

ORDINANCE NO. _____

An ordinance granting Dow Chemical Company a non-public utility pipeline franchise to install, retain, operate and maintain pipelines and their adjunct communication lines within the City of Los Angeles.

WHEREAS, Ordinance No. 175,789 granted a franchise to Dow Chemical Company that superseded the franchise granted to same by Ordinance No. 146,576; and,

WHEREAS, Dow Chemical Company has been paying annual franchise fees in good faith and complying with all other provisions of Ordinance No. 175,789 to date; and,

WHEREAS, Dow Chemical Company needs a franchise for these facilities under City right-of-way;

NOW, THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. The City Council hereby grants the following pipeline franchise to install, retain, operate and maintain pipelines and their adjunct communication lines within the City of Los Angeles to Dow Chemical Company subject to the following terms and conditions:

SECTION 1. DEFINITIONS

Unless it is apparent from the context that it has a different meaning, each of the following words and phrases has the meaning stated below wherever it is used in this franchise:

ADJUNCT COMMUNICATIONS LINE: Any facility such as coaxial cable, optical fiber, wire or other transmission lines or forms of transmission, and associated equipment and devices located in, upon, along, across, under or over the streets of the City, the sole function of which is to monitor or control the operation or safety of the pipeline facilities via the distribution of video, audio, voice or data signals. An adjunct communication line shall not include any facility that distributes, through any means, to subscribers or persons other than Grantee, the signal of one or more broadcast television or radio stations or other sources of video, audio, voice or data signals for a length in excess of 1,000 feet.

BOARD: The Board of Transportation Commissioners of the City, which has the powers and duties relating to franchises vested in it by the City Charter, Los Angeles Administrative Code and other ordinances of the City.

BOARD OF PUBLIC WORKS: The Board of Public Works, or where context indicates appropriate, another governmental agency or department of the City or of the County or State, to the extent that it may have jurisdiction over the street.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA): Section 21000, *et seq.* of Division 13 of the California Public Resources Code and the City Guidelines, in their latest revisions.

CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC): That body created by State Constitution Article XII, Sec. 1, and given jurisdiction over Public Utilities by the State Legislature.

CALIFORNIA STATE FIRE MARSHAL (CSFM): Office of the California State Fire Marshal, Pipeline Safety Division.

CHARTER: The Los Angeles City Charter in its latest revision.

CITY: The City of Los Angeles of the State of California, in its governmental capacity.

COMMON CARRIER: Any person, entity, or corporation providing transportation to or for the public or any portion of the public, as defined in California Public Utilities Code Section 201, *et seq.*

COUNCIL: The Los Angeles City Council.

DEPARTMENT: The Los Angeles City Department of Transportation.

FACILITIES: All property of Grantee, including, but not limited to, pipelines, pump stations, conduits, adjunct communication lines, attachments, appurtenances, tangible components, or service connections with Grantee's facilities, whether installed by Grantee or not, erected, constructed, laid, operated or maintained in, along or across any street pursuant to any right or privilege granted by the franchise.

FEDERAL OFFICE OF PIPELINE SAFETY: U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration.

FORCE MAJEURE: Natural disasters, including landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts,

civil disturbances, acts of terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots or other similar events, which are not reasonably within the control of Grantee.

FRANCHISE: The rights and privileges granted by the City to Grantee under this ordinance.

GRANTEE: The legal person, corporation or entity to whom this franchise is granted by the Council, or any person, corporation or entity to which it may thereafter be lawfully transferred as provided in this franchise and which has filed an acceptance statement with the Council, necessary insurances and bond requirements with the Office of the City Administrative Officer, Risk Management Section, as required in Sections 2, 5 and 6 of this franchise.

LOS ANGELES ADMINISTRATIVE CODE (LAAC): The Los Angeles Administrative Code, in its latest revision.

LOS ANGELES MUNICIPAL CODE (LAMC): The Los Angeles Municipal Code, in its latest revision

NOMINAL INTERNAL DIAMETER: The inside diameter of pipe expressed in inches to the nearest integer.

PIPELINE CODE: The United States Code of Federal Regulation Title 49, Subchapter D, Parts 190 through 199 in its latest revision.

PIPELINE SAFETY ACT: The California Pipeline Safety Act of 1981 as set forth in Chapter 5.5 of the California Government Code in its latest revision.

STREET: The surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, other public place, or any other area under control of the City, now or hereafter existing as under the City's control and within the City, except the Harbor District as that District is defined in the Charter.

