

## LICENSE AGREEMENT

This license agreement ("Agreement") is dated January 1, 2022, ("Effective Date") and is entered into by and among CONTRA COSTA COUNTY, a political subdivision of the State of California, and CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a flood control district organized under the laws of the State of California (collectively referred to as the "Licensor"), and SFPP, L.P., a limited partnership, acting by and through KINDER MORGAN OPERATING LLC. "D," its General Partner, acting by and through KINDER MORGAN G.P., INC. ("Licensee").

### RECITALS

- A. Licensor owns real property at the San Ramon Creek Channel, the San Ramon Bypass Flood Control Channel, and the Iron Horse Corridor between Ygnacio Valley Road and Newell Avenue in Walnut Creek, California (the "Property").
- B. Under Flood Control Encroachment Permit #634-20, Licensee has installed monitoring wells and soil vapor probes at various locations on the Property, as depicted in Exhibit A, for groundwater monitoring as required by the Regional Water Quality Control Board (RWQCB). The wells and soil vapor probes listed in Exhibit A-1 are located on the Property where indicated in Exhibit A, attached hereto (said areas are referred to as the "Premises").
- C. Licensee desires to obtain Licensor's permission to use the Premises for the limited purposes described in this Agreement. Licensor is willing to grant a license to use that portion of the Premises upon the terms and conditions set forth in this Agreement.

The parties therefore agree as follows:

### AGREEMENT

1. **Grant of License.** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee, a nonexclusive revocable license to enter the Premises for the purposes described in Section 2 below and for no other purpose without Licensor's prior written consent.
2. **Use of Premises.** Licensee may use the Premises for the purpose of access to sample and monitor the existing monitoring wells and soil vapor probes and to add or remove wells or probes per Section 5.a.
3. **Term.** The term of this Agreement is twenty years, beginning January 1, 2022, and ending December 31, 2041. Licensor and Licensee each have the right to terminate this Agreement at any time, for any reason, or for no reason, with thirty (30) days advance written notice. In addition, Licensor may terminate this Agreement with fifteen (15) days advance written notice if Licensee violates any term or condition of this Agreement.

4. **License Fees.** As consideration for this Agreement, Licensee agrees to pay a nonrefundable annual fee, payable in advance and without prior demand, on January 1 of each year during the term of this Agreement. The annual fee for the first year of this Agreement is NINE THOUSAND DOLLARS (\$9,000), due within 30 days of execution of this license. The annual fee during the remainder of the term will be increased by an amount equal to four percent (4%) of the annual fee for the preceding year, rounded to the nearest full dollar. Set forth below is a fee schedule for the twenty-year term of this Agreement.

<u>Due Date</u>	<u>Annual Fee</u>
Within 30 days of execution of license	\$9,000.00
1/1/2023	\$9,360.00
1/1/2024	\$9,734.00
1/1/2025	\$10,124.00
1/1/2026	\$10,529.00
1/1/2027	\$10,950.00
1/1/2028	\$11,388.00
1/1/2029	\$11,843.00
1/1/2030	\$12,317.00
1/1/2031	\$12,810.00
1/1/2032	\$13,322.00
1/1/2033	\$13,855.00
1/1/2034	\$14,409.00
1/1/2035	\$14,986.00
1/1/2036	\$15,585.00
1/1/2037	\$16,208.00
1/1/2038	\$16,857.00
1/1/2039	\$17,531.00
1/1/2040	\$18,232.00
1/1/2041	\$18,962.00

Licensee shall pay the fee when due without any deduction, setoff, or counterclaim whatsoever. If any annual fee covers a period of time less than twelve (12) months, the fee will be prorated at the rate of 1/12 of the annual fee for each full calendar month, and 1/30 of the monthly fee for each day during the partial month, for the time period covered by the payment in question.

