

C-16
Recorded at the request of:
Contra Costa County Flood Control
And Water Conservation District

After recording return to:

Kinder Morgan, Inc.
1100 Town & Country Road
Orange, CA 92868

Ptn. Of Assessor's Parcel No.: 125-020-XXX

GRANT OF EASEMENT

For good and valuable consideration, including but not limited to the agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a flood control district, organized under the laws of the State of California, (hereinafter "DISTRICT"), hereby grants to SFPP, L.P, a Delaware Limited Partnership (hereinafter "GRANTEE"), a nonexclusive perpetual easement and right of way (hereinafter "Easement ") for installing, constructing, reconstructing, removing, replacing, repairing, upgrading, maintaining, operating and using an 8-inch steel pipeline that will transport refined petroleum products, and appurtenances thereto, and for no other purposes whatsoever, along and in all of the hereinafter described parcel of land (the "Easement Area") situated in the County of Contra Costa, State of California, described as follows:

FOR DESCRIPTION AND PLAT MAP, SEE ATTACHED EXHIBITS "A' AND "B"

The foregoing grant is made subject to the following terms and conditions:

1. **PRIMARY USE OF THE PROPERTY** The primary use of the Property subject to this easement (hereinafter the "Property") is for flood control conveyance of storm water and flood protection purposes, including, but not limited to, the right of channeling, impounding and otherwise controlling the flow of drainage waters, as well as performing any other activities, and construction or maintaining any facilities that the DISTRICT may be required to perform, construct or maintain by other agencies at Federal, State, Regional, or Local levels, including but not limited to, water quality and quantity control activities (such activities and those ancillary there to being hereinafter referred to as "Flood Control").

GRANTEE acknowledges and agrees that the use just described constitutes the primary use of the Property and that any and all rights granted or implied by this Grant of Easement are secondary and subordinate to the primary use of the Property by the DISTRICT, its successors and assigns. GRANTEE shall not, at any time, use or permit the public to use the Easement Area in any manner that will interfere with or impair the DISTRICT's primary use of the Property. GRANTEE shall

not fence the Easement Area without the prior written approval of the DISTRICT, and shall remove any fencing when requested by DISTRICT to do so. GRANTEE shall not otherwise obstruct the Easement Area.

2. **U. S. ARMY CORPS OF ENGINEER'S PROJECT:** The Property is part of the U. S. Army Corps of Engineers, (hereinafter "Corps"), "Walnut Creek Project". The Corps' Project provides flood protection to the surrounding communities. Approval by the Flood Protection and Navigation Section of the Sacramento District, U.S. Army Corps of Engineers is required under 33 USC (United States Code) 408 (Section 408) for any modification to "Corps Project".
3. **DISTRICT TITLE:** GRANTEE hereby acknowledges DISTRICT's title to the Property and agrees never to assail or resist said title.
4. **CONSTRUCTION AND MAINTENANCE ACTIVITIES:**
 - (a) Prior to any construction, reconstruction, remodeling, excavation, installation, or plantings within the Easement Area, GRANTEE shall submit specific plans and specifications to the DISTRICT for review and approval. Such approval, together with any additional DISTRICT requirements, will be in the form of a written permit issued by DISTRICT to GRANTEE.
 - (b) Normal maintenance by GRANTEE of its facilities within the Easement Area, including inspection and cleaning of the existing pipeline, shall not require prior notice to the DISTRICT. GRANTEE shall perform maintenance of its facilities so as to prevent damage to the Property.
 - (c) GRANTEE shall disclose to the DISTRICT the volume, pressure and type of substances being transported by Grantee's pipeline; the size, date of construction and material specifications of the pipeline; maximum pipeline pressure ratings; the date of the most recent pipeline inspection required by law; a copy of the most recent pipeline certifications from all applicable regulatory agencies; a detailed description of materials transported, maximum daily volumes, and certifications from all agencies responsible for permitting and operation of the pipeline , as applicable; and any other information as may be requested by the DISTRICT and the Corps.
 - (d) GRANTEE shall be responsible, at its sole expense, for all repair and maintenance directly caused by GRANTEE's use of the Easement Area. Except in the case of an emergency, the GRANTEE shall not make alterations to the Easement Area, including the installation of additional improvements or utilities or performance of any construction, reconstruction, remodeling, alteration, removal, landscaping, tree planting, major maintenance work, or other work, without obtaining the prior written consent of DISTRICT's Chief Engineer, or his or her designee, which shall be in the form of an "Encroachment Permit for Use of DISTRICT's Right of Way" ("Encroachment Permit"). The GRANTEE shall make every effort to report emergency work in the Easement Area to the DISTRICT within one (1) Business-day after commencing such activities. Only after DISTRICT obtains approval for all