SECTION 2. FRANCHISE GRANT

Section 2.1. NATURE AND EXTENT OF GRANT

The franchise hereby granted by the City authorizes Grantee, subject to the provisions contained in this franchise, and other applicable City laws and regulations, to install, construct, replace, repair, reconstruct, operate, maintain, retain and use in streets to convey liquids, gases, and vapors:

- (a) the pipelines, enumerated in Section 2.2 below, and their adjunct communication lines;
- (b) other pipelines and adjunct communication lines as may be authorized in accordance with the provisions of Section 2.3(a) and (b) below;
- (c) other facilities, including maintenance holes, valves, connections, cathodic protection equipment, poles and other support or facilities appurtenant to these pipelines or adjunct communications lines.

Upon installation, acquisition, or addition by Grantee of any facilities that affect compensation due to the City pursuant to Section 6 below, in any street in the City, or upon addition to the City of any area in which Grantee retains any of these facilities in any street, Grantee shall submit to the Department, within 30 days of the installation, acquisition, or addition, a statement containing the effective date of the installation, acquisition, or addition and a description of all facilities involved, whether authorized by franchise or prior right, including specifications of facilities, "As-Built" drawings, computer records, and maps showing locations of facilities with respect to the center line of streets. These facilities shall immediately be subject to the provisions of this and succeeding franchises granted by the City.

Section 2.2. DESIGNATION OF PIPELINES AND OTHER FACILITIES

The pipelines and other facilities referred to in Section 2.1 above shall be those as summarized below, with details kept on file with City staff, from application binder:

Description	Pipe Size (in) or Facility Detail	Length (ft) or Volume (cu ft)
Categorized by CSFM as "Out-of-service" in 1997	4"	1,379.3 ft
Categorized by CSFM as "Out-of-service" in 1997	8"	800 ft

Section 2.3. AUTHORIZATION OF ADDITIONAL FACILITIES

- (a) Upon application to the Board by the Grantee for authorization of additional pipelines or the replacement of existing pipelines or the construction or installation of adjunct communication lines, as contemplated in Section 2.1(a) and (b) above, the Board shall fix a date for a hearing on the application, and after the hearing, the Board may deny or approve the application. Facilities constructed, installed or replaced pursuant to any authorization by the Board shall be subject to all the provisions of this franchise and to any additional conditions relating to

construction, specifications, protective or sectionalizing facilities, testing, operation or other conditions as may be prescribed by the authorization.

- (b) By its acceptance of this franchise grant or any assignment of the grant, Grantee agrees that pipelines, adjunct communication lines and appurtenances in streets that are subsequently acquired by Grantee or that were authorized by franchises surrendered pursuant to the provisions of Section 2.4 below, are then authorized by and shall be subject to the provisions of this franchise or succeeding franchises granted by the City provided, however, that the facilities referred to in this franchise shall not include any authorized by other adequate rights of Grantee.
- (c) Work to install additional pipelines or to replace existing pipelines or construct or install adjunct communication lines shall be commenced in good faith within six months from the granting of this franchise or from the date authorized by the Board in accordance with Subsection (a) above. Upon application to the Board by Grantee or at the request of a City department, the Board may grant an extension of the time to commence the work of installing new pipelines.

Section 2.4 - SURRENDER OF OTHER FRANCHISES

By its acceptance of this franchise grant or of an assignment of the grant, Grantee agrees (1) that all of its other pipeline franchises then within the City are thereby surrendered and (2) that upon subsequent additions of areas to the City, either by annexation, consolidation or otherwise, all pipeline franchises of Grantee in those areas are thereby surrendered provided, however, that should this franchise be declared invalid or be rendered inoperative by final judgment decree or order of any Court of competent jurisdiction, the franchises hereby surrendered shall thereafter have the same force and effect as if the surrender had not occurred.

Section 2.5 - DURATION OF GRANT

- (a) This franchise shall be effective on the 31st day after publication of the enacting ordinance provided Grantee has filed with the Board, within 20 days after publication of this Ordinance, a written instrument addressed to the Council accepting this franchise and agreeing to comply with all its provisions.
- (b) This franchise shall expire at midnight one year after the effective date of this ordinance unless terminated sooner by Council, by ordinance. Additionally, prior to the ordinance expiring, this franchise may be extended with one optional nine month extension at the discretion of the Board if there are no material changes to the franchise. The Council, by

ordinance, may terminate the franchise in the event the Council finds any of the following, provided, however, that Grantee shall be afforded due process including the opportunity to cure any noncompliance prior to the beginning of any termination proceedings:

- (i) Grantee has failed to comply with any provision of this franchise;
 - (ii) Any provision of this franchise becomes invalid or unenforceable and the Council expressly finds that the provision constituted a consideration material to the grant of this franchise;
 - (iii) Grantee is found by any court of competent jurisdiction to have practiced any fraud or deceit upon the City;
 - (iv) The City purchases all of the facilities of Grantee as provided for in the Charter; however the Grantee shall be given 30 days notice prior to the beginning of any termination proceedings; or
 - (v) The public interest would be served by the termination.
- (c) The Board may, after due notice and a public hearing, place Grantee in probationary status or suspend any and all operating rights of Grantee under this franchise for noncompliance with terms and conditions of this franchise, Board rules or orders, or Board or Department directives when the noncompliance has not been cured after reasonable notice and opportunity to cure.

