



# council agenda report

Meeting Date	7/10/01
Item Number	C2

CITY OF SAN LUIS OBISPO

**FROM:**

Jeffrey G. Jorgensen, City Attorney *JJ*

Prepared By: Gilbert A. Trujillo, Assistant City Attorney *GA*

**SUBJECT:**

FINAL ADOPTION OF ORDINANCES 1390 and 1391 GRANTING FRANCHISES TO CONSTRUCT, OPERATE, AND MAINTAIN PIPELINES TO TOSCO CORPORATION AND UNION PIPELINE COMPANY.

**CAO RECOMMENDATION**

Give final passage to Ordinance No. 1390 (2001 Series), Granting a Franchise to Construct, Operate, and Maintain Pipelines for the Transportation of Oil and Other Specified Materials in the City of San Luis Obispo to Tosco Corporation; and to Ordinance No. 1391 (2001 Series) Granting a Franchise to Construct, Operate, and Maintain Pipelines for the Transportation of Oil and Other Specified Materials in the City of San Luis Obispo to Union Pipeline Company.

**DISCUSSION**

On June 19, 2001, the Council voted 4-1 to introduce Ordinance No. 1390 (2001 Series) which grants to Tosco Corporation a non-exclusive ten year franchise to construct, operate and maintain pipelines for the transportation of oil and hydrocarbons within the City of San Luis Obispo. Council also voted 4-1 to introduce Ordinance No. 1391 (2001 Series) which grants to Union Pipeline Company a non-exclusive ten year franchise to construct, operate and maintain pipelines for the transportation of oil and hydrocarbons within the City of San Luis Obispo.

The Ordinances are now ready for adoption and will become effective thirty days after the date of their final passage.

**ATTACHMENTS**

1. Ordinance No. 1390, Granting Franchise to Tosco Corporation
2. Ordinance No. 1391, Granting Franchise to Union Pipeline Company

C2-1

**ORDINANCE NO. 1390 (2001 Series)**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN LUIS OBISPO  
GRANTING TO TOSCO CORPORATION, A NEVADA CORPORATION,  
A FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN PIPELINES  
FOR THE TRANSPORTATION OF OIL, AND OTHER SPECIFIED  
MATERIALS, IN THE CITY OF SAN LUIS OBISPO,  
STATE OF CALIFORNIA**

**WHEREAS**, the City of San Luis Obispo adopted Ordinance No. 1038 on April 2, 1985 granting a franchise to Union Oil Company of California for a term of 25 years for the transportation and distribution of oil and other specified materials in the City of San Luis Obispo; and

**WHEREAS**, Union Oil Company of California sold or transferred a portion of its pipelines subject to Ordinance No. 1038 to TOSCO Corporation and Unocal California Pipeline Company; and

**WHEREAS**, Union Oil Company of California informed the City of San Luis Obispo that it intends to commence the abandonment process for its remaining interests under Ordinance No. 1038 that have not been sold or transferred to TOSCO Corporation and Unocal California Pipeline Company; and

**WHEREAS**, Union Oil Company of California's remaining pipeline interests in the City of San Luis Obispo are still subject to the existing franchise agreement granted in Ordinance No. 1038 until such time that Union Oil Company of California has abandoned such pipelines pursuant to applicable law; and

**WHEREAS**, TOSCO Corporation and Unocal California Pipeline Company have requested the City of San Luis Obispo to enter into new franchise agreements for the oil transportation and distribution pipelines acquired from Union Oil Company of California.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of San Luis Obispo to grant a franchise to construct, operate, and maintain pipelines for the transportation of oil, and other specified materials in the City of San Luis Obispo to TOSCO Corporation, a Nevada corporation as follows:

**SECTION 1:** Terms and Conditions of Franchise (Table of Contents begins on page 2):

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**ARTICLE I**  
**NATURE OF FRANCHISE**

**A. Grant of Franchise.**

1. The City of San Luis Obispo (hereinafter referred to as "City"), hereby grants to TOSCO Corporation, a Nevada corporation, (hereinafter referred to as "Grantee"), pursuant to the provisions of Article X of the San Luis Obispo City Charter, Article XI, Section 9(b) of the California Constitution, and Section 39732(b) of the California Government Code, the non-exclusive right, privilege and franchise, subject, however, to all the limitations and restrictions herein contained, to construct, erect, maintain, operate, repair, renew, abandon, and change the size of and remove pipelines, not to exceed twelve (12) inches nominal internal diameter, for the transportation of oil, products thereof, hydrocarbon gases and other gas necessary for the operation and maintenance of the pipelines, water and mixtures thereof, movable by pipeline, in, under, along, and across the public streets, ways, alleys and places within the City of San Luis Obispo (hereinafter collectively referred to as "streets"), as described in Exhibit No. 1, attached hereto and made a part hereof.

2. The term of the franchise granted under this Ordinance shall be for a term of ten (10) years, commencing with the date on which it is accepted by Grantee.

3. Unless otherwise specifically stated, the following provisions shall govern the interpretation and construction of the franchise granted herein:

(a) This franchise shall include the right, for the period and subject to the conditions hereof, to construct, erect, maintain, operate, repair, renew, abandon and change the size and remove the said pipelines, if any, of Grantee, as laid and constructed in said streets.

(b) The terms and conditions of this franchise shall also apply to any pipe or other facilities of Grantee which are located within the right of way of any existing public road or street at the time such road or street becomes a City street through annexation or otherwise, subject to any other existing rights enjoyed by Grantee.

(c) 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.

(d) Any right or power conferred, or duty imposed upon any officer, employee, department, or other City entity, by the terms of this franchise, may be legally transferred to any other City officer, employee, department, or other City entity.

(e) Grantee shall have no recourse whatsoever against the City for any loss, cost, expense, or damage suffered by Grantee and arising out of any provision or requirement of this franchise or its lawful enforcement by the City.

(f) This franchise does not relieve Grantee of any applicable requirements of the San Luis Obispo Municipal Code or of any federal, state, or City law, ordinance, rule,

regulation, or specification, including, but not limited to, any requirement relating to street work, street excavation permits, or the use, removal or relocation of property in streets, except as specifically prescribed herein.

(g) This franchise is non-exclusive. Neither the granting of this franchise nor any of the provisions contained herein shall be construed to prevent the City from granting any identical or similar franchise to any other person.

(h) The compensation provided for in this franchise is for (i) the rights and privileges granted by this franchise, and (ii) the right and privilege granted to the Grantee to construct, erect, maintain, operate, repair, renew, abandon and change the size of and remove the said pipelines pursuant to this franchise within the City's streets. The City expressly reserves the right to impose and collect from Grantee, on a non-discriminatory basis, its normal, duly established processing and inspection fees from street cutting and excavation permits to the extent such fees are imposed generally on all non-governmental applicants for such permits within the City.

(i) Any activities involving the use of a pipeline system for the transmitting of oil, products thereof, hydrocarbon gases and other gas necessary for the operation and maintenance of the pipelines, water and mixtures thereof, which are not specifically authorized under this franchise are prohibited under this franchise. Except as provided in Article 2, any telecommunication or other uses not authorized in this franchise Ordinance must be approved by the City under a separate franchise.

(j) If any provision of this franchise, or the application of this franchise to any person or circumstance is held invalid by a court of competent jurisdiction or is not in compliance with any requirement of the City, or any other federal or state body or agency having jurisdiction over Grantee's franchise activities, the remainder of this franchise Ordinance, or the application of this franchise to persons or circumstances other than those to which it is held invalid or not in such compliance, shall not be affected thereby.

B. Limitations Upon Grant.

1. No privilege or exemption is granted or conferred by this franchise except those specifically prescribed herein.

2. Any privilege claimed under this franchise by Grantee in any street shall be subordinate to any prior lawful occupancy of the street.

3. The rights and privileges of this franchise are granted solely to Grantee except as provided within this franchise Ordinance. This franchise is not be to sold, transferred, leased, assigned, or disposed of as a whole or in part, either by forced sale, merger, consolidation, or otherwise, without the City's prior consent as described in Article 17, *infra*, or as otherwise expressly provided herein. The City agrees that such prior consent shall not be unreasonably withheld or conditioned.

C. Rights Reserved to the City.

1. The rights reserved to the City under this franchise Ordinance are in addition to all other rights of the City, whether authorized by the San Luis Obispo City Municipal Code, San Luis Obispo City Charter, or any other federal, state, or City law, rule, or regulation. No action, proceeding or exercise of a right shall affect any other rights which may be held by the City. Grantee, by acceptance of this franchise, shall be bound thereby and shall comply with any action or requirement of the City in its exercise of any such right or power.

2. The City shall have the power and right at all times during the term of this franchise to require Grantee to conform to the laws, rules and regulations governing the operation of pipelines now or hereafter adopted by the City Council to the extent permitted by law.

3. The City may enforce, to the maximum extent permitted by law, the inspection and testing of pipelines, pursuant to state and federal standards and require appropriate remuneration and fees to cover such enforcement activities.

**ARTICLE 2**  
**APPURTENANCES**

The Grantee shall have the right, subject to the prior approval of the City Public Works Department, to construct and maintain such traps, manholes, conduits, valves, appliances, attachments, and appurtenances (hereinafter for convenience collectively referred to as "appurtenances"), as may be necessary or convenient for the proper maintenance and operation of the pipelines under said franchise. Said appurtenances shall be so located as to conform to any order of the City Public Works Department in regard thereto and not to interfere with the use of the streets for travel. The Grantee shall have the right, subject to such ordinances, rules, or regulation as are now or may hereafter be in force, to make all necessary excavations in said street for the construction and repair of said pipelines and appurtenances subject to the prior approval of the City Public Works Department. "Appurtenances" shall also include any adjunct communications lines and/or conduits 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 system via the distribution of video, audio, voice, or data signals. An adjunct communications line shall not include any facility which 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.

**ARTICLE 3**  
**LOCATION OF PIPELINES**

So far as is practicable and within the requirements of the California State Fire Marshall, any pipeline hereinafter laid shall be located along the edge or shoulder of the streets or in the parking areas adjacent thereto so as not unreasonably to disturb the flow of traffic and where possible shall be laid in the unpaved portion of the street.

#### **ARTICLE 4**

#### **CONSTRUCTION OF PIPELINES**

A. Terms of Construction. The pipelines and appurtenances laid, constructed or maintained under the provisions of this franchise shall be installed, maintained, and inspected by the Grantee in a satisfactory, safe, and workmanlike manner, of good material, and in conformity with all ordinances, rules, or regulations now or hereafter adopted or prescribed by the City Council, State, or Federal authorities.

B. Restoration of Streets. The work of laying, constructing, maintaining, operating, renewing, repairing, changing size and moving any of the pipeline system contemplated by this franchise and all other work in exercise of this franchise shall be conducted according to the provisions of the City's encroachment ordinances from time to time prevailing, and otherwise in accordance with federal and state law and applicable City ordinances, and with the least possible hindrance or interference to the use of City roads by the public or by the City of San Luis Obispo, and Grantee shall provide all necessary warning, safety and traffic control devices as are or may be required by City, State or Federal regulations. All excavations shall be back filled and adequately compacted. As part of any work completed under provisions of this franchise agreement, the surface of City streets shall be repaired and replaced to meet current City standards and specifications. Under no circumstances shall the surface of City streets be placed in a manner less than as good and serviceable condition as existed at the beginning of said work, to the satisfaction of the City Public Works Department.

#### **ARTICLE 5**

#### **COMMENCEMENT OF CONSTRUCTION**

The Grantee, in good faith, shall commence with work of laying the pipelines and appurtenances within four (4) months from the date of passage of the approval of this franchise, and if any such pipelines be not so commenced within said time, this franchise shall be declared forfeited; provided, however, that if the Grantee is maintaining and operating an existing pipeline system over the route referred to in Article I herein, it shall be deemed to be in compliance with the foregoing. The Grantee shall not commence the construction of any new pipelines under the provision of this franchise or add to such existing pipeline system, if any there be, until it first shall have applied for and obtained a permit therefore from the City Public Works Department.

The application of the Grantee shall show the following facts: the length, approximate depth and proposed location of the pipeline proposed to be laid or constructed, the size and description of the pipeline intended to be used, and such other relevant facts as the City Public Works Department may require. The Grantee shall pay any and all encroachment permit fees of the City. Upon the completion of the construction of any pipelines constructed pursuant to said franchise, the Grantee shall render a statement to the City of San Luis Obispo showing in detail the permit or permits issued and the total length of pipeline, the construction of which was



authorized under such permit, or permits, and the total length of pipeline actually laid, and the Grantee shall make payment to the City for the pipelines which have actually been constructed under said franchise as provided in Article 7, Section C.

## **ARTICLE 6**

### **MAPS AND REPORTS TO BE FURNISHED**

A. Within six (6) months of the effective date of this franchise for existing pipelines, and within ninety (90) days following the date in which any additional pipelines have been laid or constructed under this franchise, the Grantee shall file a map in such form as may be required by the City Public Works Department showing the accurate location and size of all its facilities then in place, and shall, upon installation of any additional facilities or upon removal, change or abandonment of all or any portion thereof, file a revised map or maps showing the location and size of all such additional and/or abandoned facilities as of this date. Cathodic protection is to be used for all facilities installed or maintained pursuant to this franchise. For facilities previously in liquid service and where the liquids have been removed and the facilities inerted, or for facilities previously in gas service that are not pressurized, cathodic protection shall be maintained consistent with State Fire Marshall or other agency requirements. A description of all the protective devices shall be furnished to the City Public Works Department which shall show the location and types of anodes, including a description of methods to be used as a protection against corrosion and electrolytic leakage.

B. Grantee shall file with the City Finance Director, within thirty (30) days after the expiration of the calendar year, or fractional calendar year, following the date of the granting of this franchise and within thirty (30) days after the expiration of each calendar year thereafter, two copies of a report verified by the oath of Grantee or by the oath of a duly authorized representative of Grantee, showing, for the immediately preceding franchise period, the length of main lines in streets, the nominal internal diameter of such main lines, the rate per foot per year (when applicable) and the total amount due to the City. In this report, Grantee shall also show any change in franchise footage since the last franchise report, segregating such footage as to new main lines and adjunct communications lines laid, old main lines and adjunct communications lines removed, old main lines and adjunct communications lines abandoned in place, and the footage of main lines and adjunct communications lines in territory annexed by the City since the last franchise report.

C. Grantee shall file with the City Public Works Department within sixty (60) days after the end of the calendar year a report, in duplicate, showing the permit number of each permit obtained for the installation of new main lines during the immediately preceding franchise report period, together with the length and size of said main lines.

