



Home of the Tualatin River National Wildlife Refuge

URBAN RENEWAL AGENCY MEETING PACKET

FOR

Tuesday, May 2, 2023

**Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon**

URA Board of Directors Meeting
(Following the 7:00 pm City Council Regular Meeting)

This meeting will be live streamed at
<https://www.youtube.com/user/CityofSherwood>

**SHERWOOD URBAN RENEWAL AGENCY BOARD OF DIRECTORS
MEETING AGENDA**

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URA BOARD MEETING

1. CALL TO ORDER

2. ROLL CALL

3. CONSENT AGENDA

A. Approval of April 18, 2023 URA Board Meeting Minutes

(Sylvia Murphy, Agency Recorder)

B. URA Resolution 2023-004, Authorizing the Agency Manager to Enter into Two Agreements with Kinder Morgan for Relocation of the LS-14 Pipeline that lies within the Future Alignment of Ice Age Drive (Jason Waters, City Engineer)

4. ADJOURN

**SHERWOOD URBAN RENEWAL AGENCY BOARD OF DIRECTORS
MEETING MINUTES
Tuesday, April 18, 2023**

**City of Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon 97140**

URA BOARD REGULAR SESSION

- 1. CALL TO ORDER:** Chair Rosener called the meeting to order at 7:55 pm.
- 2. BOARD PRESENT:** Chair Tim Rosener, Board Members Renee Brouse, Kim Young, Doug Scott, Taylor Giles, and Dan Standke. Vice Chair Keith Mays was absent.
- 3. STAFF AND LEGAL COUNSEL PRESENT:** City Manager Keith Campbell, Community Services Director Kristen Switzer, City Attorney Ryan Adams, IT Director Brad Crawford, Community Development Director Eric Rutledge, HR Manager Lydia McEvoy, Economic Development Manager Bruce Coleman, Police Captain Dan O'Loughlin, Police Chief Ty Hanlon, and City Recorder Sylvia Murphy.
- 4. CONSENT AGENDA**
 - A. Approval of February 21, 2023 URA Board Meeting Minutes**
 - B. URA Resolution 2023-003, Authorizing Submittal of an Industrial Lands Technical Assistance Grant Application to Business Oregon for Infrastructure and Development Planning in the Tonquin Employment Area's Dahlke Corridor**

Chair Rosener addressed the Consent Agenda and called for a motion. The following motion was received.

MOTION: FROM KIM YOUNG TO APPROVE THE CONSENT AGENDA. SECONDED BY RENEE BROUSE.

Prior to the vote, Board member Giles asked for staff's recap of the proposed resolution. Economic Development Manager Bruce Coleman explained that the proposed resolution was to begin the pre-planning development activities for the development of the Dahlke corridor. He explained that the area was currently underdeveloped but had the potential for the development of 400,000 square feet of new industrial park space. He explained that the city would seek a grant from Business Oregon in order to complete the necessary planning for the alignment of Dahlke Road as well as an engineering analysis for the road. He reported that multiple developers had looked at individual parcels in that area but were unable to make them work and the city needed to create a plan that outlined where the area's utilities and road alignment would be in order to attract developers to the area. With no further Board comments, Chair Rosener called for a vote.

MOTION PASSED 6:0. ALL PRESENT MEMBERS VOTED IN FAVOR (KEITH MAYS WAS ABSENT).

5. ADJOURN

Chair Rosener adjourned the meeting at 7:59 pm.

Attest:

Sylvia Murphy, MMC, Agency Recorder

Tim Rosener, Chair

Agenda Item: Consent Agenda

TO: Sherwood Urban Renewal Agency Board of Directors

FROM: Jason Waters, City Engineer and Craig Sheldon, Public Works Director
Through: Keith D. Campbell, Agency Manager and Ryan Adams, City Attorney

SUBJECT: URA Resolution 2023-004, Authorizing the Agency Manager to Enter into Two Agreements with Kinder Morgan for Relocation of the LS-14 Pipeline that lies within the Future Alignment of Ice Age Drive

Issue:

Shall the Sherwood Urban Renewal Agency (URA) authorize the agency manager to enter into two agreements with Kinder Morgan and authorize expenditure of \$2,060,728 in URA Funds for relocation of LS-14 pipeline that lies within the future alignment of Ice Age Drive?

