



City Council Staff Report

Date: September 8, 2010

CONSENT CALENDAR

Subject: APPROVAL OF A PIPELINE INSPECTION AGREEMENT WITH SFPP, LP, RELATED TO THE GENE AUTRY TRAIL UPRR BRIDGE WIDENING PROJECT, CITY PROJECT 01-04

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

Kinder Morgan owns and operates a 22" petroleum pipeline within the Union Pacific Railroad, and is requiring the City to enter into an agreement providing for their inspection of construction occurring around the pipeline.

RECOMMENDATION:

- 1) Approve Agreement No. _____, with SFPP, L.P., a Pipeline Inspection Agreement related to the Gene Autry Trail UPRR Bridge Widening Project, City Project 01-04; and
- 2) Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

On September 2, 2009, the City Council approved a Cooperative Agreement with Riverside County, whereby the County will administer the construction phase of the City's Gene Autry Trail UPRR Bridge Widening Project (City Project 01-04). The County has combined construction of the City's project with the adjacent Palm Drive/Gene Autry Trail I-10 Interchange project.

Construction is underway on the projects, and work is scheduled to begin on widening the railroad bridge. Kinder Morgan owns and operates a 22" petroleum pipeline within the railroad right-of-way, and the pipeline runs under the existing railroad bridge. Construction of the widened bridge has the potential to impact the existing pipeline, and Kinder Morgan is requiring that the City provide for their inspection of work that has the potential to impact its pipeline.

Item No. **2.G.**

Kinder Morgan has provided a Pipeline Inspection Agreement to facilitate the City's payment of estimated costs for their inspection and oversight of construction occurring near their pipeline. The agreement has been reviewed by the City Attorney, and is recommended for approval.

FISCAL IMPACT:

Kinder Morgan has estimated the cost to provide inspection of their pipeline at \$35,000. Pursuant to the terms of the Agreement, upon execution of the Agreement the City is required to advance the estimated cost of \$35,000 to Kinder Morgan. In the event their inspection time extends beyond a two month period, an additional deposit of \$15,000 for each subsequent month is required. Ultimately, Kinder Morgan will provide a final accounting of inspection services provided, and will refund any monies owed to the City or will invoice the City for monies owed to Kinder Morgan.

This project is federally funded, and costs are covered by the federal grant at 88.53%. The local match of eligible costs of 11.47% is covered by Regional Measure A funds. Sufficient funds are available in account 261-4491-50214 (\$30,985.50), and 134-4497-50214 (\$4,014.50). No local miscellaneous General Funds will be required for this project.

SUBMITTED:

Prepared by:



Marcus L. Fuller
Assistant Director of Public Works

Recommended by:

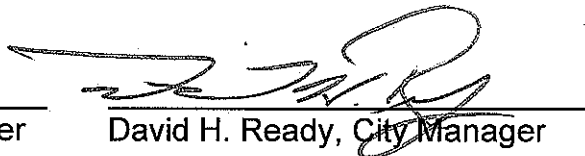


David J. Barakian
Director of Public Works/City Engineer

Approved by:



Thomas J. Wilson, Asst. City Manager



David H. Ready, City Manager

Attachments:

1. Pipeline Inspection Agreement

PIPELINE INSPECTION AGREEMENT

This PIPELINE INSPECTION AGREEMENT (this "**Agreement**") is made and entered into this _____ day of _____, 2010 (the "**Effective Date**"), by and between the City of Palm Springs ("The Agency") and SFPP, L.P. ("**SFPP**"), with reference to the following facts:

A. WHEREAS, SFPP owns, operates and maintains one 22" petroleum product pipeline and related appurtenances (the "Pipeline") located in the right of way of the Union Pacific Railroad, San Bernardino County, California.

B. WHEREAS, Agency is planning to construct an overpass at Palm Drive/ Gene Autry Trail and Union Pacific Railroad intersection (the "Project").

C. WHEREAS, the construction of the Project will require inspection of the Pipeline, and will therefore require SFPP to provide pipeline engineering services (the "Engineering Activities") to review Agency's plans for the Project and coordinate with Agency during the progress of the Project.