**ARTICLE 7**  
**COMPENSATION TO THE CITY**

A. During the term of this franchise, Grantee shall pay to the City an annual fee for this franchise, said fee to be those fees prescribed by the California Public Utilities Code section 6231.5, provided that the rate is subject to increase to the maximum rate established in subsequent amendments of the California Public Utilities Code. Annual payments to be made pursuant to this franchise shall be due and payable in arrears April 1 of each year of this franchise. The initial payment hereunder shall be prorated for the remainder of the current calendar year based on a 365-day year.

At the time of payment of fees by Grantee, Grantee shall file a verified statement with the Clerk of the City of San Luis Obispo, with a copy to the City Public Works Department showing in detail the number of lineal feet and the diameter thereof, expressed in inches, of pipelines covered by this franchise during the previous calendar year, or portion thereof.

The compensation provided for in this Article shall be subject to an increase after the first year of the franchise and each subsequent year during the term of this franchise, based on the provisions of California Public Utilities Code section 6231.5, as amended.

The fees set forth will be adjusted annually each year by the annual percentage change in the U.S. Bureau of Labor Statistics (or successor agency) consumer price index for all urban consumers (CPI-U) all cities average for the prior calendar year.

Notwithstanding the provisions as otherwise stated in this Article and franchise, the Grantee shall be liable to pay the City the annual fee for the period to and including the date of either actual removal of the facilities or the effective date of the abandonment "in place," and until the Grantee shall have fully complied with all of the provisions of law or ordinances relative to such abandonments.

In the event of partial abandonment of facilities as provided in the Ordinance, or in the event of partial removal of such facilities by the Grantee, the payments otherwise due the City for occupancy of the streets by such facilities shall be reduced by the length and diameter of pipelines abandoned or the actual pipeline removed beginning with the first day of the next succeeding franchise year, and for each franchise year thereafter; provided, however, that the base rate shall be modified to reflect the adjustment (per this Article) applicable to such abandoned or removed pipeline at the beginning of the next succeeding franchise year following abandonment or removal.

Grantee shall pay to the City, upon demand, the cost of all repairs made by the City to public property arising out of the operations of the Grantee under this franchise. Any fees charged or expenses charged to Grantee by City pursuant to this Article, or any other provision of this franchise Ordinance, unless disputed in good faith, shall be paid when due or shall be deemed delinquent. Any undisputed delinquent amounts shall be charged a 10% penalty and, in addition, shall accrue interest commencing thirty (30) days after the due date, at a rate of one

and one-half percent (1.5%) per month (based upon a 30-day calendar month) or any lesser amount if required by law. Any neglect, omission or refusal by said Grantee to pay any undisputed delinquent franchise fee with any late charges, within thirty (30) days of delinquency, at the times or in the manner herein provided, shall be grounds for a declaration of a forfeiture of this franchise and of all rights hereunder.

Payments are to be made to the City Finance Director, 990 Palm Street, San Luis Obispo, California 93401, or at such place as the City shall, from time to time, designate in writing.

B. Grantee shall pay the City a granting fee of \$5,000.00 within thirty (30) days after the date the City Council adopts this franchise Ordinance.

C. Grantee shall pay the City Public Works Department, within sixty (60) days after the end of each calendar year, for each year during the life of this franchise, an initial construction charge calculated at the rate of One Dollar (\$1.00) per foot for all new main lines laid pursuant to this franchise Ordinance during the preceding year.

D. Right of Inspection. The City shall have the right to inspect Grantee's pipeline accounting and other records relating to its annual report and to audit and recompute any and all accounts payable under this franchise. Costs of audit shall be borne by Grantee when an audit results in an increase of more than five percent of Grantee's annual payments to the City. Acceptance of any payment shall not be construed as a release, waiver, acquiescence, or accord and satisfaction of any claim the City may have for further or additional sums payable under this franchise or for the performance of any other obligation hereunder.

## **ARTICLE 8**

### **EMERGENCY EQUIPMENT AND CREWS**

At all times during the term of this franchise, the Grantee shall maintain or arrange for, on a 24-hour-a-day basis, adequate emergency equipment and a properly trained emergency crew within a reasonable distance from any pipelines, appurtenances and facilities installed or maintained pursuant hereto for the purpose of monitoring the leak detection system and the communications systems if applicable, and of shutting off the pressure and the flow of contents of such facilities in the event of an emergency resulting from an earthquake, act of war, civil disturbance, fire, flood, or any other cause or nature whatsoever.

## **ARTICLE 9**

### **REPAIR OF DEFECTIVE FACILITIES AND REPAIR OF DAMAGE TO CITY STREETS**

If any portion of any street shall be damaged by any reason related to the Grantee's operations pursuant to this franchise including defective facilities laid or constructed under this franchise, Grantee shall, at its own expense, repair any defect of its facilities and put such street

in as good condition as it was before such damage was incurred, to the satisfaction of the City Public Works Department. If Grantee, within ten (10) days after receipt of written notice from the City Public Works Department instructing it to repair such damage, fails to commence to comply with such instruction, or, thereafter, fails diligently to prosecute such work to completion, then the City Public Works Director immediately may take any actions which are, in the sole judgment and discretion of the City Public Works Director, necessary to repair said damage. Any and all costs and expenses so incurred shall be the sole responsibility of Grantee including the current rate of overhead being charged by the City for reimbursable work, which cost and expense, by the acceptance of this franchise, Grantee agrees to pay upon demand. If such damage constitutes an immediate danger to public health or safety requiring the immediate repair thereof, the City Public Works Department, without notice, may repair such damage and Grantee agrees to pay the cost thereof upon demand.

## **ARTICLE 10**

### **REARRANGEMENT OF FACILITIES**

#### **A. Expense of Grantee.**

1. If any of the Grantee's facilities, in the opinion of the City Public Works Director, shall endanger the public or interfere with the use of any street by the public or, for public purposes, the City shall have the right to require the Grantee, and the Grantee shall repair, replace, move, alter or relocate the same (hereinafter called "rearrangement") to avoid such danger, interference or obstruction, in conformity with the written notice of the City Public Works Department, at the Grantee's sole expense.

2. The City reserves the right to change the grade, to construct grade separation facilities, to change the width or to alter or change the location, of any street which is located within the service area for which this franchise is granted. If any of the facilities heretofore or hereafter constructed, installed or maintained by Grantee pursuant to this franchise on, along, under, over, in, upon or across any street are located in a manner which prevents or interferes with the change of grade, traffic needs, operation, maintenance, improvement, repair, construction, reconstruction, widening, grade separation, alteration or relocation of the street, or any work or improvement upon the street, Grantee shall relocate permanently or temporarily, as directed at the sole discretion of the City Public Works Director, any such facility at no expense to the City, upon receipt of a written request from the City Public Works Department to do so, and shall commence such work, by beginning engineering, surveying, or other pre-construction activities, on or before the date specified in such written request, which date shall be not less than sixty (60) days from receipt of such written request. Grantee shall thereafter diligently prosecute such work to completion. Should Grantee neglect or fail to relocate its facilities in a timely manner after receipt of any such notice, in addition to the liquidated damages as set forth in Article 25, Grantee shall be responsible for and shall reimburse the City for any and all additional costs or expenses incurred by City due to or resulting from such delay in the relocation of the facilities plus, where applicable, the current rate of overhead being charged by the City for reimbursable work. If such street be subsequently constituted a state highway,

while it remains a state highway the rights of the State of California shall be as provided in Section 680 of the Streets and Highways Code of the State of California.

3. The City reserves the right to lay, construct, repair, alter, relocate and maintain subsurface, surface or other improvements of any type of description in a governmental but not proprietary capacity within, over or under the streets over which this franchise is granted. If the City finds that the location or relocation of such subsurface, surface or other improvements conflicts with the facilities laid, constructed or maintained under this franchise, whether such facilities were laid before or after the improvements of the City, Grantee shall relocate permanently or temporarily, as directed at the sole discretion of the City Public Works Director, any such facility at no expense to the City upon receipt of a written request from the City Public Works Department to do so and shall commence such work, by beginning engineering, surveying or other pre-construction activities, on or before the date specified in such written request, which date shall not be less than sixty (60) days from receipt of such written request. The Grantee shall thereafter diligently prosecute such work to completion. Should Grantee neglect or fail to relocate its facilities in a timely manner after receipt of any such notice, in addition to the liquidated damages as set forth in Article 25, Grantee shall be responsible for and shall reimburse the City for any and all additional costs or expenses incurred by City due to or resulting from such delay in the relocation of the facilities plus, where applicable, the current rate of overhead being charged by the City for reimbursable work. If such street be subsequently constituted a state highway, while it remains a state highway the rights of the State of California shall be as provided in Section 680 of the Streets and Highways Code of the State of California.

4. If Grantee, after the notice provided for herein from the City, fails or refuses to relocate permanently or temporarily its facilities located in, on, upon, along, under, over, across, or above any street, or to pave, surface, grade, repave, resurface, or regrade as required pursuant to any provision of this franchise, the City may cause the work to be done, and shall keep an itemized account of the entire costs thereof, and Grantee shall hold harmless the City, its officers and employees from any liability which may arise or be claimed to arise from the moving, cutting or alteration of any of Grantee's facilities, or any necessary relocation of the facilities of other utilities.

5. Grantee agrees to, and shall, reimburse the City for such cost within thirty (30) days after presentation to Grantee of an itemized account arising out of the actions taken in this Article 10A.

B. Expense of Others.

(1) The City shall have the right to require the Grantee to rearrange any part of the Grantees' facilities for the accommodation of the City when such rearrangement is done for the accommodation of any water, electric, gas or other utility system now or hereafter owned or operated by the City.

Except as otherwise provided in Article 10A, such arrangement shall be at the City's expense.

(2) The City shall have the right to require the Grantee to rearrange any part of the Grantee's facilities for the accommodation of any person, firm or corporation. When such rearrangement is done for the accommodation of any person, firm or corporation, other than one of said utility systems owned or operated by the City, the cost of such rearrangement shall be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, shall deposit with the Grantee or the City Clerk cash or a letter of credit or other cash equivalent in an amount, as in the reasonable discretion of the City Public Works Department, shall be required to pay the costs of such rearrangement, and such accommodated party shall execute an instrument agreeing to indemnify and hold harmless the Grantee from any and all damages or claims caused by such rearrangement.

(3) The rearrangement referred to in subsection (1) and (2) of Section B of this Article 10 shall be accomplished in conformity with the written notice of the City Public Works Department.

C. Rearrangement of the Facilities of Others.

Nothing in this franchise shall be construed to require the City to move, alter or relocate any of its facilities upon said streets, at its own expense, for the convenience, accommodation or necessity of any other public utility, person, firm or corporation now or hereafter owning a public utility system of any type or nature, to move, alter or relocate any part of its system upon said streets for the convenience, accommodation or necessity of the Grantee.

D. Notice.

The Grantee shall be given not less than sixty (60) days written notice of any rearrangement of facilities which the Grantee is required to make hereunder. Such notice shall specify in reasonable detail the work to be done by the Grantee and shall specify a reasonable time that such work is to be accomplished. In the event that the City shall change the provisions of any such notice given to the Grantee, the Grantee shall be given an additional period of not less than thirty (30) days to initiate such work.

**ARTICLE 11**

**GRANTEE'S REMOVAL OR ABANDONMENT OF FACILITIES**

A. The City reserves the right to require Grantee to remove its facilities from the City streets and City public property in the event of the non-renewal, revocation or termination of this franchise or at any time thereafter with respect to those facilities abandoned in place, or for the facilities affected by the permanent discontinuance of all or a portion of the facilities. Further, so long as any abandoned facilities installed under the authority of this franchise remain in a City street, Grantee shall maintain a performance bond, security fund, or other form of collateral, acceptable to the City, sufficient to cover the cost of the removal of all such facilities from the City streets.

B. At the expiration, revocation or termination of this franchise or of the permanent discontinuance of the use of all or a portion of its facilities, Grantee shall, within thirty (30) days thereafter, make written application to the City Public Works Department for authority either:

1. To abandon all or a portion of such facilities in place; or

2. To remove all or a portion of such facilities. Such application shall describe the facilities desired to be abandoned, their location with reference to City streets, and shall describe with reasonable accuracy the physical condition of such facilities. As part of the application for removal or abandonment of these facilities, Grantee shall submit a soil test, taken within thirty (30) days of the submittal of the application, for those materials to be tested annually pursuant to federal, state and local laws. A soil test shall be taken along that portion of the pipeline to be removed or abandoned at such intervals as directed in writing by the City Public Works Department and reasonably consistent with established sampling protocols. The City Public Works Department shall determine whether any abandonment or removal which is thereby proposed may be effected without detriment to the public interest and the conditions under which such proposed abandonment or removal may be effected. The City Public Works Department shall then notify Grantee of the City's determinations. Grantee shall also obtain permits to abandon or remove the pipeline from the City Public Works Department for all pipelines prior to the removal, abandonment or discontinuation of use of all or a portion of Grantee's facilities. The City also reserves the right to require removal of Grantee's abandoned facilities in place at any time following the expiration, revocation or termination of this franchise. Grantee shall be required to meet the bonding, insurance, indemnification and annual franchise fee requirements of this franchise, for facilities abandoned in place.

C. Within thirty (30) days after receipt of Notification from the City Public Works Department pursuant to Article 11.B.2 above, Grantee shall apply for a permit from the City Public Works Department to abandon or remove the facility.

D. Grantee shall, within sixty (60) days after obtaining such permit, commence and diligently prosecute to completion the work authorized by the City's permit.

E. In the event Grantee applies to remove its facilities, and the City Public Works Department determines that any or all of the facilities cannot be removed due to a moratorium preventing work in the City streets, the payment of annual franchise fees shall be deferred during any such moratorium period, provided that Grantee promptly removes its facilities after notice by the City Public Works Department of the cessation of the moratorium and direction to remove such facilities. In the event Grantee does not promptly remove such facilities as directed, any deferred annual franchise fees shall be due and payable within thirty (30) days of notice to pay. Deferred annual franchise fees shall otherwise be waived.

F. Failure to Comply with City's Orders Regarding the Removal or Abandonment of Facilities.

1. If any orders or prescribed conditions relating to the abandonment of any facilities are not complied with, the City Public Works Department may impose such additional orders

and conditions as the City deems appropriate, including an order that the Grantee remove any or all of such facilities. Grantee shall comply with such additional orders.