Background:

On February 7, 2023 the URA Board approved Resolution 2023-001, endorsing a preferred alignment of Ice Age Dr. between SW Oregon St. and SW 124th Ave. The preferred alignment requires relocation of approximately 1,000 SF of Kinder Morgan pipeline located on three (3) properties in the Tonquin Employment Area (Attachment 1).

Kinder Morgan has provided an estimate for the work at \$2,060,728 (Resolution 2023-004 Exhibit A). Prior to commencing the relocation project, Kinder Morgan requires the full estimated project cost and two agreements to be executed. The required agreements include a Facility Adjustment and Reimbursement Agreement (Resolution 2023-004 Exhibit B) and a Pipeline Protection and Inspection Agreement (Resolution 2023-004 Exhibit C).

City staff is exploring design options with our Ice Age Dr. consultant team that would reduce the amount of line required for relocation to reduce the project cost. Any funds that are not used by Kinder Morgan, including any cost savings based on a change to the design, will be returned to the URA.

Financial Impacts:

The resolution would authorize expenditures up to \$2,060,728 from the 2021 URA for relocation of the Kinder Morgan line.

Recommendation:

Staff respectfully recommends approval of URA Resolution 2023-004, Authorizing the Agency Manager to enter into two agreements with Kinder Morgan for relocation of the LS-14 Pipeline that lies within the future alignment of Ice Age Drive.

Attachments to Staff Report:

Attachment 1 – Ice Age Dr. / Kinder Morgan Relocation Exhibit

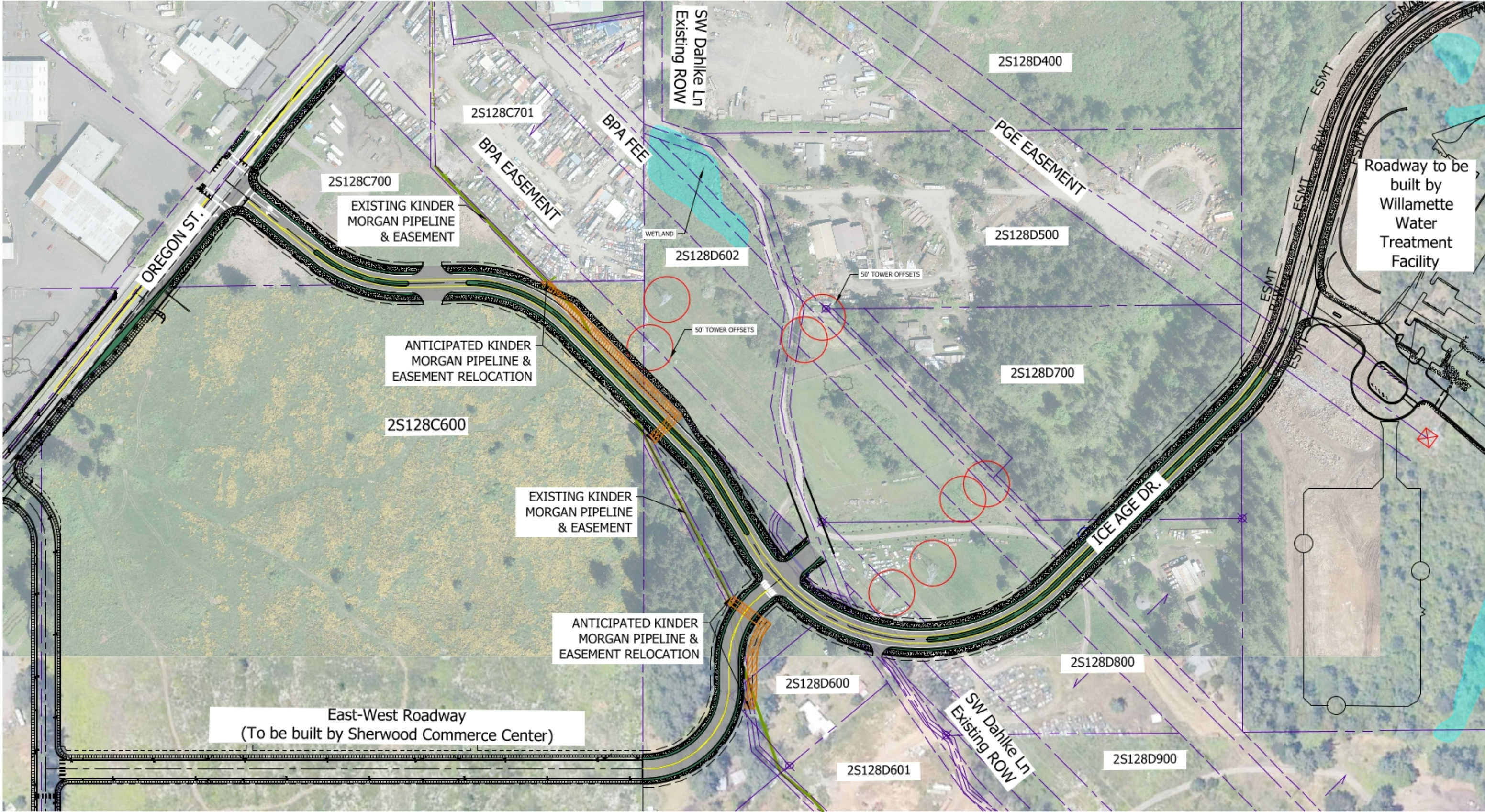
Exhibits to Resolution:

