. WHEREAS, the Company and SFPP desire to enter into an agreement whereby the Company agrees to reimburse SFPP and SFPP agrees to provide, itself or through its consultants and contractors, review of the Company's trail construction design, and provide inspection services during such construction (the "*Services*").

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 the Company hereby agree as follows:

- 1. The Company shall provide SFPP with at least 10 days written notice prior to performing any construction activities near the Facilities. Upon receipt of notice from the Company, SFPP shall coordinate with the Company to provide the Services during the period of time when the Company is performing construction activities within 10 feet and over the Facilities.
- 2. The Company shall pay to SFPP the actual cost incurred by SFPP in performance of the Services, plus SFPP's normal additives for reimbursable projects as set forth below (the "*Actual Cost*"). Actual Costs shall consist of the cost of the review of the Company's trail construction design and inspection/monitoring required during Company's construction activities, which includes: (i) SFPP labor, (ii) inspection (including coordination and supervision) and (iii) 19.4% for administrative overhead costs. SFPP estimates the cost of such Services, including additives shall be -----Ten Thousand----- and 00/100 U.S. Dollars (\$ 10,000.00-----) (the "*Estimated Cost*"). The Company shall prepay SFPP the Estimated Costs. Such Estimated Cost is a budgetary estimate only, and neither it nor any of the other estimated cost figures herein shall in any way constitute a limit upon the amount of the total Actual Cost. Such Estimated Cost is subject to revision by and at the discretion of SFPP to reflect any changes in such cost that may occur prior to the completion of the Works. If the final Actual Costs will exceed the Estimated Cost, the Company shall pay SFPP for the remainder of such additional costs.
- 3. As promptly as reasonably possible, but no sooner than ninety (90) days following completion of the Works, SFPP shall provide the Company an accounting for any variance between the Estimated Cost and the total Actual Cost ("*Final Accounting*"); provided, however,

that the Company shall be obligated to pay SFPP for the total Actual Cost regardless of whether the Actual Costs are more or less than the Estimated Cost. In the event the Company owes SFPP additional payment to cover the Actual Cost, SFPP will provide a final invoice to the Company within thirty (30) days after the Final Accounting. Should the Company fail to make payment of such invoice within (60) days after its receipt of the Final Accounting, SFPP shall be entitled to collect from the Company the amount of said invoice together with interest at a rate equal to the then-applicable Federal Energy Regulatory Commission ("FERC") refund interest rate as specified in Section 154.501(d) of FERC's regulations. Such interest shall accrue on unpaid amounts, including on unpaid interest, compounded monthly, beginning on the payment due date of SFPP's invoice to the Company and terminating when such invoice is paid. In the event that SFPP owes the Company a refund of amounts paid, SFPP agrees to make that refund to the Company within sixty (60) days after providing the Final Accounting to the Company.

4. SFPP will keep all cost records pertaining to the Services in order to have them readily available for the Company to audit, should they desire to do so. The Company has the right to audit the records during the regular office hours of SFPP for a period of two years from the date the Work is completed.

5. The Company agrees to protect, indemnify, and hold harmless SFPP, its officers, employees, representatives, agents, contractors, and subcontractors from and against any and all claims, demands, actions, expenses (including court costs and attorneys' fees), losses, damages, causes of action, and liability whether with respect to the parties hereto or third parties, for damage to property or injury to or death of persons arising out of or in connection with the performance of the Work, except to the extent said claims, demands, actions, expenses, losses, damages, causes of action, and liabilities are caused by the negligence or willful misconduct of SFPP or its employees or contractors. This indemnification obligation shall survive expiration or termination of this agreement.

6. This Agreement contains the entire agreement between the Company and SFPP with respect to the subject matter hereto.

7. If any term or other provision of this Agreement is deemed invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall remain in full force and effect. Upon such determination, the Parties shall negotiate in good faith to modify this Agreement so as to give effect the original intent of the Parties, as closely as possible and in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

8. This Agreement shall not be amended or modified in any manner, including the conduct of the Parties, except in writing and duly signed by the Parties hereto.