2. In the event that Grantee fails to comply with the terms and conditions of abandonment or removal as may be required by this franchise Ordinance, and within such time as may be prescribed by the City Public Works Department, then the City may remove or cause to be removed such facilities at Grantee's expense. Grantee shall pay to the City all of the costs of removing and disposing of these facilities, as well as returning the rights-of-way occupied pursuant to this franchise, including, but not limited to: (a) the cost of all environmental testing the City must conduct to determine the environmental condition of any rights-of-way occupied pursuant to this franchise and to ascertain what procedures the City must undertake, if any, to return any such rights-of-way to the environmental condition required by applicable Federal, State or local environmental laws; (b) all cleanup costs, disposal costs, and any other costs associated with returning these rights-of-way to such environmental condition; (c) all costs of removing, storing, and disposing of the Grantee's facilities; (d) all costs of returning all streets to the structural conditions they were in immediately at the beginning of Grantee's use of these streets pursuant to this franchise agreement; (e) plus the current rate of overhead being charged by the City for reimbursable work.

3. If, at the non-renewal, revocation or termination of this franchise, or of the permanent discontinuance of the use of all or a portion of its facilities, Grantee, within thirty (30) days thereafter, fails or refuses to make written application for the above-mentioned authority to remove or abandon its facilities, the City Public Works Department shall make the determination as to whether the facilities shall be abandoned in place or removed. The City Public Works Department shall then notify Grantee of its determinations. Grantee shall thereafter comply with the applicable provisions of this Article 11.

G. For those facilities Grantee abandons in place, Grantee shall be required to maintain an acceptable performance bond, letter of credit or security fund, as determined by the City Public Works Department, to cover the costs for the removal of any such abandoned facilities from the City streets for any and all periods of time, including those periods following the expiration, revocation or termination of this franchise, that Grantee's facilities remain in the City streets. Grantee shall be required to maintain insurance and to indemnify the City pursuant to this Article during any periods the abandoned facilities remain within the City streets. Provided, however, that any pipelines which cannot be removed due to a moratorium preventing work in the City streets, may be deferred from the payment of the annual franchise fee. The payment of annual franchise fees may be deferred during any such moratorium period, provided that Grantee promptly removes its facilities after notice by the City Public Works Department of the cessation of the moratorium and direction to remove such Facilities. In the event Grantee does not promptly remove such facilities as directed, any deferred annual franchise fees shall be due and payable within thirty (30) days of notice to pay.



## **ARTICLE 12**

### **COMPLETION OF WORK**

In the event that the Grantee fails to commence any work or act and diligently proceed therewith or to complete any such act or work required of the Grantee by the terms of this franchise within the time limits required hereby (and except as is otherwise provided in Articles 10 and 11), the City may cause such act or work to be completed by the City or, at the election of the City, by a private contractor. The Grantee agrees to pay the City, within thirty (30) days after delivery of an itemized bill, the cost of performing such act or work plus an amount equal to fifteen percent (15%) thereof for overhead. If the Grantee is dissatisfied with any decision made by the City Public Works Department hereunder or the determination of the cost of any work performed by the City pursuant to this Agreement, it may petition the City Council to review the same within ten (10) days after such decision or determination.

## **ARTICLE 13**

### **RECOVERY OF COSTS OF REPAIRS AND UNPAID FEES**

If the Grantee has not paid the City for such fees and expenses and/or liquidated damages incurred by or payable to the City as hereinabove set forth, the City may institute the following collection procedures (which procedures are in addition to any other rights, in law or equity, which the City has to correct amounts due under this franchise and to enforce the terms of this franchise):

A. The City Public Works Department shall keep an itemized account of the expenses incurred by the City pursuant hereto, or the fees unpaid by the Grantee. Sixty (60) days after the presentation of the bill to the Grantee therefore, the City Public Works Department shall prepare and file with the City Clerk a report specifying the work done by the City, or the unpaid fees, the itemized and total cost of the work, a description of the work performed, and the name and address of the Grantee entitled to notice pursuant to this Article.

B. Upon receipt of said report, the City Clerk shall present it to the City Council for consideration. The City Council shall fix a time, date and place for hearing said report, and any protest or objections thereto. The City Clerk shall cause notice of said hearing to be posted in a newspaper of general circulation in the City, and served by certified mail, postage prepaid, addressed to the Grantee as set forth herein. Such notice shall be given at least ten (10) days prior to the date set for hearing and shall specify the day, hour, and place when the City Council will hear and pass upon the City Public Works Department's report, together with any objections or protests which may be filed as hereinafter provided.

C. The Grantee may file written protests or objections with the City Clerk at any time prior to the time set for the hearing on the report of the City Public Works Department. Any such protest or objection must contain a description of the work or unpaid fee or liquidated damages in which the Grantee is contesting and the grounds of such protest or objection and the date it was received by him. He shall present such protest or objection to the City Council at the

time set for the hearing, and no other protest or objection shall be considered, except as determined by the City Council for good cause shown.

D. Upon the day and hour fixed for the hearing, the City Council shall hear and pass upon the report of the City Public Works Department together with any such objections or protests, make such revision, correction or modification to the charge as it may deem just; and when the City Council is satisfied with the correctness of the charge, the report (as revised, corrected or modified), together with the charge, shall be confirmed or rejected. The decision of the City Council on the report and the charge, and on all protests or objections, shall be the final and conclusive decision of the City.

E. The City Council may thereupon order that such charge shall be made a personal obligation of the Grantee or assess such charge against the property of the Grantee.

(1) If the City Council orders that the charge shall be a personal obligation of the Grantee, it shall direct the City Attorney to collect the same on behalf of the City by use of all appropriate legal remedies.

(2) If the City Council orders that the charge shall be assessed against the property of the Grantee, it shall confirm the assessment, cause the same to be recorded on the assessment roll, and thereafter, said assessment shall constitute a special assessment against a lien upon any property held in the City of San Luis Obispo by the Grantee.

F. The validity of any assessment made under the provisions of this franchise shall not be contested in any action or proceeding unless the same is commenced within ninety (90) days after the assessment is placed upon the assessment roll as provided herein.

G. The City Council, in its discretion, may determine that assessments in amounts of \$500.00 or more shall be payable in not more than five (5) equal annual installments. The City Council's determination to allow payment of such assessments in installments, the number of installments, whether they shall bear interest, and the rate thereof shall be adopted by a resolution prior to the confirmation of the assessment.

H. Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the property of the grantee in the City of San Luis Obispo. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property, and shall be paramount to all other liens except for state, county, and municipal taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.

(1) All such assessments remaining unpaid after thirty (30) days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the highest rate permitted by law from and after said date.

I. After confirmation of the report, certified copies of the assessment shall be filed with the County Auditor on or before August 10th. The descriptions of the parcels reported shall be those used for the same parcels on the County Assessors map books for the current year.

J. The amount of the assessment shall be collected at the same time and in the same manner as ordinary county taxes are collected and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy collection and enforcement of taxes shall be applicable to such assessment. If the City Council has determined that the assessment shall be paid in installments, each installment and any interest thereon shall be collected in the same manner as ordinary City taxes is in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for sale as provided for ordinary county taxes.

K. All money recovered by payment of the charge or assessment or from the sale of the property at foreclosure sale shall be paid to the City Finance Director.

#### **ARTICLE 14** **BOND**

A. Grantee shall, concurrently with the filing of and acceptance of award of this franchise, file with the City Clerk, and yearly thereafter, maintain in full force and effect, a bond guaranteeing to the City of San Luis Obispo the penal sum of One Million Dollars (\$1,000,000.00), with a surety to be approved by the City Public Works Director and City Risk Manager, conditioned that Grantee shall, well and truly observe, fulfill and perform each and every term and condition of this franchise, and in case of a material breach of condition of said franchise, at the discretion of the City Public Works Director, a percentage of the amount of the bond shall be paid to the City according to the following schedule, which cumulative amount for any said breach not cured within the time specified below shall not exceed the full amount of the bond, in addition to any damages recoverable by the City and shall be recoverable from the principal and sureties of the bond:

Following receipt of notice by Certified  
Mail sent by the City, failure to cure  
said breach of condition, within:

Penal sum paid to City:

10 business days

5% of the amount of the bond

30 calendar days

30% cumulative amount of the  
bond

60 calendar days

70% cumulative amount of the  
bond

90 calendar days

100% cumulative amount of the  
bond

The amount of time specified above shall be tolled while City and Grantee resolve, or until the City Council rules on, any written appeal, protest or objection to the City Public Works Director's decision as set forth in Articles 12, 13, 19, and 25, and elsewhere in this agreement; however, if Grantee's appeal, protest or objection is found by the City Council to be the result of bad-faith actions or tactics that are frivolous or intended to cause unnecessary delay, such amount of time shall not be tolled.

If said bond is not so filed, the award of this franchise and privileges will be set aside and any money paid therefore will be forfeited. Whenever a bond is taken and deemed to be liquidated damages for any breach of a term or condition of this franchise, the Grantee must immediately file another bond of like amount and character, and if the Grantee fails to do so within the time set by the City Public Works Director, the City Council may, by resolution, declare said franchise automatically forfeited. Nothing herein shall insulate Grantee from liability in excess of the amount of said bond or shall be construed as a waiver by the City of any remedy at law against the Grantee for any breach of the terms and conditions of this franchise, or for any damage, loss or injuries suffered by the City of San Luis Obispo in case of any damage, loss or injury suffered by any person, firm, or corporation by reason of any work done or any activity conducted by the Grantee in exercise of this franchise.

B. The faithful performance bond shall continue to exist for one (1) year following the City's approval of any sale, transfer, assignment or other change of ownership of this franchise, or of the expiration or termination of this franchise. The City may release said bond prior to the end of the one (1) year period upon satisfaction by Grantee of all the obligations under this franchise.

## **ARTICLE 15** **INSURANCE**

A. The Grantee shall procure and shall keep in force for the term of the franchise, at the sole cost and expense of the Grantee, the following insurance. All insurance coverages are to be placed with insurers which have a Best's rating of not less than B+VIII and are admitted insurance companies in the State of California. Grantee may satisfy the requirements of this Article 15 by showing proof of self-insurance reasonably satisfactory to the City Attorney and Risk Manager.

Commercial General Liability Insurance (CGL): Grantee shall maintain in full force and effect Commercial General Liability Insurance with the following coverages:

1. Personal Injury and Bodily Injury, including death resulting therefrom.
2. Property Damage.
3. Automobile coverage which shall include owned, non-owned and hired vehicles.

The amount of insurance shall not be less than the following: Single limit on the coverage applying to bodily and personal injury, including death resulting therefrom, property damage, and automobile coverage in the total amount of Ten Million Dollars (\$10,000,000.00).

The following endorsements must be provided in the CGL policy:

1. If the insurance policy covers on an "accident" basis, it must be changed to "occurrence."
2. The policy must cover personal injury as well as bodily injury.
3. Blanket contractual liability must be afforded and the policy must contain a cross-liability or severability of interest endorsement.
4. Broad Form Property Damage Liability must be afforded.
5. Products and Completed Operations coverage must be provided.
6. The City, its officers, employees and agents shall be named as additional insured under the policy. The policy shall include the appropriate insurance company endorsement, as required under City regulations. The policy shall provide that the insurance will operate as primary insurance. No other insurance effected by the City, whether commercial or self-insurance will be called upon to contribute to a loss hereunder.

The following requirements apply to all insurance to be provided by Grantee:

1. A certificate of insurance shall be furnished to the City. Upon request by the City, Grantee shall provide a certified copy of any insurance policy to the City within forty-five working days of the City's request.
  2. Certificates and policies shall state that the policies will not be canceled or reduced in coverage or changed in any other material respect without thirty days prior written notice to the City.
- B. Failure on the part of Grantee to procure or maintain required insurance and bonding shall constitute a material breach of this franchise upon which the City may immediately terminate or suspend this franchise.

## **ARTICLE 16**

### **INDEMNIFICATION BY GRANTEE**

The Grantee, by the acceptance or use of the franchise hereby granted, shall defend, indemnify and shall keep and save free and harmless the City, its officers, agents and/or employees against any and all claims, demands or causes of action which may be asserted, prosecuted or established against them, or any of them, for damage to persons, or property, of

whatsoever nature, arising out of the use by it of the City streets hereunder or arising out of any of the operations or activities of the Grantee pursuant to this franchise, whether such damage shall be caused by its own sole negligence or negligence concurrent with the City, excepting therefrom, however, any claim or demand based on the sole negligence and willful misconduct of the City, and any claim, demand, or cause of action which may be asserted, prosecuted or established against the City under the provision of the Worker's Compensation Act for injury to or the death of any of City's officers, agents or employees while acting within the scope of their employment. Grantee shall not be responsible for any criminal, fraudulent or malicious conduct of the City.

## **ARTICLE 17**

### **CHANGES IN CONTROL OF FRANCHISE**

A. On and after the Grantee's acceptance of this franchise as provided in Article 23 herein, Grantee, its partners, its shareholders, or any other person or persons holding an interest in Grantee shall not transfer any interest in the franchise where such a transfer would lead to another person achieving a twenty-five percent (25%) or greater interest in this franchise or change control of this franchise, unless the City approves such a transfer or change in control. The City shall approve a request for transfer or change in control only if doing so serves the public interest. As used in this franchise Ordinance, "control" includes actual working control in whatever manner exercised.

1. The City shall deny any such request for transfer or change in control if the transferor or transferee fails to comply with any applicable provision of this Article of this franchise Ordinance, or if the City determines the transferor is in non-compliance with the terms and conditions of this franchise Ordinance, or if a transferee is lacking in experience and/or financial ability to operate the pipelines authorized by this franchise Ordinance, or if the proposed transfer will be detrimental to the public interest.

B. Both the Grantee and the proposed transferee shall inform the City Public Works Department of any pending change in control of this franchise or of any pending transfer of an interest in the franchise requiring the City's consent pursuant to this Article, and each shall provide applications containing all documents on which the transfer or change in control is predicated and all documents which the City Public Works Department determines are necessary to evaluate the transfer or change of control. These applications shall be signed by duly authorized representatives of the Grantee and the proposed transferee, with signatures acknowledged by a notary. The appropriate transfer fee described in Article 17(C), *infra* shall accompany these applications.

1. Grantee's application shall include:

a. Identification and ownership of the proposed transferee in the same detail as if the proposed transferee were an applicant for an initial grant;

b. Current financial statements showing the financial condition of the Grantee as of the date of the application. In this application, the Grantee shall also agree to submit financial statements showing the condition of the franchise as of the closing. Said financial statements shall have been audited and certified by an independent certified public accountant, and shall be submitted within ninety (90) days of the closing.