5. **Improvements to the Premises.**

- a. Licensee must notify Licensor at least 30 days prior to installation of additional or removal of existing groundwater monitoring wells or soil vapor probes from the groundwater monitoring well/soil vapor probe location(s), including map coordinates and submittal of their approved Contra Costa Health Services permits.
  - b. Licensee may not construct any improvements on the Premises without prior written consent from Licensor. For the purposes of this Agreement, any equipment Licensee is permitted to install on the Premises is not considered to be an improvement to the Property or the Premises.
  - c. Any improvements to the Premises by Licensee (with or without the consent of Licensor) must be removed by Licensee, at its sole cost, except those improvements that Licensor and Licensee agree are not required to be removed upon the termination of this Agreement. Licensee shall repair, at its sole cost, any damage caused by the removal of its improvements or equipment.
  - d. Removal of existing or added groundwater monitoring wells and soil vapor probes includes the following:
    - i. Complete removal of groundwater monitoring wells and soil vapor probes, and any other monitoring items placed on the Licensed Premises by Licensee;
    - ii. Compaction of soil and grading of the Licensed Premises to Licensor standards;
    - iii. Final inspection of the Licensed Premises after Licensee has vacated the Licensed Premises; and
    - iv. Peer review of final sign-off by RWQCB, Contra Costa County Health Department, and any other agency having jurisdiction over the Licensed Premises or the subject matter of this agreement.
  - e. If Licensee fails to remove any improvements or equipment it is required to remove, Licensor may remove them at Licensee's expense, and Licensee shall immediately reimburse Licensor upon Licensee's receipt of an invoice from Licensor.
6. **Bond**. Upon execution of this license agreement, Licensee shall deliver to Licensor a performance bond naming Licensor as obligee ("**Performance Bond**") and in the amount of THREE HUNDRED AND FIFTY THOUSAND AND NO/100 DOLLARS (\$350,000), which Performance Bond shall guarantee performance of removing the groundwater monitoring wells and soil vapor probes installed by the Licensee, restoring the License Premises to Licensor standards, reimbursing Licensor for all staff time spent performing necessary inspections, and paying costs and fees incurred by Licensor for necessary inspections and peer review of the Licensed Premises following the restoration ("**Covered Activities**"). Covered Activities covered by the Performance Bond, include, without limitation, the following:

- a. Complete removal of groundwater monitoring wells and soil vapor probes, and any other monitoring items placed on the Licensed Premises by Licensee;
- b. Compaction of soil and grading of the Licensed Premises to Licensor standards;
- c. Final inspection of the Licensed Premises after Licensee has vacated the Licensed Premises; and
- d. Peer review of final sign-off by RWQCB, Contra Costa County Health Department, and any other agency having jurisdiction over the Licensed Premises or the subject matter of this agreement.

On January 1, 2027, and every five years thereafter, the Licensor may provide written notice to Licensee that a new Performance Bond is required in an amount Licensor's Chief Engineer, or designee, determines is sufficient to cause the above Covered Activities to be completed. Licensee shall deliver that new Performance Bond to Licensor within 30 days after Licensor's written notice to Licensee.

7. **Permits and Approvals.** Licensee is responsible for obtaining any permits or approvals from any agency having jurisdiction and will provide copies of said permits and approvals to Licensor upon request. This Agreement does not constitute governmental approval by Licensor of this use.
8. **Nonexclusive Right of Use.** This Agreement is nonexclusive. Licensor reserves the right to issue licenses, easements, and permits to others that could affect the Property or the Premises.
9. **Existing Facilities.** It is understood and agreed that Licensor has leases, licenses, and/or easements with others for all or a portion of the Property.

The holders of the leases, licenses, and/or easements granted by Licensor have the right to enter on the Property and maintain their facilities. Licensee will not be compensated for damage resulting from such maintenance.