**9. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES SUFFERED OR INCURRED BY THE OTHER PARTY, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR LOSS OF MARKET, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF SUCH POSSIBILITY.**

10. Neither Party may assign this Agreement without the prior written consent of the other Party. Any such attempted assignment in conflict with the previous sentence shall be void. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

11. This Agreement shall be governed by and enforced in accordance with the laws of the State of Texas, without regard to its conflict of law principles.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**SFPP, L.P.**  
*By Kinder Morgan Operating, L.P. "D"*  
*By Kinder Morgan G.P., Inc., its General Partner*

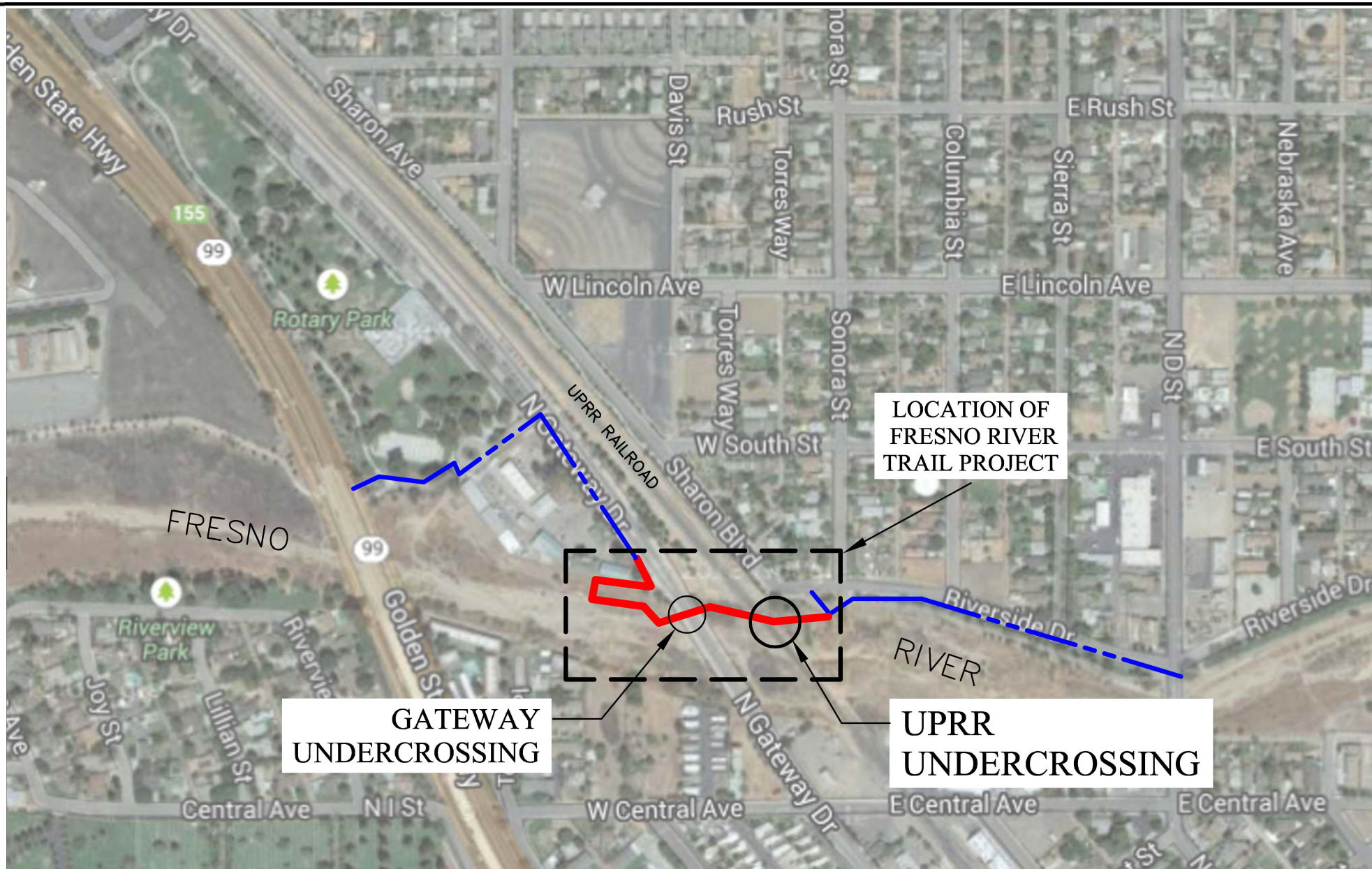
**City of Madera**  
\_\_\_\_\_

Signature: \_\_\_\_\_  
Name: **Joe Vargas**  
Title: **Pipeline Engineer**  
Date: **06/25/2020**  
Phone: **979.864.7071**

Signature: \_\_\_\_\_  
Name: **Andrew J. Medellin**  
Title: **Mayor**  
Date: **07/15/2020**  
Phone: **559.661.5418**



**ATTACHMENT 2**  
**Location Map**



LOCATION OF  
FRESNO RIVER  
TRAIL PROJECT


GATEWAY  
UNDERCROSSING

UPRR  
UNDERCROSSING

**LEGEND**

- PROPOSED PROJECT
- EXISTING TRAIL

**PROJECT MAP**  
**FRESNO RIVER BIKE TRAIL UNDER-CROSSING AT**  
**GATEWAY DRIVE AND UPRR (FHWA FUNDED)**  
**CITY OF MADERA**

  
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