2. The proposed transferee's application shall contain current financial statements of the proposed transferee and other such information and data, including but not limited to sources of capital, as will demonstrate conclusively that the proposed transferee has all the financial resources necessary to acquire the pipeline(s), carry out all of the terms and conditions of the franchise, remedy any and all defaults and violations of the provisions of this franchise in the Grantee's past and present operations, make such other improvements and additions as may be required or proposed to maintain and conduct the services and facilities required under this franchise. The proposed transferee will be required to authorize release of financial information to the City from financial institutions relating to information supplied by the proposed transferee in support of the application. The proposed transferee's application shall also include:

a. A construction schedule, describing type and placement of construction, detail phases of construction, and include map(s) correlated to the phases of construction. Map(s) shall include detail on the location, length, depth, and internal diameter of any planned pipelines.

b. Copies of any agreements with utility companies for the use of any facilities including, but not limited to, poles, lines and conduit.

c. A description of plans for emergency equipment and personnel enabling the transferee to meet the emergency equipment personnel requirements in Article 8 herein.

d. Any information indicating as specifically as possible that any principal, manager, or associate of the proposed transferee or a parent entity of the proposed transferee has previously been or is currently:

i. A party to a criminal proceeding (involving felonies or misdemeanors) in which any of the following offenses have been charged: fraud, embezzlement, tax evasion, bribery, extortion, jury tampering, obstruction of justice (or other misconduct affecting public or judicial officers in the performance of their duties), false/misleading advertising, perjury, antitrust violations (state or federal), violation of environmental laws or regulations, or conspiracy to commit any of the foregoing;

ii. A party to a civil proceeding concerning liability for any of the following: unfair or anticompetitive business practice, antitrust violations (state or federal) including instances in which consent decrees were entered, violations of security laws (state or federal), false/misleading advertising, racketeer influences and corrupt organizations, violation of environmental laws or regulations, or contraband forfeitures;

iii. Subject to any penalty, criminal or civil, involving failure to comply with the requirements of a pipeline franchise;

iv. Involved in instituting legal action against its franchising authorities;

v. Involved in revocation/non-renewal of any other franchise;

e. Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the City or by any provision of law.

f. An express and unconditional written acceptance of the terms and conditions of this Franchise Ordinance, in its most current form, as a condition to the transfer.

C. A fee shall be submitted with the applications for the City's consent to transfer or change of control.

1. Where the City's consent to a transfer or a change of control of this franchise does not result in the modification of this franchise by adoption of an amending ordinance, this fee for each application shall be as set forth in the City's fee ordinance.

2. Where the City's consent to a transfer or a change of control of this franchise results in the modification of this franchise by adoption of an amending ordinance this fee shall be as set forth in the City's fee ordinance.

3. In the event the costs to process the applications exceed the fees detailed above, the applicants may be required to pay any additional costs incurred by the City in processing the applicants' requests for the City's consent to the transfer or change of control of this franchise. Such costs may include the cost incurred for hiring consultants to assist in evaluating the applications. Such costs shall be paid by the applicants prior to final consideration of the request by City Public Works Department, or the City Council, as applicable.

D. Within thirty (30) days of the effective date of the City's approval of the transfer or change of control, or within thirty (30) days of the date of the close of the transfer or change of control, the Grantee shall file with the City Public Works Department: (1) a certified copy of each duly executed instrument of such a transfer or change in control; and (2) the submittal of a final accounting and report of all fees due under this franchise. The proposed transferee shall be responsible for any underpayment, and shall be entitled to a credit for any overpayment. Within ninety (90) days of the closing of the transfer or change of control, the Grantee shall submit financial statements, audited and certified by an independent certified public accountant, showing the condition of the franchise as of the closing. If such duly executed instruments are not filed with the City Public Works Department by the deadlines imposed in this Article, or if the final documents are different from the preliminary documents, the City Public Works Department may inform the proposed transferee that the transfer or change in control is not deemed to be in force and effect. The City Public Works Department may then administratively



determine that this franchise is forfeited and the City Council may, without notice, by ordinance repeal this franchise.

E. As a condition to the granting of consent to such a transfer or change in control, the City Council may impose such additional terms and conditions upon this franchise and upon the proposed transferee as are in the public interest. Such additional terms and conditions shall be imposed by ordinance. Nothing herein contained shall be construed to grant Grantee the right to transfer or change control of this franchise or any part thereof, except in the manner aforesaid. This Article 17 applies to any transfer of this franchise, or of any change in control of this franchise, whether by operation of law, by voluntary act of Grantee, or otherwise.

## **ARTICLE 18** **WAIVER OF BREACH**

No waiver of the breach of any of the covenants, agreements, restrictions, or conditions of this franchise by the City shall be construed to be a waiver of any succeeding breach of the same or other covenant, agreements, restrictions or conditions of this franchise. No delay or omission of the City in exercising the right, power or remedy herein provided in the event of default shall be construed as a waiver thereof, or acquiescence therein, nor shall the acceptance of any payments made in a manner or at a time other than is herein provided be construed as a waiver of or variation in any of the terms of this franchise.

## **ARTICLE 19** **DEFAULT**

A. In the event that the Grantee shall default in the performance of any of the terms, covenants and conditions herein, the City may give written notice to the Grantee of such default by certified mail. In the event that the Grantee does not commence the work necessary to cure such default within five (5) business days after such notice is received or prosecute such work diligently to completion, the City may declare this franchise forfeited by giving written notice thereof to the Grantee, whereupon this franchise shall be void and the rights of the Grantee hereunder shall terminate and the Grantee shall execute an instrument of surrender and deliver the same to the City. If the City Council declares this franchise forfeited, it may thereupon and thereafter exclude the Grantee from further occupancy or use of all City roads and streets authorized under this franchise. A forfeiture of said franchise shall not of itself operate to release any bond filed for said franchise. Upon declaring a franchise forfeited, the City Council may elect to take and accept any bond as liquidated damages therefore or pursue any other legal remedy for any damage, loss or injury suffered by the City as a result of such breach or both. After forfeiture, any bond shall remain in full force and effect for a period of one (1) year unless exonerated by the City Council. No bond shall be exonerated unless a release is obtained from the City Public Works Department and is filed with the City Clerk. The release shall state whether all excavations have been back filled, all obstructions removed, and whether the substratum or surface of City streets occupied or used have been placed in good and serviceable condition. A release shall not constitute a waiver of any right or remedy which the City of San

Luis Obispo may have against the Grantee or any person, firm or corporation for any damage, loss or injury suffered by the City as a result of any work or activity performed by the Grantee in the exercise of this franchise.

B. No provision herein made for the purpose of securing the enforcement of the terms and conditions of this franchise shall be deemed an exclusive remedy, or to afford the exclusive procedure, for the enforcement of said terms and conditions, but the remedies and procedure herein provided, in addition to those provided by law shall be deemed to be cumulative.

## **ARTICLE 20**

### **SCOPE OF RESERVATION**

Nothing herein contained shall ever be construed so as to exempt the Grantee from compliance with all ordinances of the City now in effect or which may be hereafter adopted which are not inconsistent with the terms of this franchise. The enumeration herein of specific rights reserved shall not be construed as exclusive, or as limiting the general reservation herein made or as limiting such rights as the City may now or hereafter have in law.

## **ARTICLE 21**

### **NOTICE**

Any notice required to be given under the terms of this franchise, the manner of service of which is not specifically provided for, may be served as follows:

Upon the City, by serving the City Clerk, personally or by addressing a written notice to the City Clerk of the City of San Luis Obispo, 990 Palm Street, San Luis Obispo, CA 93401, and depositing such notice in the United States mail, postage prepaid.

Upon the Grantee, by addressing a written notice to Grantee addressed to Tosco Corporation, c/o Tosco Refining Company, 9645 Santa Fe Springs Road, P.O. Box 2628, Santa Fe Springs, CA 90670-0628, Attn: Supervisor, R/W Administration, or such other address as may from time to time be furnished in writing by one party to the other and depositing said notice in the United States mail, postage prepaid. When service of any such notice is made by mail, the time of such notice shall begin with and run from the date of the deposit of same in the United States mail.

## **ARTICLE 22**

### **SUCCESSORS**

The terms herein shall inure to the benefit of and shall bind, as the case may be, the successors and assigns of the parties hereto, subject, however, to the provisions of Article 17.

**ARTICLE 23**  
**ACCEPTANCE OF FRANCHISE**

A. This franchise is granted and shall be held and enjoyed only upon the terms and conditions herein contained. By accepting this grant of franchise, Grantee shall agree to be bound by each and all of the requirements of Article X, Sections 1001 through 1007 of the San Luis Obispo City Charter.

B. Grantee shall, within ten (10) days after the passage of this franchise Ordinance, file with the City Clerk an express and unconditional written letter of acceptance of, and consent to, the terms and conditions of this franchise Ordinance, in its current version, and as subsequently amended pursuant to San Luis Obispo City Charter, Article X, Section 1004.

C. The parent entity, or entities, if any, of Grantee, shall file a letter with the City, concurrent with Grantee's letter of acceptance, which guarantees the performance of each and every term, covenant and condition imposed on Grantee pursuant to the franchise Ordinance.

D. Grantee's letter of acceptance shall be signed by two (2) duly authorized representatives of Grantee, whose signatures shall be acknowledged by a notary, and shall be accompanied by the performance bond and evidence of insurance required by this franchise Ordinance.

**ARTICLE 24**  
**FORCE MAJEURE**

The time within which Grantee is obligated hereunder to construct, erect, maintain, operate, repair, renew, change the size of and remove pipelines or other improvements shall be extended for a period of time equal in duration to, and performance in the meantime shall be excused on account of, and for, and during the period of any delay caused by strikes, threats of strikes, lockouts, war, threats of war, insurrection, invasion, acts of God, calamities, violent action of the elements, fire, action or regulation of any governmental agency law or ordinance, impossibility of obtaining materials, or other things beyond the reasonable control of Grantee.

**ARTICLE 25**  
**LIQUIDATED DAMAGES**

A. By acceptance of this franchise, Grantee understands and acknowledges that failure to timely comply with any performance requirements stipulated in this franchise Ordinance will result in damages to the City, and that it is and will be impractical to determine the actual amount of such damage in the event of delay or nonperformance. Each of the amounts set forth below has been set in recognition of the difficulty of affixing actual damages arising from breach of these time of performance requirements. Each of said amounts constitutes a reasonable estimate of these damages. This section does not limit the rights and remedies available to the City for damages other than the timely compliance with performance

requirements as described in this section. The liquidated damages set forth below shall be chargeable to the bond, letter of credit or security fund provided for in Article 14, supra, should Grantee not make payment within thirty (30) days of written notice by certified mail by the City that the following amounts are due for the following concerns:

1. Failure to provide data, documents, or reports within ten (10) business days after receipt of written request by the City, by certified mail, or such longer time as may be specified in said request: Two Hundred Fifty Dollars (\$250.00) per day for each day, or part thereof that each violation continues.

2. Failure to provide to the City within ten (10) business days after receipt of written request by the City, by certified mail, current evidence of insurance and bonding: Two Hundred Fifty Dollars (\$250.00) per day for each day, or part thereof, that each noncompliance continues. Nothing in this Section shall preclude immediate termination or suspension of this franchise as provided for under Article 15B., supra.

3. Failure by Grantee to timely restore public or private property after performance of work and following Grantee's receipt of written request by the City to do so within ten (10) business days thereafter by certified mail: Two Hundred Fifty Dollars (\$250.00) per day or part thereof, that each non-compliance continues. Any fines paid pursuant to this Subsection 3 shall be paid solely to the Street Fund of the City Public Works Department.

B. If the City Public Works Department determines that Grantee is liable for liquidated damages, the City Public Works Department shall issue to Grantee by certified mail written notice of intention to charge liquidated damages. Liquidated damages shall begin to accrue as of the date of the written notice and as set forth in said notice. The notice shall set forth the basis for the liquidated damages and give Grantee a reasonable time in which to remedy the violation.

C. Grantee shall have the right to appeal any notice to the City Public Works Department by certified mail, within twenty (20) days after issuance of the notice by the City Public Works Department. The City Public Works Department shall hold an administrative hearing within sixty (60) days after receipt of an appeal. The City Public Works Director's decision shall be the final decision of the City.

D. If Grantee does not appeal the notice within said twenty (20) day period, Grantee shall pay the amount(s) of liquidated damages as stated in the notice. If payment is not paid as provided for in this Article, the City may withdraw against the bond provided for in Article 14 herein.

## **ARTICLE 26** **ATTORNEYS' FEES**

In the event the City or Grantee brings legal action against the other, or against Grantee's bonding companies or insurance carriers to compel performance of, or to recover for breach of any covenant, agreement or condition contained in this franchise, or for damages, the prevailing party shall be entitled to, in addition to any other relief obtained, such reasonable attorneys' fees as are fixed by the judge of the court in which such action is brought.

## **ARTICLE 27** **CONDEMNATION**

Notwithstanding anything to the contrary contained herein and in accordance with San Luis Obispo City Charter Article X, Section 1005, this Ordinance shall not in any way affect the right of the City to acquire the property of the Grantee thereof either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or to abridge either for a term or in perpetuity the City's right of eminent domain with respect to any public utility. The City reserves the right to purchase the property of such utility at an agreed price. In fixing the price to be paid by the City for any utility, no allowance shall be made for franchise value (other than the actual amount paid to the City at the time of the franchise acquisition), goodwill, going concern, earning power, increased cost of reproduction, severance damage, or increased value of right-of-way.

**SECTION 2:** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of San Luis Obispo hereby declares that they would have adopted this ordinance and each sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

**SECTION 3:** This ordinance shall take effect and be in full force and effect thirty (30) days after its passage, and before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the City Council voting for and against the ordinance in a newspaper of general circulation published in the City of San Luis Obispo, State of California.

**SECTION 4:** A synopsis of this ordinance, approved by the City Attorney, together with the ayes and noes shall be published once in full at least five (5) days prior to its final passage, in a newspaper published and circulated in said City, and at the same time shall go into effect at the expiration of thirty (30) days after its said final passage. A copy of the full final

text of this ordinance shall be on file in the Office of the City Clerk on and after the date following the introduction and passage to print and shall be available to any interested member of the public.