10. **Damage.** It is the responsibility of Licensee to contact property owners and holders of easements, leases, and licenses to determine if any real property over which Licensee wishes to use a vehicle is able to support the vehicle without damage to subsurface or surface facilities. If Licensee's use of real property pursuant to this Agreement causes damage to that real property, the Property, the Premises, or their vegetation, subsurface or surface facilities, Licensee shall repair the damage and return the affected property to a neat and safe condition satisfactory to Licensor and the affected users.
11. **Pollution.** Licensee, at its expense, shall comply with all applicable laws, regulations, and rules with respect to the use of the Property, regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality, and shall furnish satisfactory evidence of such compliance upon request by Licensor.

Licensee may not permit hazardous materials to be handled at any time on the Property. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the Property due to Licensee's use and occupancy of the Property, Licensee, at its expense, shall clean all the property affected thereby, whether owned or controlled by Licensor or any third person, to the satisfaction of Licensor (insofar as the property owned or controlled by Licensor is concerned) and any governmental body having jurisdiction.

To the extent permitted by law, Licensee shall indemnify, hold harmless, and defend the Licensor and the holders of rights to use the Property (each, an "Indemnitee") against all liability, cost, and expense (including, without limitation, any fines, penalties, judgments, litigation costs, and attorneys' fees) incurred by any Indemnitee as a result of any discharge, leakage, spillage, emission or pollution, regardless of whether the liability, cost or expense arises during or after the term of this Agreement, unless such liability, cost or expense is proximately caused solely by the active negligence of Licensor.

Licensee shall pay all amounts due to Licensor under this section within ten (10) days after any demand therefor.

12. **Hold Harmless.** Licensee shall defend, indemnify, save, and keep harmless Licensor and Licensor's officers, employees, and agents from and against any and all claims, demands, liabilities, judgments, orders, costs, penalties, fines, fees, expenses, attorney's fees, and attorney's fee and cost awards (collectively, "Liabilities") arising from or connected with the occupancy or use of the Property or Premises by Licensee, any parent or subsidiary of Licensee, or Licensee's officers, employees, contractors, or agents, or as a result of Licensor granting Licensee a license under this Agreement, save and except for any Liabilities arising from the sole negligence or sole willful misconduct of Licensor, or Licensor's officers, employees, or agents. Licensee's obligations under this Section 12 shall survive the termination or expiration of this Agreement.
13. **Insurance.**
  - a. Licensee shall, at no cost to Licensor, obtain and maintain during term of this Agreement, commercial general liability insurance with a minimum limit coverage of \$1,000,000 for each occurrence and \$2,000,000 aggregate for all claims or losses due to bodily injury, including death, or damage to property, including loss of use, and to name **Contra Costa County and Contra Costa County Flood Control & Water Conservation District, and their officers, agents, and employees as additional insured** thereunder. The coverage must provide for a thirty-day written notice to Licensor of cancellation or lapse. Licensee shall provide evidence of the coverage to Licensor prior to execution of this Agreement.
  - b. Licensee shall require each contractor involved with the ground watering wells or the soil vapor probes to maintain Contractors Pollution Liability and/or Errors & Omissions applicable to the work being performed, with a limit no less than \$2,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year. If Licensee's contractor maintains broader coverage and/or higher limits than the minimums shown above, the Licensor shall be entitled to the broader coverage and/or

the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Licensor. Self-Insured Retentions or Deductibles must be declared to and approved by the Licensor. A claims retroactive date must be shown and must be prior to December 1, 2020. Licensee shall require its contractor to maintain the Pollution Liability insurance for a period of five years following completion of the contractor's work. Each policy of insurance required under this Section 13(b) shall name **Contra Costa County and Contra Costa County Flood Control & Water Conservation District, and their officers, agents, and employees as additional insureds** under said pollution policy.