Section. 2.6 - MONETARY PENALTIES FOR VIOLATIONS OF FRANCHISE ORDINANCE TERMS AND CONDITIONS

- (a) The Board may levy a monetary penalty on Grantee as an alternative to, or in addition to, suspending all or part of the franchise privileges for Grantee's failure to abide by the terms and conditions of the franchise ordinance for activities listed in Section 2.6(b). The amount of penalty shall be assessed per the schedule listed in Section 2.6(c).
- (b) Any of the following activities shall constitute a Grantee violation of the terms and conditions of the franchise ordinance, which may subject Grantee to a monetary penalty:
- (i) Unauthorized sale, lease, transfer or other disposition of facilities for which consent of the City is required;
 - (ii) Failure to maintain City required insurance, including late submission of insurance documentation to the City resulting in missing coverage periods even if the coverage documentation and policies are later adjusted to full coverage duration;

- (iii) Failure to conduct pressure tests or facilities inspections as required by State and Federal Codes, and as may be required by the Board;
 - (iv) Failure to maintain in full force and effect or upgrade the amount, as directed by the Board, the required faithful performance bond;
 - (v) Failure to provide the Board and Department access to facilities and records;
 - (vi) Late application/notification or failure to submit application/notification to the Board or the Department for changes, additions to or repair of franchise facilities;
 - (vii) Failure to promptly make necessary repairs and modifications to facilities, City property or to pay compensation for damage to private property;
 - (viii) Failure to submit to the Department or Board any information required by this franchise or that is requested or required by the Board as provided for in this franchise ordinance or in any Board or City directive;
 - (ix) Fraudulent reporting to the Department or Board of any requested or required information;
 - (x) Using the facilities in any manner not specifically authorized under the franchise ordinance; and
 - (xi) Failure to comply with the rules, regulations, and standards of local, state, federal, and other governmental entities, to the extent that they may have safety or regulatory authority over pipeline operations.
- (c) Following a due process procedure as established by the Board, the Board may levy the following monetary penalties against Grantee for the violations in Section 2.6(b):
- (i) Up to \$10,000 for the first offense;
 - (ii) Up to \$25,000 for the second offense within a 12-month period; and
 - (iii) Up to a maximum of \$50,000 for third and subsequent offenses within the same 12-month period.

The Board's assessment of monetary penalties for a second, third and subsequent offense, as noted in the schedule, shall only be applied to the same type of offense.

- (d) Only single penalty assessments that exceed \$30,000 are subject to appeal to the Council and shall be stated in writing to the Council within 30 days of Board assessment.

Judicial review of an action of the Board levying a monetary penalty or of an action of the Council in denying an appeal, as provided for in this franchise, shall be available only if petition for a writ of mandate is filed in the Superior Court not later than the 90th day following the date upon which the decision of the Board or Council becomes final. The date a decision of the Board is final shall be the expiration of the period during which reconsideration can be sought, provided that if reconsideration is sought, the decision is final for the purposes of this section on the date that reconsideration is rejected.

- (e) The total monetary penalty payment is due by the date established by the Board or 30 days after the end of the month in which payment has accrued, whichever comes first. The payment is delinquent if not paid on or before the due date. A sum of money equal to 20% of the penalty amount not timely paid shall be assessed on any payment that has become delinquent. Payment of a monetary penalty shall constitute a waiver of the right to further appeal any monetary penalty to the Council. If an appeal is filed with the Council and the appeal is denied, the monetary penalty shall be due 30 days after the Council action.

SECTION 3. CONSTRUCTION OF FRANCHISE

Section 3.1 - INTERPRETATION

Unless otherwise specifically prescribed in this franchise, the following provisions shall govern the interpretation and construction of this franchise.

- (a) The singular number includes the plural, and the plural number includes the singular.
- (b) Grantee shall not be relieved of its obligation to promptly comply with any provision of this franchise by failure of the City to enforce prompt compliance.
- (c) Any right or power conferred, or duly imposed upon any officer, employee, department, or board of the City, may be legally transferred to any other officer, employee, department or board of the City.
- (d) Grantee shall have no recourse whatsoever against the City for any loss, cost, expense, or damage arising out of any provision or requirement of this franchise or its enforcement.
- (e) This franchise does not relieve Grantee of any requirement of the Charter or of any ordinance, rule, regulation or specification of the City, including,

but not limited to, any requirement relating to street work, street excavation permits, or the use, removal or relocation of facilities in streets, except as specifically prescribed in this franchise.