**INTRODUCED** on the 19th day of June 2001 **AND FINALLY ADOPTED** by the Council of the City of San Luis Obispo on the 10<sup>th</sup> day of July 2001, on the following roll call vote:

AYES: Council Members Marx, Mulholland, Schwartz, Vice Mayor Ewan and Mayor Settle

NOES: None

ABSENT: None

ATTEST:

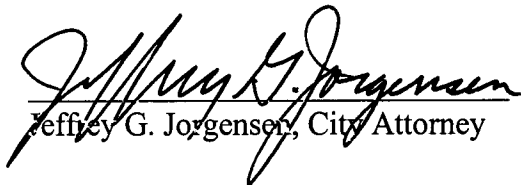


Lee Price, City Clerk



Mayor Allen Settle

APPROVED:



Jeffrey G. Jorgensen, City Attorney

**ORDINANCE NO. 1391 (2001 Series)**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN LUIS OBISPO  
GRANTING TO UNION PIPELINE COMPANY, A CALIFORNIA CORPORATION, A  
FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN  
PIPELINES FOR THE TRANSPORTATION OF OIL, AND OTHER SPECIFIED  
MATERIALS IN THE CITY OF SAN LUIS OBISPO,  
STATE OF CALIFORNIA**

**WHEREAS**, the City of San Luis Obispo adopted Ordinance No. 1038 on April 2, 1985 granting a franchise to Union Oil Company of California for a term of 25 years for the transportation and distribution of oil and other specified materials in the City of San Luis Obispo; and

**WHEREAS**, Union Oil Company of California sold or transferred a portion of its pipelines subject to Ordinance No. 1038 to TOSCO Corporation and Union Pipeline Company, a California Corporation; and

**WHEREAS**, Union Oil Company of California informed the City of San Luis Obispo that it intends to commence the abandonment process for its remaining interests under Ordinance No. 1038 that have not been sold or transferred to TOSCO Corporation and Union Pipeline Company, a California Corporation; and

**WHEREAS**, Union Oil Company of California's remaining pipeline interests in the City of San Luis Obispo are still subject to the existing franchise agreement granted in Ordinance No. 1038 until such time that Union Oil Company of California has abandoned such pipelines pursuant to applicable law; and

**WHEREAS**, TOSCO Corporation and Union Pipeline Company have requested the City of San Luis Obispo to enter into new franchise agreements for the oil transportation and distribution pipelines acquired from Union Oil Company of California.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of San Luis Obispo to grant a franchise to construct, operate, and maintain pipelines for the transportation of oil, and other specified materials in the City of San Luis Obispo to Union Pipeline Company ("Unocap"), a California corporation as follows:

**SECTION 1:** Terms and Conditions of Franchise (Table of Contents begins on page 2):

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**ARTICLE I**  
**NATURE OF FRANCHISE**

**A. Grant of Franchise.**

1. The City of San Luis Obispo (hereinafter referred to as "City"), hereby grants to Union Pipeline Company , a California Corporation, (hereinafter referred to as "Grantee"), pursuant to the provisions of Article X of the San Luis Obispo City Charter, Article XI, Section 9(b) of the California Constitution, and Section 39732(b) of the California Government Code, the non-exclusive right, privilege and franchise, subject, however, to all the limitations and restrictions herein contained, to construct, erect, maintain, operate, repair, renew, abandon, and change the size of and remove pipelines, not to exceed twelve (12) inches nominal internal diameter, for the transportation of oil, products thereof, hydrocarbon gases and other gas necessary for the operation and maintenance of the pipelines, water and mixtures thereof, movable by pipeline, in, under, along, and across the public streets, ways, alleys and places within the City of San Luis Obispo (hereinafter collectively referred to as "streets"), as described in Exhibit No. 1, attached hereto and made a part hereof.

2. The term of the franchise granted under this Ordinance shall be for a term of ten (10) years, commencing with the date on which it is accepted by Grantee.

3. Unless otherwise specifically stated, the following provisions shall govern the interpretation and construction of the franchise granted herein:

(a) This franchise shall include the right, for the period and subject to the conditions hereof, to construct, erect, maintain, operate, repair, renew, abandon and change the size and remove the said pipelines, if any, of Grantee, as laid and constructed in said streets.

(b) The terms and conditions of this franchise shall also apply to any pipe or other facilities of Grantee which are located within the right of way of any existing public road or street at the time such road or street becomes a City street through annexation or otherwise, subject to any other existing rights enjoyed by Grantee.

(c) 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.

(d) Any right or power conferred, or duty imposed upon any officer, employee, department, or other City entity, by the terms of this franchise, may be legally transferred to any other City officer, employee, department, or other City entity.

(e) Grantee shall have no recourse whatsoever against the City for any loss, cost, expense, or damage suffered by Grantee and arising out of any provision or requirement of this franchise or its lawful enforcement by the City.

(f) This franchise does not relieve Grantee of any applicable requirements of the San Luis Obispo Municipal Code or of any federal, state, or City law, ordinance, rule, regulation, or specification, including, but not limited to, any requirement relating to street work, street excavation permits, or the use, removal or relocation of property in streets, except as specifically prescribed herein.

(g) This franchise is non-exclusive. Neither the granting of this franchise nor any of the provisions contained herein shall be construed to prevent the City from granting any identical or similar franchise to any other person.

(h) The compensation provided for in this franchise is for (i) the rights and privileges granted by this franchise, and (ii) the right and privilege granted to the Grantee to construct, erect, maintain, operate, repair, renew, abandon and change the size of and remove the said pipelines pursuant to this franchise within the City's streets. The City expressly reserves the right to impose and collect from Grantee, on a non-discriminatory basis, its normal duly established processing and inspection fees from street cutting and excavation permits to the extent such fees are imposed generally on all non-governmental applicants for such permits within the City.

(i) Any activities involving the use of a pipeline system for the transmitting of oil, products thereof, hydrocarbon gases and other gas necessary for the operation and maintenance of the pipelines, water and mixtures thereof, which are not specifically authorized under this franchise are prohibited under this franchise. Except as provided in Article 2, any telecommunication or other uses not authorized in this franchise Ordinance must be approved by the City under a separate franchise.

(j) If any provision of this franchise, or the application of this franchise to any person or circumstance is held invalid by a court of competent jurisdiction or is not in compliance with any requirement of the Public Utilities Commission, the City, or any other federal or state body or agency having jurisdiction over Grantee's franchise activities, the remainder of this franchise Ordinance, or the application of this franchise to persons or circumstances other than those to which it is held invalid or not in such compliance, shall not be affected thereby.

**B. Limitations Upon Grant.**

1. No privilege or exemption is granted or conferred by this franchise except those specifically prescribed herein.

2. Any privilege claimed under this franchise by Grantee in any street shall be subordinate to any prior lawful occupancy of the street.

3. The rights and privileges of this franchise are granted solely to Grantee except as provided within this franchise Ordinance. This franchise is not be to sold, transferred, leased, assigned, or disposed of as a whole or in part, either by forced sale, merger, consolidation, or

otherwise, without the City's prior consent as described in Article 17, *infra*, or as otherwise expressly provided herein. The City agrees that such prior consent shall not be unreasonably withheld or conditioned.

C. Rights Reserved to the City.

1. The rights reserved to the City under this franchise Ordinance are in addition to all other rights of the City, whether authorized by the San Luis Obispo City Charter, San Luis Obispo City Municipal Code, or any other federal, state, or City law, rule, or regulation. No action, proceeding or exercise of a right shall affect any other rights that may be held by the City. Grantee, by acceptance of this franchise, shall be bound thereby and shall comply with any action or requirement of the City in its exercise of any such right or power.

2. The City shall have the power and right at all times during the term of this franchise to require Grantee to conform to the laws, rules and regulations governing the operation of pipelines now or hereafter adopted by the City Council to the extent permitted by law.

3. The City may enforce, to the maximum extent permitted by law, the inspection and testing of pipelines, pursuant to state and federal standards and require appropriate remuneration and fees to cover such enforcement activities.

**ARTICLE 2**  
**APPURTENANCES**

The Grantee shall have the right, subject to the prior approval of the City Public Works Department, to construct and maintain such traps, manholes, conduits, valves, appliances, attachments, and appurtenances (hereinafter for convenience collectively referred to as "appurtenances"), as may be necessary or convenient for the proper maintenance and operation of the pipelines under said franchise. Said appurtenances shall be so located as to conform to any order of the City Public Works Department in regard thereto and not to interfere with the use of the streets for travel. The Grantee shall have the right, subject to such ordinances, rules, or regulation as are now or may hereafter be in force, to make all necessary excavations in said street for the construction and repair of said pipelines and appurtenances subject to the prior approval of the City Public Works Department. "Appurtenances" shall also include any adjunct communications lines and/or conduits 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 system via the distribution of video, audio, voice, or data signals. An adjunct communications line shall not include any facility which 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.

### **ARTICLE 3**

#### **LOCATION OF PIPELINES**

So far as is practicable and within the requirements of the California State Fire Marshall, any pipeline hereinafter laid shall be located along the edge or shoulder of the streets or in the parking areas adjacent thereto so as not unreasonably to disturb the flow of traffic and where possible shall be laid in the unpaved portion of the street.

### **ARTICLE 4**

#### **CONSTRUCTION OF PIPELINES**

A. Terms of Construction. The pipelines and appurtenances laid, constructed or maintained under the provisions of this franchise shall be installed, maintained, and inspected by the Grantee in a satisfactory, safe, and workmanlike manner, of good material, and in conformity with all ordinances, rules, or regulations now or hereafter adopted or prescribed by the City Council, State, or Federal authorities.

B. Restoration of Streets. The work of laying, constructing, maintaining, operating, renewing, repairing, changing size and moving any of the pipeline system contemplated by this franchise and all other work in exercise of this franchise shall be conducted according to the provisions of the City's encroachment ordinances from time to time prevailing, and otherwise in accordance with federal and state law and applicable City ordinances, and with the least possible hindrance or interference to the use of City roads by the public or by the City of San Luis Obispo, and Grantee shall provide all necessary warning, safety and traffic control devices as are or may be required by City, State or Federal regulations. All excavations shall be back filled and adequately compacted. As part of any work completed under provisions of this franchise agreement, the surface of City streets shall be repaired and replaced to meet current City standards and specifications. Under no circumstances shall the surface of City streets be placed in a manner less than as good and serviceable condition as existed at the beginning of said work, to the satisfaction of the City Public Works Department.

### **ARTICLE 5**

#### **COMMENCEMENT OF CONSTRUCTION**

The Grantee, in good faith, shall commence with work of laying the pipelines and appurtenances within four (4) months from the date of passage of the approval of this franchise, and if any such pipelines be not so commenced within said time, this franchise shall be declared forfeited; provided, however, that if the Grantee is maintaining and operating an existing pipeline system over the route referred to in Article I herein, it shall be deemed to be in compliance with the foregoing. The Grantee shall not commence the construction of any new pipelines under the provision of this franchise or add to such existing pipeline system, if any there be, until it first shall have applied for and obtained a permit therefore from the City Public Works Department.

The application of the Grantee shall show the following facts: the length, approximate depth and proposed location of the pipeline proposed to be laid or constructed, the size and description of the pipeline intended to be used, and such other relevant facts as the City Public Works Department may require. The Grantee shall pay any and all encroachment permit fees of the City. Upon the completion of the construction of any pipelines constructed pursuant to said franchise, the Grantee shall render a statement to the City of San Luis Obispo showing in detail the permit or permits issued and the total length of pipeline, the construction of which was authorized under such permit, or permits, and the total length of pipeline actually laid, and the Grantee shall make payment to the City for the pipelines which have actually been constructed under said franchise as provided in Article 7, Section C.

## **ARTICLE 6**

### **MAPS AND REPORTS TO BE FURNISHED**

A. Within six (6) months of the effective date of this franchise for existing pipelines, and within ninety (90) days following the date in which any additional pipelines have been laid or constructed under this franchise, the Grantee shall file a map in such form as may be required by the City Public Works Department showing the accurate location and size of all its facilities then in place, and shall, upon installation of any additional facilities or upon removal, change or abandonment of all or any portion thereof, file a revised map or maps showing the location and size of all such additional and/or abandoned facilities as of this date. Cathodic protection is to be used for all facilities installed or maintained pursuant to this franchise. For facilities previously in liquid service and where the liquids have been removed and the facilities inerted, or for facilities previously in gas service that are not pressurized, cathodic protection shall be maintained consistent with State Fire Marshall or other agency requirements. A description of all the protective devices shall be furnished to the City Public Works Department which shall show the location and types of anodes, including a description of methods to be used as a protection against corrosion and electrolytic leakage.

B. Grantee shall file with the City Finance Director, within thirty (30) days after the expiration of the calendar year, or fractional calendar year, following the date of the granting of this franchise and within thirty (30) days after the expiration of each calendar year thereafter, two copies of a report verified by the oath of Grantee or by the oath of a duly authorized representative of Grantee, showing, for the immediately preceding franchise period, the length of main lines in streets, the nominal internal diameter of such main lines, the rate per foot per year (when applicable) and the total amount due to the City. In this report, Grantee shall also show any change in franchise footage since the last franchise report, segregating such footage as to new main lines and adjunct communications lines laid, old main lines and adjunct communications lines removed, old main lines and adjunct communications lines abandoned in place, and the footage of main lines and adjunct communications lines in territory annexed by the City since the last franchise report.

C. Grantee shall file with the City Public Works Department within sixty (60) days after the end of the calendar year a report, in duplicate, showing the permit number of each permit

obtained for the installation of new main lines during the immediately preceding franchise report period, together with the length and size of said main lines.

## **ARTICLE 7**

### **COMPENSATION TO THE CITY**

A. During the term of this franchise, Grantee shall pay to the City an annual fee for this franchise, said fee to be those fees prescribed by the California Public Utilities Code section 6231.5, provided that the rate is subject to increase to the maximum rate established in subsequent amendments of the California Public Utilities Code. Annual payments to be made pursuant to this franchise shall be due and payable in arrears April 1 of each year of this franchise. The initial payment hereunder shall be prorated for the remainder of the current calendar year based on a 365-day year.

At the time of payment of fees by Grantee, Grantee shall file a verified statement with the Clerk of the City of San Luis Obispo, with a copy to the City Public Works Department showing in detail the number of lineal feet and the diameter thereof, expressed in inches, of pipelines covered by this franchise during the previous calendar year, or portion thereof.

The compensation provided for in this Article shall be subject to an increase after the first year of the franchise and each subsequent year during the term of this franchise, based on the provisions of California Public Utilities Code section 6231.5, as amended.