proposed encroachments or revisions from the Corps, then GRANTEE shall obtain from DISTRICT the written consent for GRANTEE's alterations to the Easement Area in the form of an Encroachment Permit, which permission may be revoked at any time if necessary for or in furtherance of the DISTRICT'S uses of the Easement Area. Upon revocation or denial of consent, GRANTEE shall immediately remove any of such alterations. District may require GRANTEE to alter or remove any emergency work done by GRANTEE, at GRANTEE's sole cost and expense, if the emergency work interferes with DISTRICTS's use of the Easement Area or if such work is not permitted by the Corps, GRANTEE shall reimburse DISTRICT for all costs to process, issue, and inspect GRANTEE encroachments.

(e) GRANTEE shall test all pipelines as required by the State Fire Marshal or other state or federal agency with jurisdiction over the pipeline or by any applicable law, and must make available for inspection by the DISTRICT the results of all pipeline inspections and pipeline tests that are required by the State Fire Marshal and by all applicable laws within sixty (60) days after the GRANTEE'S receipt of those results.

(f) GRANTEE shall file, and thereafter annually keep on file with the DISTRICT, a pipeline emergency plan as may be required by 49 C.F.R. section 195.402, 49 C.F.R. section 192.615, the California Pipeline Safety Act of 1981 (Government Code sections 51010 et seq.), and all other applicable laws, regulations, and ordinances. GRANTEE shall update its pipeline emergency plan whenever it acquires, constructs, lays, removes, or abandons any facilities in the Easement Area, and shall file the plan with the DISTRICT within thirty (30) days after any update.

5 **MODIFICATION, RELOCATION, AND REMOVAL OF GRANTEE'S FACILITIES:**

DISTRICT reserves the right to require GRANTEE to modify its facilities, to relocate said facilities within the Easement Area or, at DISTRICT's sole discretion, to remove its facilities from the Easement Area to another site selected by DISTRICT, all at GRANTEE's sole expense. If DISTRICT directs GRANTEE to remove its facilities from the Easement Area to a site outside the Easement Area, DISTRICT shall provide the GRANTEE with a similar easement for the new site. GRANTEE shall be responsible for all costs of relocating its facilities but shall not be required to pay for the relocated Easement Area. In the event that GRANTEE fails to commence the required modification, relocation or removal work within ninety days after being directed to do so by DISTRICT, or such reasonable extension as DISTRICT may agree to, or if GRANTEE fails to complete the required modification, relocation, or removal work within a reasonable time thereafter, as determined by the DISTRICT, the DISTRICT may perform or complete the work at the expense of GRANTEE, which expense GRANTEE agrees to pay to DISTRICT promptly upon demand, including but not limited to, engineering costs and any legal expenses incurred to collect such costs. If GRANTEE's facilities are removed from the current Easement Area to a new easement area, GRANTEE shall promptly quitclaim to DISTRICT its interest in the current Easement Area.