- (f) The granting of this franchise or any of the provisions contained in this franchise shall not be construed to prevent the City from granting any identical or similar franchise to any person or corporation other than Grantee.
- (g) The compensation provided for in this franchise is for (i) the rights and privileges granted by this franchise, and (ii) the right and privilege of using, opening and excavating within the streets of the City by Grantee in the course of installing, maintaining or removing facilities pursuant to this franchise; furthermore, the City expressly reserves the right to impose and collect from Grantee, on a non-discriminatory basis, fees from street cutting and excavation permits to the extent those fees are imposed generally on all applicants for such permits within the City.
- (h) Any activities or uses of the facilities not specifically authorized under this franchise are prohibited under this franchise.
- (i) If Grantee is wholly or partially unable to carry out its obligations under this franchise as a result of force majeure, Grantee shall give the Board prompt notice of the force majeure, describing the same in reasonable detail. Grantee's obligations under this franchise may not be deemed in violation or default for the duration of the force majeure, upon determination by the Board. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of force majeure, to carry out its responsibility and duties under this franchise.

Section 3.2 - LIMITATIONS UPON GRANT

- (a) No privilege or exemption is granted or conferred by this franchise except those specifically prescribed in this franchise.
- (b) Any privilege claimed under this franchise by Grantee in any street shall be subordinate to any prior lawful occupancy of the street.
- (c) If any provision of this franchise, or its application to any person or circumstance is held invalid, the remainder of the franchise, or the application of that provision to other persons or circumstances, shall not be affected.

Section 3.3 - NON-DISCRIMINATION POLICY

While engaged in any activity covered by this franchise, Grantee shall not discriminate in its employment practices against any employee or applicant for employment because of race, creed, color, ancestry, religion, national origin, sex (with or without sexually harassing conduct), sexual orientation, age, marital status, medical condition (including, but not limited to, cancer), Acquired Immune Deficiency Syndrome (AIDS) - acquired or perceived, disability, or retaliate against anyone for having filed a discrimination complaint or participating in a protected activity, and shall comply with the provisions of Ordinance No. 147,030, Los Angeles Administrative Code Section 10.8, as amended from time to time, and any additional requirements that may be imposed by applicable law.

Section 3.4 - RIGHTS RESERVED TO CITY

- (a) There is hereby reserved to the City every right and power, which is required to be reserved or provided by any provision of the Charter or of the Franchise Procedure Guidelines of the City, the Los Angeles Administrative Code or the Los Angeles Municipal Code, as amended from time to time. Grantee by its acceptance of this franchise agrees to be bound by those provisions and to comply with any action or requirement of the City in its exercise of any right or power.
- (b) Neither the granting of this franchise nor any provision of the franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

SECTION 4. CONSTRUCTION AND OPERATION OF FACILITIES

Section 4.1 - INSTALLATION AND LOCATION OF FACILITIES

The installation and location of any facilities in a street area shall be subject to the approval of the Board of Public Works and, unless otherwise authorized in writing by the Board, the location shall be confined to the street route in which the pipeline is authorized.

Section 4.2 - SPECIFICATIONS

All pipeline and appurtenant facilities authorized by this franchise shall be designed, manufactured, installed, constructed and inspected in accordance with the Pipeline Code, the Pipeline Safety Act, the California Public Utilities Code, CPUC regulations for pipelines, and any other applicable local, state and federal codes or regulations, in their latest revisions.

Adequate protective facilities shall be provided in accordance with the Pipeline Code and the Pipeline Safety Act, as amended from time to time, on the portion of each pipeline installed under the authority of this franchise, and elsewhere on the same pipeline, to immediately locate operating troubles and minimize their effects on City streets or on their use by the public. If, at any time during the term of this franchise, protective facilities on any pipeline are found to be inadequate as determined by the CSFM, the Board, the CPUC, or the Federal Office of Pipeline Safety, Grantee shall at its own expense make changes in accordance with the Pipeline Code and Pipeline Safety Act, as amended from time to time, or as may be required by the Board. Failure to do so may result in forfeiture of this franchise and require immediate cessation of the use of the facilities.

Section 4.3 - TESTING

After installation, and for the duration of the franchise, pipelines shall be tested, at a minimum, in accordance with the provisions of the Pipeline Code, the Pipeline Safety Act, the California Public Utilities Code, CPUC regulations for pipelines, and as required by the State Fire Marshal under the Pipeline Safety Act. The City reserves the right to require testing for facilities not under the direct authority of the State Fire Marshal, the California Public Utilities Commission or the Federal Office of Pipeline Safety.

Section 4.4 - REPORTING

Grantee shall supply copies or summaries of the following reports and information pertaining to franchised pipelines to the Department until Grantee is notified by the Department or the Board that the required information (in full or in part) can be directly accessed by the Department from the State Fire Marshal, the State Public Utilities Commission, the Federal Office of Pipeline Safety, or other responsible agency or party, to the satisfaction of the Department:

- (i) Pipeline hydrostatic pressure test results;
- (ii) Accident reports;
- (iii) Reports regarding rupture, spill, explosion, or fire; and
- (iv) Maps or suitable diagrams indicating the location of pipelines and contingency plans for pipeline emergencies.