Exhibit A – Kinder Morgan Relocation Estimate

Exhibit B – Facility and Adjustment Reimbursement Agreement

Exhibit C – Pipeline Protection and Inspection Agreement

Ice Age Drive





URA RESOLUTION 2023-004

AUTHORIZING THE AGENCY MANAGER TO ENTER INTO TWO AGREEMENTS WITH KINDER MORGAN FOR RELOCATION OF THE LS-14 PIPELINE THAT LIES WITHIN THE FUTURE ALIGNMENT OF ICE AGE DRIVE

WHEREAS, Economic Development is a key priority of the City in order to balance the City's tax base and provide living wage jobs;

WHEREAS, the Tonquin Employment Area is within the City's urban growth boundary and is a key employment growth area with approximately 300-acres of employment land; and

WHEREAS, SW Ice Age Dr. will connect SW Oregon St. to SW 124th Ave through the Tonquin Employment Area, providing access to new industrial developments currently under construction as well as future industrial developments within the Central Tonquin Employment Area; and

WHEREAS, the URA Board approved Resolution 2023-001 endorsing the preferred alignment of Ice Age Dr. for final design and construction; and

WHEREAS, the preferred alignment requires relocation of approximately 1,000 linear feet of Kinder Morgan pipeline, identified as the LS-14 pipeline; and

WHEREAS, Kinder Morgan has provided an estimate for the design and physical relocation of the line included as Exhibit A to this resolution; and

WHEREAS, Kinder Morgan has provided a Facility Adjustment and Reimbursement Agreement (Exhibit B) and a Pipeline Protection and Inspection Agreement (Exhibit C) which are required in order to begin the design and relocation work; and

WHEREAS, the City wishes to complete the Ice Age Dr. construction project including relocation of the Kinder Morgan line in a timely and cost effective manner to meet the City's Economic Development goals.

NOW, THEREFORE, THE SHERWOOD URBAN RENEWAL AGENCY BOARD RESOLVES AS FOLLOWS:

Section 1. The Agency Manager is hereby authorized to enter into a Facility Adjustment and Reimbursement Agreement (Exhibit B) and Pipeline Protection and Inspection Agreement with Kinder Morgan (Exhibit C).

Section 2. An expenditure of URA funds in the amount of \$2,060,728 is authorized for the design and relocation of a portion of the LS-14 Kinder Morgan pipeline.

Section 3. This Resolution shall be effective upon its approval and adoption.

Duly passed by the Urban Renewal Agency Board this 2nd day of May 2023.

Tim Rosener, Chair

Attest:

Sylvia Murphy, MMC, Agency Recorder

KINDER MORGAN					
PROJECT NAME	SFPP Ice Age Relocation				
PUBLISH DATE	Mar-23			OVERHEAD	10.50%
PROJECT MANAGER	Nicole Rodriguez			TAX GROSS UP	0.00%
STATE	California			PROJECT TYPE	Reimbursable
COUNTY	Washington			IN-SERVICE	Feb-24
Relocation SCOPE:	Relocate approx. 1,000lf LS-14 line sections by open trench due to encroachment (STA 946+10 to 954+90). City of Sherwood is proposing future Ice Age Dr in conflict with LS-14. City to provide new easement for KM relocation. Related to encroachment NR2209001.				
Removal SCOPE:	Removal of 900ft of LS-14.				
Damage Prevention SCOPE:	Provide damage prevention inspection for newly relocated line during City Construction.				
ESTIMATE SUMMARY		Relocation	Removal	Damage Prevention	TOTAL
MATERIAL (INCL SALES TAX)	\$	89,760	\$ 1,980	\$ -	\$ 91,740
COMPANY LABOR COST	\$	76,560	\$ -	\$ -	\$ 76,560
PM, ENG, LAND, ENVIRO - EXPENSE	\$	3,410	\$ -	\$ -	\$ 3,410
PRIMARY CONSTRUCTION CONTRACTOR	\$	1,207,470	\$ 144,210	\$ -	\$ 1,351,680
SECONDARY CONTRACTOR	\$	-	\$ 37,510	\$ -	\$ 37,510
PROFESSIONAL ENGINEERING	\$	55,770	\$ -	\$ -	\$ 55,770
INSPECTION SERVICES	\$	125,840	\$ 16,390	\$ 66,700	\$ 208,930
RADIOGRAPHY SERVICES	\$	2,860	\$ 990	\$ -	\$ 3,850
SURVEY CONTRACTOR	\$	22,550	\$ -	\$ -	\$ 22,550
ROW & DAMAGES	\$	8,250	\$ -	\$ -	\$ 8,250
PERMIT FEES	\$	11,000	\$ -	\$ -	\$ 11,000
SUBTOTAL	\$	1,603,470	\$ 201,080	\$ 66,700	\$ 1,871,250
CAPITALIZED OVERHEAD (BURDEN)	\$	168,364	\$ 21,113	\$ -	\$ 189,478
TAX GROSS-UP	\$	-	\$ -	\$ -	\$ -
ESTIMATED TOTAL COST	\$	1,771,834	\$ 222,193	\$ 66,700	\$ 2,060,728
ASSUMPTIONS					
- No conflicting utilities - City to remove vegetation and clear site - City to provide temporary workspace - Pig and nitrogen purge for LS-14. Approx 7.75mi evacuation. - No Federally listed or State listed species of special concern will be impacted; no species surveys, reporting, or consultation with USFWS will be required. - No cultural resources will be impacted. - Land disturbance will be more than 1 acre. - Any necessary building or development permits will be acquired by Project Management of the Contractor. - Assume 1 additional Prime Contractor day per roadway crossing with required compaction.					
The following was provided by the City's Geotech Report:					
- Decomposed basalt and intact basalt bedrock will be encountered during trench excavations and will result in difficult excavations. Cobbles and boulders were encountered in some of the explorations and are often encountered within the decomposed basalt, which will result in difficult digging, excavations wider than anticipated, and larger trench volumes and may require specialized equipment. Excavations into the more intact basalt will require rock excavation techniques such as blasting, vertical drilling to weaken the rock, rock hammering, or directional drilling. Blasting, if attempted, will be difficult and need careful planning given the residential/commercial development in the area as well as the presence of existing utilities.					
** Estimate shelf life is 6 months from published date.					

KM Facility Adjustment & Reimbursement Agreement

THIS KM FACILITY ADJUSTMENT & REIMBURSEMENT AGREEMENT ("Agreement") is made and entered into as of this ____ day of _____, 20__, by and between **[Kinder Morgan Company Name]**, a Delaware limited liability company ("[KM Company]"), with an office at [Address], and **[Third Party Company]** ("[Third Party]") whose address is [Address].

WHEREAS, Third Party is proposing to construct and maintain [describe Project], hereinafter referred to as the "Project," which will necessitate [describe adjustment necessary to KM facilities and identify those facilities], known as KM Company's [insert name facilities are known by] ([defined facility name, such as "Pipeline"] "KM Facility"), which is owned and operated by KM Company within a ____-foot wide right-of-way [or on property owned by KM Company at whatever location]. The Project will be in [describe location], which is approximately at MP ____ on the KM Facility [if applicable] ("Location").

WHEREAS, based on pre-engineering work done by KM Company and paid for by Third Party, Third Party and KM Company agree that the Project would best be facilitated and both parties would best be served by KM Company [adjusting and relocating, or whatever is applicable] a segment of its KM Facility as described herein to allow for the construction of the Project.