The fees set forth will be adjusted annually each year by the annual percentage change in the U.S. Bureau of Labor Statistics (or successor agency) consumer price index for all urban consumers (CPI-U) all cities average for the prior calendar year.

Notwithstanding the provisions as otherwise stated in this Article and franchise, the Grantee shall be liable to pay the City the annual fee for the period to and including the date of either actual removal of the facilities or the effective date of the abandonment "in place," and until the Grantee shall have fully complied with all of the provisions of law or ordinances relative to such abandonments.

In the event of partial abandonment of facilities as provided in the Ordinance, or in the event of partial removal of such facilities by the Grantee, the payments otherwise due the City for occupancy of the streets by such facilities shall be reduced by the length and diameter of pipelines abandoned or the actual pipeline removed beginning with the first day of the next succeeding franchise year, and for each franchise year thereafter; provided, however, that the base rate shall be modified to reflect the adjustment (per this Article) applicable to such abandoned or removed pipeline at the beginning of the next succeeding franchise year following abandonment or removal.

Grantee shall pay to the City, upon demand, the cost of all repairs made by the City to public property arising out of the operations of the Grantee under this franchise. Any fees charged or expenses charged to Grantee by City pursuant to this Article, or any other provision

of this franchise Ordinance, unless disputed in good faith, shall be paid when due or shall be deemed delinquent. Any undisputed delinquent amounts shall be charged a 10% penalty and, in addition, shall accrue interest commencing thirty (30) days after the due date, at a rate of one and one-half percent (1.5%) per month (based upon a 30-day calendar month) or any lesser amount if required by law. Any neglect, omission or refusal by said Grantee to pay any undisputed delinquent franchise fee with any late charges, within thirty (30) days of delinquency, at the times or in the manner herein provided, shall be grounds for a declaration of a forfeiture of this franchise and of all rights hereunder.

Payments are to be made to the City Finance Department, 990 Palm Street, San Luis Obispo, California 93401, or at such place as the City shall, from time to time, designate in writing.

B. Grantee shall pay the City a granting fee of \$5,000.00 within thirty (30) days after the date the City Council adopts this franchise Ordinance.

C. Grantee shall pay the City Public Works Department, within sixty (60) days after the end of each calendar year, for each year during the life of this franchise, an initial construction charge calculated at the rate of One Dollar (\$1.00) per foot for all new main lines laid pursuant to this franchise Ordinance during the preceding year.

D. Right of Inspection. The City shall have the right to inspect Grantee's pipeline accounting and other records relating to its annual report and to audit and recompute any and all accounts payable under this franchise. Costs of audit shall be borne by Grantee when an audit results in an increase of more than five percent of Grantee's annual payments to the City. Acceptance of any payment shall not be construed as a release, waiver, acquiescence, or accord and satisfaction of any claim the City may have for further or additional sums payable under this franchise or for the performance of any other obligation hereunder.

## **ARTICLE 8**

### **EMERGENCY EQUIPMENT AND CREWS**

At all times during the term of this franchise, the Grantee shall maintain or arrange for, on a 24-hour-a-day basis, adequate emergency equipment and a properly trained emergency crew within a reasonable distance from any pipelines, appurtenances and facilities installed or maintained pursuant hereto for the purpose of monitoring the leak detection system and the communications systems if applicable, and of shutting off the pressure and the flow of contents of such facilities in the event of an emergency resulting from an earthquake, act of war, civil disturbance, fire, flood, or any other cause or nature whatsoever.



**ARTICLE 9**  
**REPAIR OF DEFECTIVE FACILITIES AND**  
**REPAIR OF DAMAGE TO CITY STREETS**

If any portion of any street shall be damaged by any reason related to the Grantee's operations pursuant to this franchise including defective facilities laid or constructed under this franchise, Grantee shall, at its own expense, repair any defect of its facilities and put such street in as good condition as it was before such damage was incurred, to the satisfaction of the City Public Works Department. If Grantee, within ten (10) days after receipt of written notice from the City Public Works Department instructing it to repair such damage, fails to commence to comply with such instruction, or, thereafter, fails diligently to prosecute such work to completion, then the City Public Works Director immediately may take any actions which are, in the sole judgment and discretion of the City Public Works Director, necessary to repair said damage. Any and all costs and expenses so incurred shall be the sole responsibility of Grantee including the current rate of overhead being charged by the City for reimbursable work, which cost and expense, by the acceptance of this franchise, Grantee agrees to pay upon demand. If such damage constitutes an immediate danger to public health or safety requiring the immediate repair thereof, the City Public Works Department, without notice, may repair such damage and Grantee agrees to pay the cost thereof upon demand.

**ARTICLE 10**  
**REARRANGEMENT OF FACILITIES**

**A. Expense of Grantee.**

1. If any of the Grantee's facilities, in the opinion of the City Public Works Director, shall endanger the public or interfere with the use of any street by the public or, for public purposes, the City shall have the right to require the Grantee, and the Grantee shall repair, replace, move, alter or relocate the same (hereinafter called "rearrangement") to avoid such danger, interference or obstruction, in conformity with the written notice of the City Public Works Department, at the Grantee's sole expense.

2. The City reserves the right to change the grade, to construct grade separation facilities, to change the width or to alter or change the location, of any street which is located within the service area for which this franchise is granted. If any of the facilities heretofore or hereafter constructed, installed or maintained by Grantee pursuant to this franchise on, along, under, over, in, upon or across any street are located in a manner which prevents or interferes with the change of grade, traffic needs, operation, maintenance, improvement, repair, construction, reconstruction, widening, grade separation, alteration or relocation of the street, or any work or improvement upon the street, Grantee shall relocate permanently or temporarily, as directed at the sole discretion of the City Public Works Director, any such facility at no expense to the City, upon receipt of a written request from the City Public Works Department to do so, and shall commence such work, by beginning engineering, surveying, or other pre-construction activities, on or before the date specified in such written request, which date shall be not less than sixty (60) days from receipt of such written request. Grantee shall thereafter diligently prosecute

such work to completion. Should Grantee neglect or fail to relocate its facilities in a timely manner after receipt of any such notice, in addition to the liquidated damages as set forth in Article 25, Grantee shall be responsible for and shall reimburse the City for any and all additional costs or expenses incurred by City due to or resulting from such delay in the relocation of the facilities plus, where applicable, the current rate of overhead being charged by the City for reimbursable work. If such street be subsequently constituted a state highway, while it remains a state highway the rights of the State of California shall be as provided in Section 680 of the Streets and Highways Code of the State of California.

3. The City reserves the right to lay, construct, repair, alter, relocate and maintain subsurface, surface or other improvements of any type of description in a governmental but not proprietary capacity within, over or under the streets over which this franchise is granted. If the City finds that the location or relocation of such subsurface, surface or other improvements conflicts with the facilities laid, constructed or maintained under this franchise, whether such facilities were laid before or after the improvements of the City, Grantee shall relocate permanently or temporarily, as directed at the sole discretion of the City Public Works Director, any such facility at no expense to the City upon receipt of a written request from the City Public Works Department to do so and shall commence such work, by beginning engineering, surveying or other pre-construction activities, on or before the date specified in such written request, which date shall not be less than sixty (60) days from receipt of such written request. The Grantee shall thereafter diligently prosecute such work to completion. Should Grantee neglect or fail to relocate its facilities in a timely manner after receipt of any such notice, in addition to the liquidated damages as set forth in Article 25, Grantee shall be responsible for and shall reimburse the City for any and all additional costs or expenses incurred by City due to or resulting from such delay in the relocation of the facilities plus, where applicable, the current rate of overhead being charged by the City for reimbursable work. If such street be subsequently constituted a state highway, while it remains a state highway the rights of the State of California shall be as provided in Section 680 of the Streets and Highways Code of the State of California.

4. If Grantee, after the notice provided for herein from the City, fails or refuses to relocate permanently or temporarily its facilities located in, on, upon, along, under, over, across, or above any street, or to pave, surface, grade, repave, resurface, or regrade as required pursuant to any provision of this franchise, the City may cause the work to be done, and shall keep an itemized account of the entire costs thereof, and Grantee shall hold harmless the City, its officers and employees from any liability which may arise or be claimed to arise from the moving, cutting or alteration of any of Grantee's facilities, or any necessary relocation of the facilities of other utilities.

5. Grantee agrees to, and shall, reimburse the City for such cost within thirty (30) days after presentation to Grantee of an itemized account arising out of the actions taken in this Article 10A.

B. Expense of Others.

(1) The City shall have the right to require the Grantee to rearrange any part of the Grantees' facilities for the accommodation of the City when such rearrangement is done for the

accommodation of any water, electric, gas or other utility system now or hereafter owned or operated by the City.

Except as otherwise provided in Article 10A, such arrangement shall be at the City's expense.

(2) The City shall have the right to require the Grantee to rearrange any part of the Grantee's facilities for the accommodation of any person, firm or corporation. When such rearrangement is done for the accommodation of any person, firm or corporation, other than one of said utility systems owned or operated by the City, the cost of such rearrangement shall be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, shall deposit with the Grantee or the City Clerk cash or a letter of credit or other cash equivalent in an amount, as in the reasonable discretion of the City Public Works Department, shall be required to pay the costs of such rearrangement, and such accommodated party shall execute an instrument agreeing to indemnify and hold harmless the Grantee from any and all damages or claims caused by such rearrangement.

(3) The rearrangement referred to in subsection (1) and (2) of Section B of this Article 10 shall be accomplished in conformity with the written notice of the City Public Works Department.

C. Rearrangement of the Facilities of Others.

Nothing in this franchise shall be construed to require the City to move, alter or relocate any of its facilities upon said streets, at its own expense, for the convenience, accommodation or necessity of any other public utility, person, firm or corporation now or hereafter owning a public utility system of any type or nature, to move, alter or relocate any part of its system upon said streets for the convenience, accommodation or necessity of the Grantee.

D. Notice.

The Grantee shall be given not less than sixty (60) days written notice of any rearrangement of facilities which the Grantee is required to make hereunder. Such notice shall specify in reasonable detail the work to be done by the Grantee and shall specify a reasonable time that such work is to be accomplished. In the event that the City shall change the provisions of any such notice given to the Grantee, the Grantee shall be given an additional period of not less than thirty (30) days to initiate such work.

**ARTICLE 11**

**GRANTEE'S REMOVAL OR ABANDONMENT OF FACILITIES**

A. The City reserves the right to require Grantee to remove its facilities from the City streets and City public property in the event of the non-renewal, revocation or termination of this franchise or at any time thereafter with respect to those facilities abandoned in place, or for the facilities affected by the permanent discontinuance of all or a portion of the facilities. Further, so long as any abandoned facilities installed under the authority of this franchise remain in a City street, Grantee shall maintain a performance bond, security fund, or other form of collateral,

acceptable to the City, sufficient to cover the cost of the removal of all such facilities from the City streets.

B. At the expiration, revocation or termination of this franchise or of the permanent discontinuance of the use of all or a portion of its facilities, Grantee shall, within thirty (30) days thereafter, make written application to the City Public Works Department for authority either:

1. To abandon all or a portion of such facilities in place; or

2. To remove all or a portion of such facilities. Such application shall describe the facilities desired to be abandoned, their location with reference to City streets, and shall describe with reasonable accuracy the physical condition of such facilities. As part of the application for removal or abandonment of these facilities, Grantee shall submit a soil test, taken within thirty (30) days of the submittal of the application, for those materials to be tested annually pursuant to federal, state and local laws. A soil test shall be taken along that portion of the pipeline to be removed or abandoned at such intervals as directed in writing by the City Public Works Department and reasonably consistent with established sampling protocols. The City Public Works Department shall determine whether any abandonment or removal which is thereby proposed may be effected without detriment to the public interest and the conditions under which such proposed abandonment or removal may be effected. The City Public Works Department shall then notify Grantee of the City's determinations. Grantee shall also obtain permits to abandon or remove the pipeline from the City Public Works Department for all pipelines prior to the removal, abandonment or discontinuation of use of all or a portion of Grantee's facilities. The City also reserves the right to require removal of Grantee's abandoned facilities in place at any time following the expiration, revocation or termination of this franchise. Grantee shall be required to meet the bonding, insurance, indemnification and annual franchise fee requirements of this franchise, for facilities abandoned in place.

C. Within thirty (30) days after receipt of Notification from the City Public Works Department pursuant to Article 11.B.2 above, Grantee shall apply for a permit from the City Public Works Department to abandon or remove the facility.

D. Grantee shall, within sixty (60) days after obtaining such permit, commence and diligently prosecute to completion the work authorized by the City's permit.

E. In the event Grantee applies to remove its facilities, and the City Public Works Department determines that any or all of the facilities cannot be removed due to a moratorium preventing work in the City streets, the payment of annual franchise fees shall be deferred during any such moratorium period, provided that Grantee promptly removes its facilities after notice by the City Public Works Department of the cessation of the moratorium and direction to remove such facilities. In the event Grantee does not promptly remove such facilities as directed, any deferred annual franchise fees shall be due and payable within thirty (30) days of notice to pay. Deferred annual franchise fees shall otherwise be waived.

F. Failure to Comply with City's Orders Regarding the Removal or Abandonment of Facilities.

1. If any orders or prescribed conditions relating to the abandonment of any facilities are not complied with, the City Public Works Department may impose such additional orders and conditions as the City deems appropriate, including an order that the Grantee remove any or all of such facilities. Grantee shall comply with such additional orders.

2. In the event that Grantee fails to comply with the terms and conditions of abandonment or removal as may be required by this franchise Ordinance, and within such time as may be prescribed by the City Public Works Department, then the City may remove or cause to be removed such facilities at Grantee's expense. Grantee shall pay to the City all of the costs of removing and disposing of these facilities, as well as returning the rights-of-way occupied pursuant to this franchise, including, but not limited to: (a) the cost of all environmental testing the City must conduct to determine the environmental condition of any rights-of-way occupied pursuant to this franchise and to ascertain what procedures the City must undertake, if any, to return any such rights-of-way to the environmental condition required by applicable Federal, State or local environmental laws; (b) all cleanup costs, disposal costs, and any other costs associated with returning these rights-of-way to such environmental condition; (c) all costs of removing, storing, and disposing of the Grantee's facilities; (d) all costs of returning all streets to the structural conditions they were in immediately at the beginning of Grantee's use of these streets pursuant to this franchise agreement; (e) plus the current rate of overhead being charged by the City for reimbursable work.