The Board reserves the right to revise and amend the safety and reporting requirements prescribed in this franchise.

Section 4.5 - REPAIRS

- (a) Grantee shall promptly repair any leaks or breaks in pipelines covered by this franchise in accordance with the Pipeline Code, the Pipeline Safety

Act, or any other responsible jurisdictions or Codes. If any street or other public property shall be damaged by any leaks or breaks in their pipelines or by reason of any cause arising from the operation or existence of facilities, Grantee shall, at its own cost and expense, backfill, place surfacing and otherwise repair the damaged portions of the street or other public property in accordance with the Los Angeles Municipal Code and to the satisfaction of the Board of Public Works.

If any private property is damaged by leaks or breaks in pipelines or from any cause arising from the operation or existence of facilities, Grantee shall pay all damages or compensation to which the owners are entitled and repair its facilities to protect the damaged private property from further damage.

If Grantee, within ten days after receipt of notice from the City instructing it to repair any damage, fails to commence work or to comply with the instructions, or thereafter fails to diligently prosecute the work to completion, or to the satisfaction of the Board of Public Works, then the City may immediately do whatever work is necessary to carry out the instructions at the cost and expense of Grantee, which cost and expense, by the acceptance of the franchise, Grantee agrees to pay upon demand. If the damage constitutes an immediate danger to public health or safety, requiring immediate repair, the City, without notice, may repair the damage, and Grantee, by the acceptance of this franchise, agrees to pay all cost and expense upon demand.

Grantee shall reimburse the City for all direct and indirect expenses incurred by the City in responding to any spill, release or accident arising from the operation or existence of Grantee's franchise property.

- (b) If necessary for Grantee to replace a portion of a pipeline as the result of an obligation of Section 4.5(a), the replacement shall be continuous, and, unless authorized by the Board pursuant to the provisions of Section 2.3(a), shall not exceed 300 feet in length.

Section 4.6 - CHANGES REQUIRED BY PUBLIC IMPROVEMENTS

- (a) Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street, or remove from any street any facilities when required by the Board of Public Works by reason of traffic conditions, public safety, street vacation, freeway construction, change or establishment of street grade, street maintenance requirements, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity provided that with respect to

facilities within a State freeway, which was not a State highway at the time the facilities were originally installed, the obligations of Grantee shall be as provided by applicable law and by any agreements between Grantee and the State as may be applicable, and further provided that with respect to work done for the benefit of any non-governmental entity, Grantee is not precluded from recovering the cost and expense of the work from the entity, unless provided otherwise by applicable law.

Upon failure of Grantee to promptly:

- (i) protect, support, temporarily disconnect, relocate in the same street, or remove any facilities, except facilities the Board of Public Works may permit to be abandoned in-place; and,
- (ii) restore streets to their original condition prior to any construction or excavation;

the City may perform the work after providing written notice to Grantee. Grantee shall reimburse the City for the work within ten days after receipt of a statement of the City's expense. Grantee shall hold harmless the City, its Boards, officers, agents, employees, assigns, and successors in interest from any liability which may arise or be claimed to arise from any action of the City which may affect Grantee's facilities.

- (b) Where a street area has been excavated over or adjoining a pipeline of Grantee by other than Grantee, or where the area is to be lowered, paved or repaved by or for the Board of Public Works and the Board does not require removal of the pipeline from the street pursuant to the provisions of Section 4.5, Grantee may recondition or replace the pipeline, within the working area, without authorization of the Board as provided in Section 2.3(a).

Section 4.7 - REMOVAL OR ABANDONMENT OF FACILITIES

In the event the use of any facilities is discontinued (permanently removed from use), or no franchise has been obtained or applied for therefore upon expiration or within six months after any termination of this franchise, Grantee shall promptly remove from the streets all facilities involved, other than any the Board of Public Works may permit to be abandoned as prescribed below.

Grantee shall obtain permission from the Board of Public Works to abandon any facilities and shall notify the Department, in writing, prior to abandonment. Pipelines to be abandoned in-place shall be purged, cleaned, sectionalized and capped, or abandoned in any other manner as the Board of Public Works prescribes.

Upon abandonment of any facilities, Grantee shall submit to the Department an instrument, approved by the City Attorney, transferring to the City the ownership of the facilities. Grantee shall hold harmless the City, its Boards, officers, agents, employees, assigns, and successors in interest from any liability, which may arise or be claimed to arise from or attributable to all prior uses and operations.