6. **DAMAGE TO DISTRICT PROPERTY:** Any and all DISTRICT property, facilities, landscaping, or other improvements removed or damaged as a result of the use of the Easement Area by GRANTEE, or any other person or entity acting under GRANTEE's direction or control, shall, at DISTRICT's discretion and direction, Either (a) be repaired or replaced by DISTRICT, and GRANTEE shall reimburse DISTRICT for all of DISTRICT'S reasonable repair or replacement costs with all of DISTRICT's costs and expenses to be paid by GRANTEE (including but not limited to engineering costs and legal costs of collecting any unpaid expenses), or (b) shall be repaired or replaced by GRANTEE, at the sole cost and expense of GRANTEE, equivalent to or better than their existing condition. In the event that GRANTEE fails to commence the required work within ninety days after being directed to do so by DISTRICT, or such reasonable extension as DISTRICT may agree to in writing, or fails to complete the required work within a reasonable time thereafter, as determined by the DISTRICT, the DISTRICT may perform or complete the work at the reasonable expense of GRANTEE, which expense GRANTEE agrees to pay to DISTRICT promptly upon demand, including but not limited to engineering costs and any legal expenses incurred to collect such costs.
7. **DAMAGE TO GRANTEE'S FACILITIES:** DISTRICT shall have no responsibility for the protection, maintenance, damage to, or removal of, GRANTEE's facilities, appurtenances, or improvements caused by or resulting from DISTRICT's use of the Property or its work or operations thereon. It shall be the sole responsibility of the GRANTEE to provide and maintain adequate protection and surface markings for its own facilities.
8. **NON-EXCLUSIVE EASEMENT:** The Easement granted hereunder is non-exclusive. This Easement is subject and subordinate to all existing rights, rights of way, licenses, reservations, franchises, and easements of record, or that would be evident from a physical inspection or accurate survey of the Property, in and to the Property ("each such right being held by an "Existing user"). DISTRICT shall have the right to require GRANTEE to modify, remove, or relocate its facility within the Easement Area or to a similar easement to be granted to GRANTEE by DISTRICT at no cost, in a timely manner at GRANTEE's sole cost as reasonably necessary to accommodate the DISTRICT's, or any other existing user's right to construct, replace, enlarge, repair, maintain and operate its facilities, in the same manner as required by Section 4 of this Easement, including the rights and remedies contained therein. GRANTEE agrees to take all precautions required to avoid damage to the facilities of the existing users. If GRANTEE damages the facilities or improvements of any existing user, GRANTEE shall repair or replace such facilities at GRANTEE's sole cost and expense. Nothing contained herein shall be construed to prevent DISTRICT from granting other easements, franchises, licenses or rights of way over said lands, provided however, that said subsequent uses do not unreasonably prevent or obstruct GRANTEE's easement rights hereunder.

9. **INDEMNIFICATION; USE AND CONDITION OF PROPERTY:**

(a) In the exercise of all rights under this Easement, GRANTEE shall be responsible for any and all injury to the public, to persons, and to property arising out of or connected with GRANTEE's use of the Property. GRANTEE shall indemnify, defend, save, protect, and hold harmless, DISTRICT, its officers, agents, employees, and contractors from and against any and all threatened or actual loss, damage, liability, claims, suits, demands, judgments, orders, costs, fines, penalties or expense of whatever character, including but not limited to those relating to inverse condemnation, and including attorneys' fees, (hereinafter collectively referred to as "Liabilities") to persons or property, direct, directly contributed to, or caused by , GRANTEE's operations, acts, or omissions pursuant to this Easement, or the GRANTEE's use of the Easement Area, save and except Liabilities arising from the sole negligence or sole willful misconduct of the DISTRICT, its officers, or its employees. GRANTEE acknowledges that the Property subject to this easement is in a flood control area. GRANTEE agrees that GRANTEE shall never have, claim, or assert any right or action against DISTRICT or the County of Contra Costa in the event of damage to or disruption of GRANTEE's facilities caused or contributed to by flooding or water, and GRANTEE shall indemnify, defend, save, protect and hold DISTRICT harmless from all Liabilities resulting from such damage or disruption.

b) GRANTEE further agrees to defend, indemnify, save, protect and hold harmless, DISTRICT from any and all actual or threatened claims, costs, actions or proceedings to attack, set aside, void, abrogate, or annul this grant of easement or any act or approval of DISTRICT related thereto.

c) GRANTEE accepts the Easement Area in an "as is" physical condition, with no warranty, guarantee, representation, or liability, express or implied on the part of the DISTRICT as to any matter, including but not limited to the physical condition of the Property and/or the condition and/or possible uses of the land or any improvements thereon, the condition of the soil, or the geology of the soil, the condition of the air, surface water or groundwater, the presence of known and unknown faults, the presence of any hazardous substance, materials, or other kinds of contamination or pollutants of any kind in the air, soil, groundwater or surface water, or the suitability of the Property for the construction and use of the improvements thereon. It shall be the sole responsibility of GRANTEE, at its sole cost and expense, to investigate and determine the suitability of the soil, water, geologic, environmental and seismic conditions of the Property for the intended use contemplated herein, and to determine and comply with all building, planning and zoning regulations relative to the Property and the uses to which it can be put. GRANTEE relies solely on GRANTEE's own judgment, experience and investigations as to the present and future condition of the Property or its suitability for GRANTEE's intended use and is not relying in any manner on any representation or warranty by DISTRICT. GRANTEE agrees that neither GRANTEE, its heirs, successors, or assign shall ever claim have or assert any right or action against DISTRICT for any loss, damage, or other matter arising out of, or resulting from the presence of any hazardous substance or any other condition of the Property at the commencement of the Easement, or from the release of any hazardous substance in, on, or around