14. **Assignment**. Licensee may not assign its rights under this Agreement.
15. **Licensor's Title**. Licensee hereby acknowledges Licensor's fee title in and to the Property and agrees never to assail or to resist Licensor's title. Licensee agrees that it has not, and never will, acquire any rights or interest in the Property as a result of this Agreement, and that Licensee has not, and will not, obtain any right or claim to the use of the Property beyond that specifically granted in this Agreement. Construction of any improvements by Licensee on or about the Property does not give rise to an agreement coupled with an interest.
16. **Notices**. Notices under this Agreement must be in writing and will be effective either when delivered in person or deposited as certified mail, postage prepaid, return receipt requested, or sent by a recognized overnight courier service for next business day delivery, and directed to the other party at its address as stated below, or to such other address as the party may designate by written notice.

SFPP, LP: Kinder Morgan/SFPP, LP  
1001 Louisiana Street  
Houston, TX 77002

With a copy to: Concord Station  
1550 Solano Way  
Concord, CA 94520  
Attn: Area Manager

Licensor: Contra Costa County/Contra Costa County Flood  
Control & Water Conservation District  
Public Works Department  
Attn: Real Estate Division  
255 Glacier Drive  
Martinez, CA 94553

A notice given in accordance with this Section shall be deemed received on the same day it is personally delivered, on the business day following deposit with an overnight courier service for next business day delivery, and on the fifth day after mailing if given by certified mail.

17. **Governing Law.** This Agreement is governed by the laws of the State of California. Any action or proceeding to interpret or enforce this Agreement shall be brought in a state or federal court in California with jurisdiction over the parties and over the subject matter thereof.
18. **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to the subject matter of this Agreement. No alteration or variation of this Agreement is valid or binding unless made in writing and signed by both parties.

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The parties are signing this Agreement as of the date set forth in the introductory paragraph.

**CONTRA COSTA COUNTY/  
CONTRA COSTA COUNTY FLOOD  
CONTROL AND WATER  
CONSERVATION DISTRICT**

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

By: \_\_\_\_\_  
Brian M. Balbas  
Public Works Director/Chief Engineer

By: Kinder Morgan Operating  
LLC "D", its General Partner

By: Kinder Morgan G.P., Inc.,  
its General Partner

RECOMMENDED TO THE BOARD  
OF SUPERVISORS FOR APPROVAL:

By:   
Michael Pitta  
Vice President

By \_\_\_\_\_  
Jessica L. Dillingham  
Principal Real Property Agent

By \_\_\_\_\_  
Margaret Eychner  
Senior Real Property Agent

APPROVED AS TO FORM

MARY ANN McNETT MASON,  
COUNTY COUNSEL

By: \_\_\_\_\_  
Stephen M. Siptroth  
Deputy County Counsel

ME:sl  
G:\realprop\License Agreements\Kinder Morgan SFPP, L.P Amendment\CCC and CCCFCD - San Ramon Bypass Monitoring Wells -  
2022\AG.29 License Agreement - FCD SR Bypass - 2022 - Final 2.8.22.docx  
Approved by County Counsel 3/2021  
Rev. 3/2021



## EXHIBIT A



# Exhibit A-1

## Monitoring Wells and Soil Vapor Probes on Property of Licensor

Monitoring wells and soil vapor probes depicted on Exhibit A on property controlled by Licensor and subject to the terms of this license are listed below:

- IHT-01/ IHT-SVP-01
- IHT-02/ IHT-SVP-02
- IHT-04/ IHT-SVP-04
- IHT-05/ IHT-SVP-05
- IHT-07/ IHT-SVP-07
- SVP-18B
- SVP-19
- MW-04/ SVP-04
- MW-11/ SVP-11
- MW-12/ SVP-12
- MW-13/ SVP-13
- IHT-BA-01/ SVP-BA-01
- IHT-BA-02/ SVP-BA-02
- IHT-BA-03/ SVP-BA-03
- IHT-BA-04/ SVP-BA-04
- IHT-BA-05/ SVP-BA-05
- IHT-14
- IHT-15
- IHT-16B
- IHT-17
- IHT-18
- IHT-19
- IHT-24
- IHT-25
- IHT-26