3. If, at the nonrenewal, revocation or termination of this franchise, or of the permanent discontinuance of the use of all or a portion of its facilities, Grantee, within thirty (30) days thereafter, fails or refuses to make written application for the above-mentioned authority to remove or abandon its facilities, the City Public Works Department shall make the determination as to whether the facilities shall be abandoned in place or removed. The City Public Works Department shall then notify Grantee of its determinations. Grantee shall thereafter comply with the applicable provisions of this Article 11.

G. For those facilities Grantee abandons in place, Grantee shall be required to maintain an acceptable performance bond, letter of credit or security fund, as determined by the City Public Works Department, to cover the costs for the removal of any such abandoned facilities from the City streets for any and all periods of time, including those periods following the expiration, revocation or termination of this franchise, that Grantee's facilities remain in the City streets. Grantee shall be required to maintain insurance and to indemnify the City pursuant to this Article during any periods the abandoned facilities remain within the City streets. Provided, however, that any pipelines which cannot be removed due to a moratorium preventing work in the City streets, may be deferred from the payment of the annual franchise fee. The payment of annual franchise fees may be deferred during any such moratorium period, provided that Grantee promptly removes its facilities after notice by the City Public Works Department of the cessation of the moratorium and direction to remove such Facilities. In the event Grantee does not promptly remove such facilities as directed, any deferred annual franchise fees shall be due and payable within thirty (30) days of notice to pay.

## **ARTICLE 12**

### **COMPLETION OF WORK**

In the event that the Grantee fails to commence any work or act and diligently proceed therewith or to complete any such act or work required of the Grantee by the terms of this franchise within the time limits required hereby (and except as is otherwise provided in Articles 10 and 11), the City may cause such act or work to be completed by the City or, at the election of the City, by a private contractor. The Grantee agrees to pay the City, within thirty (30) days after delivery of an itemized bill, the cost of performing such act or work plus an amount equal to fifteen percent (15%) thereof for overhead. If the Grantee is dissatisfied with any decision made by the City Public Works Department hereunder or the determination of the cost of any work performed by the City pursuant to this Agreement, it may petition the City Council to review the same within ten (10) days after such decision or determination.

## **ARTICLE 13**

### **RECOVERY OF COSTS OF REPAIRS AND UNPAID FEES**

If the Grantee has not paid the City for such fees and expenses and/or liquidated damages incurred by or payable to the City as hereinabove set forth, the City may institute the following collection procedures (which procedures are in addition to any other rights, in law or equity, which the City has to correct amounts due under this franchise and to enforce the terms of this franchise):

A. The City Public Works Department shall keep an itemized account of the expenses incurred by the City pursuant hereto, or the fees unpaid by the Grantee. Sixty (60) days after the presentation of the bill to the Grantee therefore, the City Public Works Department shall prepare and file with the City Clerk a report specifying the work done by the City, or the unpaid fees, the itemized and total cost of the work, a description of the work performed, and the name and address of the Grantee entitled to notice pursuant to this Article.

B. Upon receipt of said report, the City Clerk shall present it to the City Council for consideration. The City Council shall fix a time, date and place for hearing said report, and any protest or objections thereto. The City Clerk shall cause notice of said hearing to be posted in a newspaper of general circulation in the City, and served by certified mail, postage prepaid, addressed to the Grantee as set forth herein. Such notice shall be given at least ten (10) days prior to the date set for hearing and shall specify the day, hour, and place when the City Council will hear and pass upon the City Public Works Department's report, together with any objections or protests which may be filed as hereinafter provided.

C. The Grantee may file written protests or objections with the City Clerk at any time prior to the time set for the hearing on the report of the City Public Works Department. Any such protest or objection must contain a description of the work or unpaid fee or liquidated damages in which the Grantee is contesting and the grounds of such protest or objection and the date it was received by him. He shall present such protest or objection to the City Council at the

time set for the hearing, and no other protest or objection shall be considered, except as determined by the City Council for good cause shown.

D. Upon the day and hour fixed for the hearing, the City Council shall hear and pass upon the report of the City Public Works Department together with any such objections or protests, make such revision, correction or modification to the charge as it may deem just; and when the City Council is satisfied with the correctness of the charge, the report (as revised, corrected or modified), together with the charge, shall be confirmed or rejected. The decision of the City Council on the report and the charge, and on all protests or objections, shall be the final and conclusive decision of the City.

E. The City Council may thereupon order that such charge shall be made a personal obligation of the Grantee or assess such charge against the property of the Grantee.

(1) If the City Council orders that the charge shall be a personal obligation of the Grantee, it shall direct the City Attorney to collect the same on behalf of the City by use of all appropriate legal remedies.

(2) If the City Council orders that the charge shall be assessed against the property of the Grantee, it shall confirm the assessment, cause the same to be recorded on the assessment roll, and thereafter, said assessment shall constitute a special assessment against a lien upon any property held in the City of San Luis Obispo by the Grantee.

F. The validity of any assessment made under the provisions of this franchise shall not be contested in any action or proceeding unless the same is commenced within ninety (90) days after the assessment is placed upon the assessment roll as provided herein.

G. The City Council, in its discretion, may determine that assessments in amounts of \$500.00 or more shall be payable in not more than five (5) equal annual installments. The City Council's determination to allow payment of such assessments in installments, the number of installments, whether they shall bear interest, and the rate thereof shall be adopted by a resolution prior to the confirmation of the assessment.

H. Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the property of the grantee in the City of San Luis Obispo. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property, and shall be paramount to all other liens except for state, county, and municipal taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.

(1) All such assessments remaining unpaid after thirty (30) days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the highest rate permitted by law from and after said date.

I. After confirmation of the report, certified copies of the assessment shall be filed with the County Auditor on or before August 10th. The descriptions of the parcels reported shall be those used for the same parcels on the County Assessors map books for the current year.

J. The amount of the assessment shall be collected at the same time and in the same manner as ordinary county taxes are collected and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy collection and enforcement of taxes shall be applicable to such assessment. If the City Council has determined that the assessment shall be paid in installments, each installment and any interest thereon shall be collected in the same manner as ordinary City taxes is in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for sale as provided for ordinary county taxes.

K. All money recovered by payment of the charge or assessment or from the sale of the property at foreclosure sale shall be paid to the City Finance Director.

#### **ARTICLE 14**

#### **BOND**

A. Grantee shall, concurrently with the filing of and acceptance of award of this franchise, file with the City Clerk, and yearly thereafter, maintain in full force and effect, a bond guaranteeing to the City of San Luis Obispo the penal sum of One Million Dollars (\$1,000,000.00), with a surety to be approved by the City Public Works Director and City Risk Manager, conditioned that Grantee shall, well and truly observe, fulfill and perform each and every term and condition of this franchise, and in case of material breach of condition of said franchise, at the discretion of the City Public Works Director, a percentage of the amount of the bond shall be paid to the City according to the following schedule, which cumulative amount for any said breach not cured within the time specified below shall not exceed the full amount of the bond, in addition to any damages recoverable by the City and shall be recoverable from the principal and sureties of the bond:

Following receipt of notice by Certified  
Mail sent by the City, failure to cure  
said breach of condition, within:

Penal sum paid to City:

10 business days

5% of the amount of the bond

30 calendar days

30% cumulative amount of the  
bond

60 calendar days

70% cumulative amount of the  
bond

90 calendar days

100% cumulative amount of the  
bond



The amount of time specified above shall be tolled while City and Grantee resolve, or until the City Council rules on, any written appeal, protest or objection to the City Public Works Director's decision as set forth in Articles 12, 13, 19, and 25, and elsewhere in this agreement; however, if Grantee's appeal, protest or objection is found by the City Council to be the result of bad-faith actions or tactics that are frivolous or intended to cause unnecessary delay, such amount of time shall not be tolled.

If said bond is not so filed, the award of this franchise and privileges will be set aside and any money paid therefore will be forfeited. Whenever a bond is taken and deemed to be liquidated damages for any breach of a term or condition of this franchise, the Grantee must immediately file another bond of like amount and character, and if the Grantee fails to do so within the time set by the City Public Works Director, the City Council may, by resolution, declare said franchise automatically forfeited. Nothing herein shall insulate Grantee from liability in excess of the amount of said bond or shall be construed as a waiver by the City of any remedy at law against the Grantee for any breach of the terms and conditions of this franchise, or for any damage, loss or injuries suffered by the City of San Luis Obispo in case of any damage, loss or injury suffered by any person, firm, or corporation by reason of any work done or any activity conducted by the Grantee in exercise of this franchise.

B. The faithful performance bond shall continue to exist for one (1) year following the City's approval of any sale, transfer, assignment or other change of ownership of this franchise, or of the expiration or termination of this franchise. The City may release said bond prior to the end of the one (1) year period upon satisfaction by Grantee of all the obligations under this franchise.

## **ARTICLE 15** **INSURANCE**

A. The Grantee shall procure and shall keep in force for the term of the franchise, at the sole cost and expense of the Grantee, the following insurance. All insurance coverages are to be placed with insurers which have a Best's rating of not less than B+VIII and are admitted insurance companies in the State of California. Grantee may satisfy the requirements of this Article 15 by showing proof of self-insurance reasonably satisfactory to the City Attorney and Risk Manager.

Commercial General Liability Insurance (CGL): Grantee shall maintain in full force and effect Commercial General Liability Insurance with the following coverages:

1. Personal Injury and Bodily Injury, including death resulting therefrom.
2. Property Damage.
3. Automobile coverage which shall include owned, non-owned and hired vehicles.

The amount of insurance shall not be less than the following: Single limit on the coverage applying to bodily and personal injury, including death resulting therefrom, property damage, and automobile coverage in the total amount of Ten Million Dollars (\$10,000,000.00).

The following endorsements must be provided in the CGL policy:

1. If the insurance policy covers on an "accident" basis, it must be changed to "occurrence."

2. The policy must cover personal injury as well as bodily injury.
3. Blanket contractual liability must be afforded and the policy must contain a cross-liability or severability of interest endorsement.
4. Broad Form Property Damage Liability must be afforded.
5. Products and Completed Operations coverage must be provided.
6. The City, its officers, employees and agents shall be named as additional insured under the policy. The policy shall include the appropriate insurance company endorsement, as required under City regulations. The policy shall provide that the insurance will operate as primary insurance. No other insurance effected by the City, whether commercial or self-insurance will be called upon to contribute to a loss hereunder.

The following requirements apply to all insurance to be provided by Grantee:

1. A certificate of insurance shall be furnished to the City. Upon request by the City, Grantee shall provide a certified copy of any insurance policy to the City within forty-five working days of the City's request.
2. Certificates and policies shall state that the policies will not be canceled or reduced in coverage or changed in any other material respect without thirty days prior written notice to the City.

B. Failure on the part of Grantee to procure or maintain required insurance and bonding shall constitute a material breach of this franchise upon which the City may immediately terminate or suspend this franchise.

## **ARTICLE 16**

### **INDEMNIFICATION BY GRANTEE**

The Grantee, by the acceptance or use of the franchise hereby granted, shall defend, indemnify and shall keep and save free and harmless the City, its officers, agents and/or employees against any and all claims, demands or causes of action which may be asserted, prosecuted or established against them, or any of them, for damage to persons, or property, of whatsoever nature, arising out of the use by it of the City streets hereunder or arising out of any of the operations or activities of the Grantee pursuant to this franchise, whether such damage shall be caused by its own sole negligence or negligence concurrent with the City, excepting therefrom, however, any claim or demand based on the sole negligence or willful misconduct of the City and any claim, demand, or cause of action which may be asserted, prosecuted or established against the City under the provision of the Worker's Compensation Act for injury to or the death of any of City's officers, agents or employees while acting within the scope of their employment. Grantee shall not be responsible for any criminal, fraudulent or malicious conduct of the City.

## **ARTICLE 17**

### **CHANGES IN CONTROL OF FRANCHISE**

A. On and after the Grantee's acceptance of this franchise as provided in Article 23 herein, Grantee, its partners, its shareholders, or any other person or persons holding an interest

in Grantee shall not transfer any interest in the franchise where such a transfer would lead to another person achieving a twenty-five percent (25%) or greater interest in this franchise or change control of this franchise, unless the City approves such a transfer or change in control. The City shall approve a request for transfer or change in control only if doing so serves the public interest. As used in this franchise Ordinance, "control" includes actual working control in whatever manner exercised.

1. The City shall deny any such request for transfer or change in control if the transferor or transferee fails to comply with any applicable provision of this Article of this franchise Ordinance, or if the City determines the transferor is in non-compliance with the terms and conditions of this franchise Ordinance, or if a transferee is lacking in experience and/or financial ability to operate the pipelines authorized by this franchise Ordinance, or if the proposed transfer will be detrimental to the public interest.

B. Both the Grantee and the proposed transferee shall inform the City Public Works Department of any pending change in control of this franchise or of any pending transfer of an interest in the franchise requiring the City's consent pursuant to this Article, and each shall provide applications containing all documents on which the transfer or change in control is predicated and all documents which the City Public Works Department determines are necessary to evaluate the transfer or change of control. These applications shall be signed by duly authorized representatives of the Grantee and the proposed transferee, with signatures acknowledged by a notary. The appropriate transfer fee described in Article 17(C), *infra* shall accompany these applications.

1. Grantee's application shall include:

a. Identification and ownership of the proposed transferee in the same detail as if the proposed transferee were an applicant for an initial grant;

b. Current financial statements showing the financial condition of the Grantee as of the date of the application. In this application, the Grantee shall also agree to submit financial statements showing the condition of the franchise as of the closing. Said financial statements shall have been audited and certified by an independent certified public accountant, and shall be submitted within ninety (90) days of the closing.