any part of the Property, or in the soil, water, subsurface strata, or ambient air, by any person or entity other than the DISTRICT following the commencement of this Easement. As used herein, "hazardous substance" means any substance, material, or waste which is or may become designated, classified, or regulated as being "toxic," "hazardous," or a "pollutant" under any federal, state, or local law, regulation, or ordinance. Nothing in this section is intended in any way to restrict the right of GRANTEE to seek contribution or indemnity from any person or entity other than DISTRICT whose activities are a cause of any discharge, leakage, spillage, or emission of hazardous materials on or to the Property.

d) To the extent permitted by law, GRANTEE shall indemnify, defend, save, protect and hold the DISTRICT harmless from and against any and all Liabilities (including but not limited to the costs of any required or necessary testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties and from and against the preparation of any cleanup, remediation, closure or other required plans whether such action is required or necessary prior to or following the termination of the easement), of any kind or nature, to the extent caused or contributed to by GRANTEE's operation or performance under this Easement, or GRANTEE's use, release, or disposal of any hazardous substance, including all costs, claims, damages (including property and personal injury) caused by the uncovering, release, or excavation of hazardous materials (including petroleum) as a result of GRANTEE's construction, reconstruction, maintenance, use, replacement, or removal of its facilities, to the extent that such activities increase the costs attributable to the cleanup or remediation of such hazardous materials.

e) **CONTAMINANTS:** Except as expressly authorized herein GRANTEE may not allow any hazardous substances to be generated, used, stored for any period of time, released on, under, or from the Easement Area. If any potential or known release, threatened release, generation, storage, disposal or placement of any hazardous substances occurs on, in, near, or from the Easement Area, the GRANTEE shall immediately notify appropriate emergency personnel, public agencies, and the DISTRICT.

f) The obligations contained in this section shall survive the abandonment, expiration, or other termination of this easement.

10. **ABANDONMENT:** In the event GRANTEE shall cease to use the Easement herein continuously for a period of one year, or in the event GRANTEE abandons its facilities or fails to use the Easement for the purpose for which it is granted, then all rights of GRANTEE in and to said lands shall thereupon cease and terminate and shall immediately revert to and vest in DISTRICT or its successors. Upon any such termination of GRANTEE's rights, GRANTEE shall, upon request by DISTRICT, and at GRANTEE's sole cost and expense, remove all of its facilities from the Easement Area and restore said Property to its original condition; or, if agreed upon in writing by the DISTRICT, the GRANTEE may abandon in place its facilities in the Easement

Area by taking all necessary industry practices to inactivate and remove hydrocarbons, and make the pipeline inert by agreeable means. Upon the failure of GRANTEE to complete the removal or abandonment work required by this section,, this work may be performed by DISTRICT at GRANTEE's own expense, which sole reasonable expense GRANTEE agrees to pay to DISTRICT within 30 days after request of DISTRICT's demand for payment . Upon request by district, GRANTEE shall execute any Quitclaim Deeds required by DISTRICT to relinquish GRANTEE's interest in the Easement Area following abandonment.

11. **NO ASSIGNMENT OF EASEMENT:** No rights granted hereunder shall be transferred, apportioned, or assigned without the prior written consent of DISTRICT.
12. **NO SECONDARY RIGHTS:** Nothing herein contained shall be deemed to construe that access or other secondary rights are conveyed by this Easement over any of DISTRICT's adjacent lands lying outside of the Easement Area.
13. **ENTIRE AGREEMENT:** This Grant of Easement contains the entire agreement between the parties hereto and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.
14. **CONSTRUCTION:** This grant of easement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this grant of easement and their counsel have read and reviewed this grant of easement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this grant of easement.
15. **SUCCESSORS AND ASSIGNS:** This indenture and all of the covenants herein contained shall inure to the benefit of and be binding upon the heirs, successors and assigns of the respective parties hereto.