WHEREAS, Third Party has agreed to reimburse KM Company for ____ percent (____%) of the total cost of such relocation [if a highway project involving partial reimbursement – otherwise insert "100"], as described herein.

NOW THEREFORE, for and in consideration of the premises and the mutual benefits to all parties, and intending hereby to be legally bound, it is understood and agreed as follows:

1. KM Company will [relocate (or whatever adjustment is being done)] a segment of its existing KM Facility to accommodate the proposed Project in a manner that will be sufficient for both KM Company and Third Party, as depicted in the drawing attached hereto as Exhibit A, all hereinafter referred to as the "Work."
2. Third Party shall pay KM Company for ____ percent (??%) [or just state "all"] of the actual costs and expenses incurred by KM Company to perform the Work ("Reimbursement Expenses"). Such Reimbursement Expenses shall include allocable overheads, taxes, including a tax gross-up amount, and fees incurred by KM Company.
3. Third Party shall prepay KM Company for KM Company's estimated Reimbursement Expenses. KM Company estimates that the Reimbursement Expenses to be incurred by KM Company and paid by Third Party are \$_____ ("Estimated Amount"), as described in Exhibit B attached hereto. Such Estimated Amount 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 of the Work, including overheads and taxes, incurred by KM Company, for which Third Party shall be liable to

pay hereunder. Such cost estimate is based on the costs of materials and labor current at the time of preparation of the estimate, and is subject to revision by and at the discretion of KM Company to reflect any changes in such cost that may occur prior to the completion of the Work. Such cost estimate makes no provision of encountering unforeseen rock, water, bad weather, or any other unforeseen contingencies in connection with the Work and such contingencies will be included and accounted for in the total actual cost of the Work, for which Third Party agrees to reimburse KM Company in full.

4. Upon full execution of this Agreement, Third Party shall pay KM Company the Estimated Amount. KM Company shall be under no obligation to commence any activities relative to the Work until Third Party has paid KM Company the Estimated Amount and all authorizations and permits, if any, necessary to complete the Work have been received. Upon receipt of the Estimated Amount, KM Company will make arrangements to begin the Work as soon thereafter as reasonably possible. All payments due hereunder shall be in the form either of a check made out to KM Company, [insert address] or a wire transfer to: [insert wiring instructions].
5. As promptly as reasonably possible, but no sooner than ninety (90) days following completion of the Work, KM Company shall provide Third Party an accounting for any variance between the Estimated Amount and the total Reimbursement Expenses ("Final Accounting"); provided, however, that Third Party shall be obligated to pay KM Company for the total Reimbursement Expenses regardless of whether the Reimbursement Expenses are more or less than the Estimated Amount. In the event Third Party owes KM Company additional payment to cover the Reimbursement Expenses, KM Company will provide a final invoice to Third Party within thirty (30) days after the Final Accounting. Should Third Party fail to make payment of such invoice within (60) days after its receipt of the Final Accounting, KM Company shall be entitled to collect from Third Party 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 KM Company's invoice to Third Party and terminating when such invoice is paid. In the event that KM Company owes Third Party a refund of amounts paid, KM Company agrees to make that refund to Third Party within sixty (60) days after providing the Final Accounting to Third Party.
6. Third Party agrees to perform the Project in accordance with the drawings for the Project as provided to KM Company and in effect on the date this Agreement is executed and will not make any changes to the Project where the KM Facility is involved without prior written notification to KM Company. If changes to the Project are made or future changes are made to Third Party's development that affect the KM Facility such that additional adjustments are necessary within KM Company's currently existing right of way or otherwise affect the property interests of KM Company, then KM Company will make said adjustments at the expense of Third Party.
7. From time to time KM Company or its contractor(s) may perform maintenance or construction operations on its KM Facility. During these times, [for example, when it is determined that there are anomalies with the pipe (delete as necessary)], it may be necessary to excavate and expose its KM Facility to make the necessary repairs or for other necessary maintenance or construction activities. It is therefore understood,

agreed, and accepted by Third Party that [adjust the following as necessary to fit the Project] KM Company shall have the right to [cut the pavement of the Project and any utilities within KM Company's right of way and to allow said cutting of any access roads or parking areas with the understanding that all costs associated with repairs to the Project and utilities, the access roads, and parking areas, as a result of any such cutting by KM Company will be at the expense of Third Party on the existing right of way limits and at the expense of KM Company on any part outside of the existing right of way limits. KM Company, by agreeing to the construction of the Project, does not relinquish any of its rights, titles, or interest in or to its existing right of way.