2. The proposed transferee's application shall contain current financial statements of the proposed transferee and other such information and data, including but not limited to sources of capital, as will demonstrate conclusively that the proposed transferee has all the financial resources necessary to acquire the pipeline(s), carry out all of the terms and conditions of the franchise, remedy any and all defaults and violations of the provisions of this franchise in the Grantee's past and present operations, make such other improvements and additions as may be required or proposed to maintain and conduct the services and facilities required under this franchise. The proposed transferee will be required to authorize release of financial information to the City from financial institutions relating to information supplied by the proposed transferee in support of the application. The proposed transferee's application shall also include:

a. A construction schedule, describing type and placement of construction, detail phases of construction, and include map(s) correlated to the phases of construction. Map(s) shall include detail on the location, length, depth, and internal diameter of any planned pipelines.

b. Copies of any agreements with utility companies for the use of any facilities including, but not limited to, poles, lines and conduit.

c. A description of plans for emergency equipment and personnel enabling the transferee to meet the emergency equipment personnel requirements in Article 8 herein.

d. Any information indicating as specifically as possible that any principal, manager, or associate of the proposed transferee or a parent entity of the proposed transferee has previously been or is currently:

i. A party to a criminal proceeding (involving felonies or misdemeanors) in which any of the following offenses have been charged: fraud, embezzlement, tax evasion, bribery, extortion, jury tampering, obstruction of justice (or other misconduct affecting public or judicial officers in the performance of their duties), false/misleading advertising, perjury, antitrust violations (state or federal), violation of environmental laws or regulations, or conspiracy to commit any of the foregoing;

ii. A party to a civil proceeding concerning liability for any of the following: unfair or anticompetitive business practice, antitrust violations (state or federal) including instances in which consent decrees were entered, violations of security laws (state or federal), false/misleading advertising, racketeer influences and corrupt organizations, violation of environmental laws or regulations, or contraband forfeitures;

iii. Subject to any penalty, criminal or civil, involving failure to comply with the requirements of a pipeline franchise;

iv. Involved in instituting legal action against its franchising authorities;

v. Involved in revocation/non-renewal of any other franchise;

e. Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the City or by any provision of law.

f. An express and unconditional written acceptance of the terms and conditions of this Franchise Ordinance, in its most current form, as a condition to the transfer.

C. A fee shall be submitted with the applications for the City's consent to transfer or change of control.

1. Where the City's consent to a transfer or a change of control of this franchise does not result in the modification of this franchise by adoption of an amending ordinance, this fee for each application shall be as set forth in the City's fee ordinance.

2. Where the City's consent to a transfer or a change of control of this franchise results in the modification of this franchise by adoption of an amending ordinance this fee shall be as set forth in the City's fee ordinance.

3. In the event the costs to process the applications exceed the fees detailed above, the applicants may be required to pay any additional costs incurred by the City in processing the applicants' requests for the City's consent to the transfer or change of control of this franchise. Such costs may include the cost incurred for hiring consultants to assist in evaluating the applications. Such costs shall be paid by the applicants prior to final consideration of the request by City Public Works Department, or the City Council, as applicable.

D. Within thirty (30) days of the effective date of the City's approval of the transfer or change of control, or within thirty (30) days of the date of the close of the transfer or change of control, the Grantee shall file with the City Public Works Department: (1) a certified copy of each duly executed instrument of such a transfer or change in control; and (2) the submittal of a final accounting and report of all fees due under this franchise. The proposed transferee shall be responsible for any underpayment, and shall be entitled to a credit for any overpayment. Within ninety (90) days of the closing of the transfer or change of control, the Grantee shall submit financial statements, audited and certified by an independent certified public accountant, showing the condition of the franchise as of the closing. If such duly executed instruments are not filed with the City Public Works Department by the deadlines imposed in this Article, or if the final documents are different from the preliminary documents, the City Public Works Department may inform the proposed transferee that the transfer or change in control is not deemed to be in force and effect. The City Public Works Department may then administratively determine that this franchise is forfeited and the City Council may, without notice, by ordinance repeal this franchise.

E. As a condition to the granting of consent to such a transfer or change in control, the City Council may impose such additional terms and conditions upon this franchise and upon the proposed transferee as are in the public interest. Such additional terms and conditions shall be imposed by ordinance. Nothing herein contained shall be construed to grant Grantee the right to transfer or change control of this franchise or any part thereof, except in the manner aforesaid. This Article 17 applies to any transfer of this franchise, or of any change in control of this franchise, whether by operation of law, by voluntary act of Grantee, or otherwise.

## **ARTICLE 18**

### **WAIVER OF BREACH**

No waiver of the breach of any of the covenants, agreements, restrictions, or conditions of this franchise by the City shall be construed to be a waiver of any succeeding breach of the same or other covenant, agreements, restrictions or conditions of this franchise. No delay or omission of the City in exercising the right, power or remedy herein provided in the event of default shall be construed as a waiver thereof, or acquiescence therein, nor shall the acceptance of any payments made in a manner or at a time other than is herein provided be construed as a waiver of or variation in any of the terms of this franchise.

## **ARTICLE 19**

### **DEFAULT**

A. In the event that the Grantee shall default in the performance of any of the terms, covenants and conditions herein, the City may give written notice to the Grantee of such default by certified mail. In the event that the Grantee does not commence the work necessary to cure such default within five (5) business days after such notice is received or prosecute such work diligently to completion, the City may declare this franchise forfeited by giving written notice thereof to the Grantee, whereupon this franchise shall be void and the rights of the Grantee

hereunder shall terminate and the Grantee shall execute an instrument of surrender and deliver the same to the City. If the City Council declares this franchise forfeited, it may thereupon and thereafter exclude the Grantee from further occupancy or use of all City roads and streets authorized under this franchise. A forfeiture of said franchise shall not of itself operate to release any bond filed for said franchise. Upon declaring a franchise forfeited, the City Council may elect to take and accept any bond as liquidated damages therefore or pursue any other legal remedy for any damage, loss or injury suffered by the City as a result of such breach or both. After forfeiture, any bond shall remain in full force and effect for a period of one (1) year unless exonerated by the City Council. No bond shall be exonerated unless a release is obtained from the City Public Works Department and is filed with the City Clerk. The release shall state whether all excavations have been back filled, all obstructions removed, and whether the substratum or surface of City streets occupied or used have been placed in good and serviceable condition. A release shall not constitute a waiver of any right or remedy which the City of San Luis Obispo may have against the Grantee or any person, firm or corporation for any damage, loss or injury suffered by the City as a result of any work or activity performed by the Grantee in the exercise of this franchise.

B. No provision herein made for the purpose of securing the enforcement of the terms and conditions of this franchise shall be deemed an exclusive remedy, or to afford the exclusive procedure, for the enforcement of said terms and conditions, but the remedies and procedure herein provided, in addition to those provided by law shall be deemed to be cumulative.

## **ARTICLE 20**

### **SCOPE OF RESERVATION**

Nothing herein contained shall ever be construed so as to exempt the Grantee from compliance with all ordinances of the City now in effect or which may be hereafter adopted which are not inconsistent with the terms of this franchise. The enumeration herein of specific rights reserved shall not be construed as exclusive, or as limiting the general reservation herein made or as limiting such rights as the City may now or hereafter have in law.

## **ARTICLE 21**

### **NOTICE**

Any notice required to be given under the terms of this franchise, the manner of service of which is not specifically provided for, may be served as follows:

Upon the City, by serving the City Clerk, personally or by addressing a written notice to the City Clerk of the City of San Luis Obispo, 990 Palm Street, San Luis Obispo, CA 93401, and depositing such notice in the United States mail, postage prepaid.

Upon the Grantee, by addressing a written notice to Grantee addressed to Union Pipeline Company, c/o Tosco Refining Company, 9645 Santa Fe Springs Road, P.O. Box 2628, Santa Fe Springs, CA 90670-0628, Attn: Supervisor, R/W Administration, or such other address as may

from time to time be furnished in writing by one party to the other and depositing said notice in the United States mail, postage prepaid. When service of any such notice is made by mail, the time of such notice shall begin with and run from the date of the deposit of same in the United States mail.

**ARTICLE 22**  
**SUCCESSORS**

The terms herein shall inure to the benefit of and shall bind, as the case may be, the successors and assigns of the parties hereto, subject, however, to the provisions of Article 17.

**ARTICLE 23**  
**ACCEPTANCE OF FRANCHISE**

A. This franchise is granted and shall be held and enjoyed only upon the terms and conditions herein contained. By accepting this grant of franchise, Grantee shall agree to be bound by each and all of the requirements of Article X, Sections 1001 through 1007 of the San Luis Obispo City Charter.

B. Grantee shall, within ten (10) days after the passage of this franchise Ordinance, file with the City Clerk an express and unconditional written letter of acceptance of, and consent to, the terms and conditions of this franchise Ordinance, in its current version, and as subsequently amended, pursuant to San Luis Obispo City Charter, Article X, Section 1004.

C. The parent entity, or entities, if any, of Grantee, shall file a letter with the City, concurrent with Grantee's letter of acceptance, which guarantees the performance of each and every term, covenant and condition imposed on Grantee pursuant to the franchise Ordinance.

D. Grantee's letter of acceptance shall be signed by two (2) duly authorized representatives of Grantee, whose signatures shall be acknowledged by a notary, and shall be accompanied by the performance bond and evidence of insurance required by this franchise Ordinance.

**ARTICLE 24**  
**FORCE MAJEURE**

The time within which Grantee is obligated hereunder to construct, erect, maintain, operate, repair, renew, change the size of and remove pipelines or other improvements shall be extended for a period of time equal in duration to, and performance in the meantime shall be excused on account of, and for, and during the period of any delay caused by strikes, threats of strikes, lockouts, war, threats of war, insurrection, invasion, acts of God, calamities, violent action of the elements, fire, action or regulation of any governmental agency law or ordinance, impossibility of obtaining materials, or other things beyond the reasonable control of Grantee.

**ARTICLE 25**  
**LIQUIDATED DAMAGES**

A. By acceptance of this franchise, Grantee understands and acknowledges that failure to timely comply with any performance requirements stipulated in this franchise Ordinance will result in damages to the City, and that it is and will be impractical to determine the actual amount of such damage in the event of delay or nonperformance. Each of the amounts set forth below has been set in recognition of the difficulty of affixing actual damages arising from breach of these time of performance requirements. Each of said amounts constitutes a reasonable estimate of these damages. This section does not limit the rights and remedies available to the City for damages other than the timely compliance with performance requirements as described in this section. The liquidated damages set forth below shall be chargeable to the bond, letter of credit or security fund provided for in Article 14, supra, should Grantee not make payment within thirty (30) days of written notice by certified mail by the City that the following amounts are due for the following concerns:

1. Failure to provide data, documents, or reports within ten (10) business days after receipt of written request by the City, by certified mail, or such longer time as may be specified in said request: Two Hundred Fifty Dollars (\$250.00) per day for each day, or part thereof that each violation continues.

2. Failure to provide to the City within ten (10) business days after receipt of written request by the City, by certified mail, current evidence of insurance and bonding: Two Hundred Fifty Dollars (\$250.00) per day for each day, or part thereof, that each noncompliance continues. Nothing in this Section shall preclude immediate termination or suspension of this franchise as provided for under Article 15B., supra.

3. Failure by Grantee to timely restore public or private property after performance of work, and following Grantee's receipt of written request by the City to do so within ten (10) business days thereafter by certified mail: Two Hundred Fifty Dollars (\$250.00) per day or part thereof, that each non-compliance continues. Any fines paid pursuant to this Subsection 3 shall be paid solely to the Street Fund of the City Public Works Department.

B. If the City Public Works Department determines that Grantee is liable for liquidated damages, the City Public Works Department shall issue to Grantee by certified mail written notice of intention to charge liquidated damages. Liquidated damages shall begin to accrue as of the date of the written notice and as set forth in said notice. The notice shall set forth the basis for the liquidated damages and give Grantee a reasonable time in which to remedy the violation.

C. Grantee shall have the right to appeal any notice to the City Public Works Department by certified mail, within twenty (20) days after issuance of the notice by the City Public Works Department. The City Public Works Department shall hold an administrative hearing within sixty (60) days after receipt of an appeal. The City Public Works Director's decision shall be the final decision of the City.



D. If Grantee does not appeal the notice within said twenty (20) day period, Grantee shall pay the amount(s) of liquidated damages as stated in the notice. If payment is not paid as provided for in this Article, the City may withdraw against the bond provided for in Article 14 herein.

## **ARTICLE 26** **ATTORNEYS' FEES**

In the event the City or Grantee brings legal action against the other, or against Grantee's bonding companies or insurance carriers to compel performance of, or to recover for breach of any covenant, agreement or condition contained in this franchise, or for damages, the prevailing party shall be entitled to, in addition to any other relief obtained, such reasonable attorneys' fees as are fixed by the judge of the court in which such action is brought.

## **ARTICLE 27** **CONDEMNATION**

Notwithstanding anything to the contrary contained herein and in accordance with San Luis Obispo City Charter Article X, Section 1005, this Ordinance shall not in any way affect the right of the City to acquire the property of the Grantee thereof either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or to abridge either for a term or in perpetuity the City's right of eminent domain with respect to any public utility. The City reserves the right to purchase the property of such utility at an agreed price. In fixing the price to be paid by the City for any utility, no allowance shall be made for franchise value (other than the actual amount paid to the City at the time of the franchise acquisition), goodwill, going concern, earning power, increased cost of reproduction, severance damage, or increased value of right-of-way.

**SECTION 2:** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of San Luis Obispo hereby declares that they would have adopted this ordinance and each sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

**SECTION 3:** This ordinance shall take effect and be in full force and effect thirty (30) days after its passage, and before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the City Council voting for and against the ordinance in a newspaper of general circulation published in the City of San Luis Obispo, State of California.

**SECTION 4:** A synopsis of this ordinance, approved by the City Attorney, together with the ayes and noes shall be published once in full at least five (5) days prior to its final passage, in a newspaper published and circulated in said City, and at the same time shall go into

effect at the expiration of thirty (30) days after its said final passage. A copy of the full final text of this ordinance shall be on file in the Office of the City Clerk on and after the date following the introduction and passage to print and shall be available to any interested member of the public.

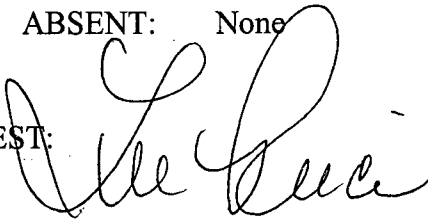
**INTRODUCED** on the 19th day of June 2001 **AND FINALLY ADOPTED** by the Council of the City of San Luis Obispo on the 10<sup>th</sup> day of July 2001, on the following roll call vote:

AYES: Council Members Marx, Mulholland, Schwartz, Vice Mayor Ewan and Mayor Settle

NOES: None

ABSENT: None

ATTEST:

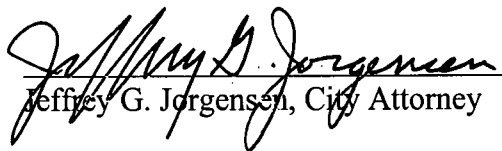


Lee Price, City Clerk



Mayor Allen Settle

APPROVED:



Jeffrey G. Jorgensen, City Attorney