For the purposes of the payment provisions in Section 6 of this franchise, facilities shall exist as such until (1) inspection reports of the Board of Public Works indicate the work of removal has been done to its satisfaction or (2) in the case of facilities to be abandoned in-place, until the instrument transferring to the City ownership of the facilities has been properly recorded with the County of Los Angeles and a certified copy has been submitted to the Board.

Section 4.8 - TRANSFER/ASSIGNMENT OF FRANCHISE

- (a)** This franchise is a privilege to be held in personal trust by the original Grantee. It cannot in any event be transferred in part, and it is not to be sold, transferred, leased, assigned, or disposed of as a whole, either by forced sale, merger, consolidation, or otherwise, without prior consent of the City expressed by ordinance, and then only under conditions as may be prescribed in the ordinance; provided, however, that no consent shall be required for any transfer in trust, mortgage, or other hypothecation, as a whole, to secure an indebtedness.
- (b)** Any purported or attempted sale, lease, assignment, transfer, disposal, in part or as a whole, of this franchise without the consent of the City expressed by ordinance, regardless of whether made voluntarily or otherwise, is void and of no effect and transfers none of the rights and privileges authorized by the granting of the franchise.
- (c)** Grantee shall notify the Board of any proposed transfer of facilities identified in Section 2.2 of this franchise, to entities that have not been granted the privilege to install, retain, operate and maintain pipelines and their adjunct communication lines within the City of Los Angeles, a minimum of 120 days prior to the completion of the transfer. In addition, the entity receiving the facilities shall submit an application for a pipeline franchise.

Upon failure of the City to grant a franchise within 120 days of the notification, Grantee shall be permitted to enter into an agreement with the entity receiving the facilities for that entity to operate the facilities. Grantee shall comply with all of the terms and conditions of this franchise until the entity receiving the facilities is granted a franchise by the City.

- (d) Upon application to the Board by Grantee for the transfer/assignment of franchise privileges to any successor entities to retain, operate, and maintain pipelines and their adjunct communication lines identified in Section 2.2 of this franchise, the Board shall fix a date for a hearing on the application, and after the hearing, the Board may deny or approve the application, subject to the approval of the Council and the Mayor of the City of Los Angeles. Facilities pursuant to any authorization by the Council and the Mayor of Los Angeles shall be subject to all of the provisions of this franchise and to any additional conditions as may be prescribed by the authorization.

SECTION 5. INDEMNIFICATION AND INSURANCE

Section 5.1 - INDEMNIFICATION

Except for the active negligence or willful misconduct of the City or any of its Board, officers, agents, employees, assigns and successors-in-interest, Grantee undertakes and agrees to defend, indemnify and hold harmless the City and any of its City's boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in-house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for the death or injury to any person, including Grantee's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this franchise on the part of Grantee or any of his agents, employees or sub-contractor of any tier. Rights and remedies available to the City under this provision are cumulative to those provided for elsewhere in this Ordinance and those allowed under the laws of the United States, the State of California, and the City. The provisions of Section 5.1 shall survive expiration or termination of this Ordinance.

Section 5.2 - INSURANCE REQUIREMENTS

- (a) Grantee shall obtain, at its own cost 1) comprehensive general liability insurance, to include contractual liability 2) worker's compensation/employer's liability insurance and 3) automobile liability insurance in amounts as the Board in concurrence with the City Risk Manager may from time to time require to insure against any claims arising out of the activities of Grantee. The minimum amount of general liability insurance initially required by this franchise is **\$10,000,000.00**, with **\$1,000,000** workers Compensation and Employee Liability insurance, Automobile Liability insurance of **\$1,000,000**, and Pollution Liability

insurance of **\$25,000,000**. If operations of Grantee change to the extent requiring a modification of the amount or type of insurance, the Board may require or allow the modification after public hearing. Should the Board determine a change in amount or type is required, Grantee shall be given a 90 day advance written notice of the change.

- (b) Self-insurance programs and self-insured retentions in insurance policies are subject to separate approval by the City upon review of evidence of Grantee's financial capacity to respond. Additionally, these programs or retentions must provide the City with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance. These programs or retentions may require special Board or City conditions as part of their approval.
- (c) Grantee shall file evidence of insurance policy, bond or program of self-insurance with the Department, in a form as the City requires, conforming to City Charter, ordinance or policy, for approval by the Office of the City Administrative Officer, Risk Management Section prior to the commencement of operation under this franchise. Grantee shall maintain continuous uninterrupted insurance coverage and shall maintain evidence of coverage on file with the Department for the duration of this franchise and thereafter until Grantee has liquidated all of its obligations with the City that may have arisen from the acceptance of this franchise by Grantee or from its exercise of any privilege granted in this franchise.
- (d) Grantee shall provide the City with at least 30 days written notice prior to a change or cancellation of insurance coverage, and for general and automobile liability insurance, Grantee shall include the City of Los Angeles, its officers, agents and employees as additional insureds with regard to liability and defense of suits arising from the performance of this franchise.
- (e) Grantee's failure to procure and maintain required insurance or bond or to establish and adhere to a program of self-insurance shall constitute a material breach of contract and may result in the immediate and automatic termination of this franchise. The date of the breach under this section may be the effective date of termination of this franchise, regardless of whether notification to the City was provided or whether the City was aware of the breach or not. Upon termination of this franchise, operation of the facilities covered by this franchise are no longer authorized and franchise may be liable for costs associated with abandonment et al.