8. KM Company will keep all cost records pertaining to the Work in order to have them readily available for Third Party to audit, should they desire to do so. Third Party has the right to audit the records during the regular office hours of KM Company for a period of two years from the date the Work is completed.
9. KM Company and Third Party acknowledge and agree that nothing in this Agreement shall operate or be construed as a representation or guarantee that the activities of KM Company shall result in the Work being successful or completed, or that such activities will be completed by any specific or anticipated date, and KM Company shall have no liability whatsoever to Third Party for the failure to complete the Work, provided however, while recognizing this is an accommodation without financial incentive to KM Company, KM Company will undertake the Work in its normal course of business. The Work undertaken by KM Company herein shall be provided with NO WARRANTY, EXPRESS OR IMPLIED, AS IS, WHERE IS, WITH ALL FAULTS, AND KM COMPANY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO ITS ACTIVITIES OR ANY MATTER HEREUNDER, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, OR CONFORMANCE TO MODELS OR SAMPLES OF MATERIAL. In no event shall KM Company be liable to Third Party with respect to KM Company's Work or for any losses, costs, liabilities, obligations, or damages arising out of or in connection with such Work, whether arising in contract, tort, (including, but not limited to, negligence or strict liability) or otherwise. IT IS SPECIFICALLY AGREED THAT KM COMPANY SHALL HAVE NO OBLIGATION WHATSOEVER FOR, AND THIRD PARTY EXPRESSLY WAIVES, ANY LOST PROFITS, CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, DELAY DAMAGES WITH RESPECT TO THE WORK, OR THIS AGREEMENT, REGARDLESS OF HOW CAUSED.
10. By granting its consent to the Project in conjunction with the performance of the Work, it is understood that KM Company does not assume any additional responsibility for the protection, operation, and maintenance of its KM Facility because of the Project. In consideration of such consent, to the extent allowed by law, Third Party agrees to protect, indemnify, and hold harmless KM Company, 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 either the Work or the Project, 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 KM Company or its employees or contractors.

11. Third Party shall carry, and cause its contractors and subcontractors to carry, at its and their own expense, in reliable insurance companies satisfactory to KM Company, insurance to cover its obligations and liabilities under this Agreement, including, but not limited to Worker's Compensation Insurance with Employer's Liability coverage, General Liability Insurance with Contractual Liability coverage, and Automobile Liability Insurance. Third Party further agrees that all policies of insurance that are intended to cover any liabilities, expenses, losses, claims, costs (including attorneys' fees), suits, and causes of action incurred hereunder shall be properly endorsed to waive the insurer's rights of subrogation, under any such policies, against KM Company.
12. This Agreement shall be effective as of the date first written above upon execution by both Parties hereto and shall remain in full force and effect thereafter until the date that the Parties' rights and obligations under Sections 3, 4, and 5 of this Agreement, including the right to payment and refund, have been fully satisfied. KM Company shall have the right to terminate this Agreement in the event Third Party has failed to make timely payment of the Estimated Amount in accordance with the payment provisions herein, and/or Third Party causes the proposed construction described herein to be delayed, such that the Work cannot reasonably be completed within two (2) years of the date of this Agreement.
13. This Agreement shall be construed in accordance with the laws of the State of [state where Project is located], is subject to all valid laws, rules or regulations of any governmental authority having jurisdiction, incorporates the entire agreement between the parties, may only be changed or amended by written agreement of the parties hereto, and shall be binding on the parties hereto as well as their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

Third Party

By:
Title:

KM COMPANY

By:
Title:

PIPELINE PROTECTION AND INSPECTION AGREEMENT

This PIPELINE PROTECTION, AND INSPECTION AGREEMENT (this “**Agreement**”) is made and entered into this ____ day of _____, 2023 (the “**Effective Date**”), by and between the City of Sherwood, whose address is _____, (the “_____”) and, SFPP, L.P., a Delaware limited partnership (“**SFPP**”) whose principle address is 1001 Louisiana Street, Houston, Texas 77002, with reference to the following facts:

- A. WHEREAS, the City of Sherwood is planning to construct a new road.
- B. WHEREAS, SFPP has installed and operates a 8 inch diameter pipeline (LS-14) located on the property.
- C. WHEREAS, SFPP intends to provide the required manpower and resources to protect SFPP right-of way and pipeline, and monitor Sherwood’s activities on and in the vicinity of the SFPP pipeline.
- D. WHEREAS, Sherwood agrees to reimburse SFPP and SFPP agrees to provide, itself or through its consultants and contractors, inspection services during such activities (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 Sherwood hereby agree as follows:

1. Upon receipt of notice from Sherwood, SFPP shall coordinate with Sherwood to provide the Services.

2. Sherwood 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**”). To start, Sherwood will advance the estimated Actual Cost for the Services in the amount of \$_____ prior to commencement of the Services (“**Estimated Cost**”). SFPP’s Actual Cost to complete the Services shall only consist of inspection/monitoring services required during Sherwood’s construction activities, which includes: (i) SFPP labor, (ii) inspection (including coordination and supervision) and (iii) 19.4% for administrative overhead costs. The final Actual Costs shall in no event exceed the Estimated Cost by more than fifteen percent (15%) without the prior written consent of Sherwood, which consent may be made in its sole and absolute discretion.

3. Payment of the Estimated Cost must be received by SFPP upfront and in one installment prior to commencement of the Services. SFPP shall complete a final accounting of Actual Costs of the Services within thirty (30) days following completion of the Services. When the final accounting of the Actual Cost of the Services performed by SFPP has been completed, SFPP will submit an itemized billing of the Actual Cost to the City of Sherwood for review, together with either: (i) an invoice, to the extent the Actual Cost exceeds the Estimated Cost or (ii) a check from SFPP, to the extent the Estimated Cost exceeds the Actual Cost. If the Actual Cost exceeds the Estimated Cost, the Sherwood shall pay SFPP the excess amount within 30 days after receiving such invoice from SFPP. If the Estimated Cost exceeds the Actual Cost, SFPP shall pay

the difference to Sherwood within thirty (30) days following the completion of the Services. 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, which may be viewed by Sherwood upon written request. All payments due hereunder shall be in the form either of a check made out to SFPP, L.P. or a wire transfer. See attachment regarding payment instructions and please include “_____” and is coordinated with SFPP’s Jason Brothers.

4. To the maximum extent allowed by law, the Sherwood shall defend, indemnify, and hold harmless Indemnitees (hereinafter defined) from and against all Charges (hereinafter defined) that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of Sherwood or its contractors or anyone directly or indirectly employed by any of them, or, as determined by a court of law, anyone for whose acts any of the forenamed may be liable. Notwithstanding the foregoing, in no event shall the Sherwood be required to defend, indemnify or hold harmless the Indemnities for any Charges arising directly as a result of the gross negligence or willful misconduct of any of the Indemnitees. As used in the preceding sentences of this paragraph: (i) “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, fines, penalties, settlements and expenses included without limitation within interest and reasonable attorneys’ fees assessed as part of any such item; and amounts for alleged violations of environmental laws, regulations, ordinances, rules, or orders, and (ii) “Indemnitees” means SFPP and its officers, agents, and employees.

5. All notices must be in writing and are effective only when deposited in the U.S. mail, certified mail, return receipt requested and postage prepaid or when sent via overnight delivery service. Notices to City of Sherwood are to be sent to: City of Sherwood, Attn: Craig Sheldon, Public Works Director, 15527 SW Willamette St., Sherwood, OR 97140. Notices to SFPP must be sent to Kinder Morgan Pipeline Engineering, Attn: Engineering, 1001 Louisiana Street, Houston, TX 77002,

6. Notwithstanding anything herein to the contrary, in no event shall either party to this Agreement be liable to the other under this Agreement for any indirect, consequential, special or punitive damages, whether in contract or in tort.

7. This Agreement may be executed in any number of counterparts, each of which shall be construed as an original against any party whose signature appears thereon and all of which taken together shall constitute one and the same instrument.

8. This Agreement shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns.

9. This Agreement contains the entire agreement between Sherwood 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.

City of Sherwood

By: _____

Name: _____

Its: _____

SFPP, L.P.

a Delaware limited partnership

*By Kinder Morgan Operating LLC "D", its general partner
a Delaware limited liability company*

By: _____

Name: Melissa Cowan

Its: Attorney-in-fact