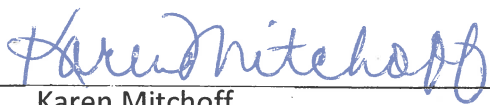
16. **NO THIRD-PARTY BENEFICIARIES:** Nothing in this Grant of Easement confers any rights on any persons or entities other than the Parties hereto.
17. **GOVERNING LAW:** This Grant of Easement shall be construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this Grant of Easement is signed and executed this 13th day of March 2018.

CONTRA COSTA COUNTY FLOOD
CONTROL & WATER CONSERVATION
DISTRICT

GRANTEE
SFPP, L.P.

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

By 
Karen Mitchoff
Chair, Board of Supervisors

By 
Floyd C. Robertson
Attorney-in-Fact

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF CONTRA COSTA ✓)

On March 13, 2018 before me, Clerk of the Board of Supervisors, Contra Costa County, personally appeared Karen Mitchoff, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Stacey M Boyd

Deputy Clerk

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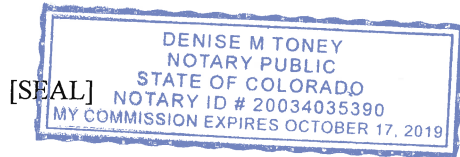
(APPROVED AS TO FORM by County Counsel 07/99)

ACKNOWLEDGEMENT

STATE OF COLORADO)
) SS
COUNTY OF EL PASO)

On the 14th day of October, 2017, before me the undersigned authority, appeared **Floyd C. Robertson** to me personally known, who, being sworn did say that he is an Attorney-in-Fact for SFPP, L.P., a Delaware limited partnership, and that the foregoing instrument was signed in behalf of said partnership and Appeared acknowledged to me that said instrument to be the free act and deed of the partnership.

Denise Toney
Notary Public



My Commission Expires: 10-17-19

EXHIBIT "A"

All that real property situated in the unincorporated area of Contra Costa County, State of California, being a portion of that parcel of land as described in that certain Director's Deed (State Deed Number 19288-DD) recorded July 23, 1962 in Volume 4165, at Page 183, Official Records of Contra Costa County, more particularly described as follows:

COMMENCING at the most Northerly corner of that parcel of land as described in that certain Director's Deed (State Deed Number 19288-DD-2) recorded November 9, 1967 in Volume 5492, at Page 238, Official Records of Contra Costa County; thence along the general Easterly lines of said parcel, South 18°42'16" West, 49.54 feet to an angle point and South 44°46'34" East, 63.69 feet to the most Northerly corner of PARCEL 1 as described in that Director's Deed (State Deed Number 19288-DD-1) recorded September 13, 1962 in Volume 4201, at Page 97, Official Records of Contra Costa County; thence along the Westerly line of said PARCEL 1, South 18°43'34" West, 166.09 feet; thence North 58°48'11" East, 31.06 feet to a point on the Easterly line of said PARCEL 1, said point being the POINT OF BEGINNING; thence continuing North 58°48'11" East, 339.64 feet to the Easterly line of said parcel (Volume 4165, Page 183); thence along last said line, North 18°43'34" East, 15.76 feet; thence South 58°48'11" West, 339.64 feet to said Easterly line of said PARCEL 1; thence along last said line, South 18°43'34" West, 15.76 feet to the POINT OF BEGINNING.

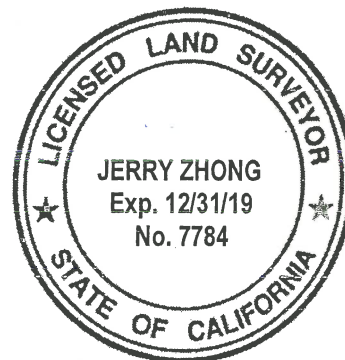
CONTAINING 3,447 square feet, more or less.

The bearings and distances used in the above description are on the California Coordinate System of 1983, Zone 3, Epoch 1991.35. Multiply the above distances by 1.0000574 to obtain ground level distances.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: 
Licensed Land Surveyor

Date: 1/9/2018



CONTRA COSTA COUNTY

NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or