SECTION 6. COMPENSATION AND GUARANTEE TO CITY

Section 6.1 - FRANCHISE FEES

Grantee shall pay an annual franchise fee to the City each year for the duration of this franchise and thereafter until Grantee has liquidated all of its obligations with the City that may have arisen from the acceptance of this franchise by Grantee or from its exercise of any privilege herein granted.

Payment by Grantee shall accrue to City for the street space occupied by facilities on January 1st each year, at the rate of one dollar and forty cents (\$1.40) per cubic foot adjusted by the ratio of the Los Angeles-Riverside-Orange County Consumers Price Index for All Urban Consumers (LACPI) for the most recent month of October to the CPI for 1982-84 (CPI 1982-84 = 100).

For purposes of this section 6.1, the street space occupied by a pipeline or conduit including protective covering, pipe casings, pipe connections, cathodic protection facilities and other minor appurtenances shall be taken as equivalent to the volume occupied by a cylinder of equal length having a diameter of one inch (for metal pipe) or two inches (for plastic pipe) greater than the nominal internal diameter of the pipe or conduit but in no case with an equivalent cylinder diameter less than six inches (6"), and the payment rate therefore shall be computed to the nearest tenth of a cent per lineal foot of pipe. Street space occupied by any larger appurtenances such as maintenance holes or vaults shall be computed from the outside dimensions of the structure. Street space occupied by overhead communication lines shall be taken as one-fifth (1/5) cubic foot per lineal foot of street route.

If the United States Bureau of Statistics shall discontinue the preparation and publication of the Los Angeles-Riverside-Orange County Consumers Price Index (LACPI) for All Urban Consumers (1982-84 = 100), then the Board shall prescribe an index for adjustment of the annual franchise fee payment accruing to the City. The Board shall prescribe an index which varies in approximate proportion as the LACPI (1982-84 = 100) for commodity and labor costs. Upon this point, the judgment of the Board shall be final and conclusive.

If during the term of this ordinance, the City changes its franchise fee calculation methodology formula for pipeline companies, the company agrees to compensate the City for the remainder term of its ordinance based on the new formula.

Section 6.2 - PAYMENTS TO THE CITY

- (a) The first franchise payment assessed shall be due to the City on the effective date of this ordinance.

- (b)** Annual franchise fees shall be due to the City on March 1st of each year pursuant to the street space occupied by Grantee on January 1st of that year as determined in Section 6.1(a).
- (c)** All franchise fees assessed for construction of new facilities as authorized in Section 2.1(c) and 2.3, prorated to the date of acceptance by the City for that year, shall be due to the City upon acceptance of construction by the City.
- (d)** All payments shall be paid to the City in money of the United States. All payments due under this franchise shall be deemed paid upon receipt by the City Treasurer (or its authorized local depository) of good funds or, if made electronically in accordance with the practices of banks belonging to the Federal Reserve System, upon timely transmission to an authorized depository in accordance with those practices. The City shall, upon Grantee's request, furnish Grantee with information as may be necessary for Grantee to make the payments electronically to City's authorized depository and shall, from time to time, provide Grantee with written notice of any changes to this information.
- (e)** All payments shall be considered delinquent if not received on or within 30 days of the due date. The City shall not refund any portion of a franchise fee that has been properly paid including any changes due to transfers or abandonment of facilities.
- (f)** In the event Grantee fails (other than as the result of force majeure) to make the franchise fee payments required by this franchise on or before the date due as provided above, or there is an omission in the calculation of pipeline footage by Grantee, Grantee shall pay as additional consideration a sum of money equal to ten percent of the amount not timely paid. Additionally, this ten percent penalty will be assessed on any delinquent amount every 30 days thereafter. However, the total amount of the penalty shall not exceed 50 percent of the annual franchise fee due for that year. Should the franchise payment not be provided to the City the franchise may be immediately and automatically terminated. Upon termination of this franchise, operation of the facilities covered by this franchise are no longer authorized and franchise may be liable for costs associated with abandonment et al.
- (g)** Grantee shall submit each franchise payment to the City along with a statement to the Department, verified by a general officer or other duly authorized representative of Grantee, showing in a form and detail as the Board may require from time to time, the facts material to a determination of the amount due and the calculations used to determine the payment.