D. WHEREAS, Agency and SFPP desire to enter into an agreement whereby the Agency agrees to reimburse SFPP and SFPP agrees to provide, itself or through its consultants and contractors, certain pipeline inspection services (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 Agency hereby agree as follows:

1. Agency shall provide SFPP with at least 10 days written notice prior to performing any construction activities in the Subject Property. **If any activities to be undertaken by Agency require any sampling, boring, excavation, ditching or other disruption of the soil or subsurface of the Subject Property, Agency shall obtain SFPP's written approval prior to commencing any such activity.** Upon receipt of notice from Agency, SFPP shall coordinate with Agency to provide the Services during the period of time when Agency is performing construction activities near the pipeline easement in the Subject Property. Notices shall be delivered by courier, overnight mail, or certified mail to the attention of Kinder Morgan Area Manager, Bill Toepfer, Kinder Morgan, 2051 E. Slover, Bloomington, CA 92316, (909) 873-5152.

2. Agency shall pay SFPP the actual cost incurred by SFPP in performance of the Services, plus SFPP's normal additives for reimbursable projects (the "**Actual Cost**"). SFPP estimates the cost of such Services, including additives shall be \$35,000.00 (the "**Estimated Cost**"), which includes but is not limited to: (i) consultant and contractor charges, (ii) equipment and materials, (iii) SFPP labor, (iv) engineering (including 42% for labor additives), and (v) 19.4% for administrative overhead costs.

3. On or before the Effective Date, Agency shall deliver payment to SFPP in the amount of the Estimated Cost. Such payment must be received by SFPP prior to the performance of any Services under this Agreement. When the final accounting of the Actual Cost of the Services performed by SFPP is completed, SFPP will submit an itemized billing to Agency for review, together with either: (i) an invoice, to the extent the Actual Cost exceeds the Estimated Cost; (ii) a check from SFPP, to the extent the Estimated Cost exceeds the Actual

Cost. If the Actual Cost exceeds the Estimated Cost, Agency shall pay SFPP the excess amount within 30 days after receiving such invoice from SFPP. SFPP shall maintain records for 3 years of the actual costs incurred and charged or allocated in the performance of the Services in accordance with generally accepted accounting principles.

4. In the event that the inspection time exceeds two months, Agency shall forward an additional payment of \$15,000 at the end of the first month and each succeeding month to cover the next month's estimated inspection cost until the construction activities impacting the subject facilities are completed.

5. To the extent permitted by applicable law, Agency agrees to release, defend, and to protect, indemnify and hold harmless SFPP, its parent, affiliates, and subsidiaries, and its and their respective directors, officers, agents and employees, from every kind or character of damages, losses, liabilities, expenses, demands or claims, including any and all costs and fees arising out of litigation or settlement of any claims (collectively, "**Losses**"), to the extent the Losses are caused by, arise from or relate to, directly or indirectly, the negligence, recklessness or willful misconduct of Agency, its agents, employees in connection with this Agreement or the Subject Property. Agency further agrees that it shall pay, in proportion to its obligation pursuant to this Section 5, all damages, costs and expenses (including attorneys' fees) in connection therewith or any matter resulting therefrom. Agency shall not settle any such action or suit without SFPP'S prior written consent. This indemnification obligation shall survive expiration or termination of this agreement.

To the extent permitted by applicable law, SFPP, L.P., Kinder Morgan Operating L.P. "D", Kinder Morgan G.P., Inc., and Kinder Morgan Management, LLC (collectively and individually, for purposes of this paragraph, "SFPP") agree to release, defend, and to protect, indemnify and hold harmless Agency, its affiliates, and its and their respective directors, officers, agents and employees, from every kind or character of damages, losses, liabilities, expenses, demands or claims, including any and all costs and fees arising out of litigation or settlement of any claims (collectively, "**Losses**"), to the extent the Losses are caused by, arise from or relate to, directly or indirectly, the negligence, recklessness or willful misconduct of SFPP, its agents, employees in connection with this Agreement or the Subject Property. SFPP further agrees that it shall pay, in proportion to its obligation pursuant to this Section 5, all damages, costs and expenses (including attorneys' fees) in connection therewith or any matter resulting therefrom. SFPP shall not settle any such action or suit without Agency's prior written consent. This indemnification obligation shall survive expiration or termination of this agreement.

UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES

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

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

[Signatures on the following page.]

City of Palm Springs

By: _____

Name: _____

Title: _____

SFPP, L.P.,

By: Kinder Morgan Operating L.P. "D", its general partner

By: Kinder Morgan G.P., Inc., its general partner

By: Kinder Morgan Management, LLC, the delegate of Kinder Morgan G.P., Inc.

By: _____

Name: _____

Title: _____

[Pipeline Inspection Agreement Between City of Palm Springs and SFPP, L.P., 2010]