In the event of an impasse in a dispute between Grantee and the City as to the correctness of the computation, Grantee and the City agree to submit the matter to binding arbitration for resolution. The matter shall be submitted to a panel of three arbitrators, of whom one shall be appointed by the City, one by Grantee and the third by the two arbitrators so appointed. These arbitrators shall determine the compensation under this franchise pursuant to the arbitration rules of the California Code of Civil Procedures. The parties shall equally bear the costs, if any, of the arbitration fees.

- (h) No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable.

Section 6.3 - FAITHFUL PERFORMANCE BOND

- (a) Grantee shall, within five days after the award of this franchise by Council, file with the City Clerk, and at all times thereafter maintain in full force and effect, an acceptable corporate surety bond, in duplicate, running to the City in the penal sum equal to three times the value of the annual franchise fee in the year the ordinance was adopted. Each year-, the City may adjust this amount to be consistent with the increase in franchise fees and notify the franchisee accordingly. The performance bond shall be conditioned that Grantee shall well and truly observe, fulfill, and perform each and every term and condition of this franchise. In the event Grantee shall fail to comply with any one or more of the provisions of this franchise, then there shall be recoverable jointly and severally from the principal and surety of the bond, any damages suffered by the City as a result of Grantee's failure to comply, including, but not limited to, the full amount of compensation due the City, indemnification or cost of removal or abandonment of facilities as prescribed by Sections 4.6, 5 or 6 of this franchise, which may be in default, up to the full amount of the bond. Grantee is obligated to maintain, in full force and effect, the performance bond for the duration of this franchise and thereafter until Grantee has liquidated all of its obligations with the City that may have arisen from the acceptance of this franchise by Grantee or from its exercise of any privilege granted in this franchise.
- (b) The Department may accept cash, a Certificate of Deposit, or an Irrevocable Letter of Credit in lieu of a surety bond provided it is conditioned and submitted in accordance with an agreement containing all the requirements of the bond as required above and any other

requirements deemed necessary by the Los Angeles City Attorney, in a format acceptable to the City and the Department, including banking or funding institution approval.

- (c) If at any time during the term of this franchise the condition of the corporate surety or any other type of bond allowed shall change in a manner as to render the bond unsatisfactory to the City, Grantee shall forthwith replace the bond with a bond of like amount and similarly conditioned, issued by a corporate surety or other method as deemed satisfactory by the City. The bond shall be cancelable only by the City and Grantee shall give a minimum 90 day written notice to both the Board and the Los Angeles City Attorney prior to replacement or request for cancellation of the bond.
- (d) In the event of a substantial change in the volume of street space occupied by facilities pursuant to provisions of Sections 2.3 or 4.6 of this franchise, the Board may require or may permit a corresponding change in the amount of the bond required.
- (e) Neither the provisions of this Section 6.3, any bond accepted by the City pursuant to this franchise, nor any damages recovered by the City under the bond shall be construed to excuse faithful performance by Grantee or limit the liability of Grantee under this franchise for damages, either to the full amount of the bond or otherwise.

Section 6.4 - INSPECTION OF FACILITIES AND RECORDS

- (a) At all reasonable times, Grantee shall permit any duly authorized representative of the Board or authorized officer or employee in the classified service of the City to examine all facilities, together with any facilities of Grantee situated in or outside the City, and to examine and transcribe any and all maps, books, accounts, papers and other records kept or maintained by Grantee or under its control, which pertain to the operations, affairs, transactions, financial data or facilities of Grantee. If any of the maps, books, accounts, papers or other records are not kept in the City, and if the Board determines that an examination of these is necessary or appropriate to the performance of any of its duties, then all travel and maintenance expense necessarily incurred in making the examination shall be paid by Grantee.

Grantee shall prepare and furnish to the Board, at all times and in the form prescribed by the Board, data and reports, with respect to its operations, affairs, transactions, finances or facilities, as may be reasonably necessary or appropriate to the performance of any of the duties of the

Board or the Department in connection with this franchise. All other reports required by the Charter or City ordinance shall be provided by Grantee from time to time as required.

- (b)** Grantee shall maintain all financial records for the purpose of computing franchise fees in accordance with generally accepted utility accounting principles as approved by the CPUC. In order to facilitate the review of the franchise fee computation by the City, Grantee agrees to maintain copies of all company records, work papers and other information used in preparing the computation for a period of seven years following the termination of the franchise ordinance.
- (c)** Grantee shall maintain all records as may be required by the Pipeline Code, Pipeline Safety Act, CPUC, California State Fire Marshal, CPUC, Board of Public Works or any other responsible jurisdiction or code, as may be appropriate, in addition to those records that may be specified or required by the Board.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

HOLLY L. WOLCOTT, City Clerk


By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  _____
MICHAEL D. NAGLE
Deputy City Attorney

Date 4/27/2017

File No. _____