CITY OF BELLFLOWER

ORDINANCE NO. 1303

AN ORDINANCE GRANTING TO TESORO SOCAL PIPELINE COMPANY LLC AN OIL PIPELINE FRANCHISE WITHIN THE CITY OF BELLFLOWER

THE CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines as follows:

A. The City of Bellflower ("City") received an application from Tesoro SoCal Pipeline Company LLC ("Tesoro") for a franchise to lay and use pipes and appurtenances for transmitting and distributing oil or products thereof (as defined below), for any and all purposes in, under, along, across or upon the public streets, ways, alleys and places within the City of Bellflower.

B. Tesoro had a 10-year oil pipeline franchise agreement with the City which expired on June 8, 2015, but which franchise agreement file no. 215.1 maintained in a holdover status by annually submitting payment of franchise fees calculated pursuant to the terms of such franchise agreement and the City's acceptance thereof. Tesoro seeks to be granted by the City a new franchise agreement for ten (10) years, for the same pipelines.

C. In accordance with state law, the City Council, at a regular meeting held on October 12, 2015, declared its intention to grant said franchise agreement to Tesoro by adopting Resolution No. 15-82.

D. The City Council also conducted a duly noticed public hearing on October 10, 2016, and after considering all oral and written testimony at said hearing, approved the granting of this franchise agreement to Tesoro in accordance with the terms and conditions of this Ordinance.

SECTION 2. **Definitions.** Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this chapter.

A. "City" or "Grantor" means the City of Bellflower, a general law city and municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

B. "Director" means the Director of Public Works of the City.

C. "Engineer" means the City Engineer of the City, or designee.

D. "Facilities" means "Pipes and Appurtenances" as defined below.

E. "Franchise" means this Ordinance, including its terms and conditions, and includes the authorization by the City to transmit and distribute oil or petroleum products for any and all purposes under, along, across or upon the public streets, ways, alleys and places in the City by means of pipes and appurtenances.

F. "Grantee" means Tesoro SoCal Pipeline Company LLC, a limited liability company and its lawful successors or assigns.

G. "Hazardous Materials" means any flammable, explosive, or radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any federal, state, local law or regulation or which, even if not so regulated, may or could pose a hazard to public health and safety, including, without limitation, asbestos, PCBs, petroleum products and byproducts, substances defined or listed as "hazardous substances" or "toxic substances" or similarly identified in, pursuant to, or for purposes of, the California Solid Waste Management, Resource Recovery and Recycling Act (Gov't. Code §§ 66700 *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*); California Health & Safety Code §§ 25117 or 25316, including the regulations promulgated thereto (*see* 22 Cal. Code of Regs. § 66261.3); any substances or mixture regulated under the Toxic Substance Control Act of 1976 (15 U.S.C. §§ 2601 *et seq.*); any "toxic pollutant" under the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*); and any hazardous air pollutant under the Clean Air Act (42 U.S.C. §§ 7901 *et seq.*).

H. "Lay and use" means to lay, construct, erect, install, operate, maintain, use, repair, replace, or remove.

I. "Oil or petroleum products" means oil, gas, gasoline, petroleum, wet gas, hydrocarbon substances, nitrogen and other industrial gases, water, waste water, mud, steam and other liquid substances not more hazardous than the aforesaid substances.

J. "Pipes and appurtenances" means pipes, pipelines, manholes, valves, appurtenances and service connections necessary or convenient for the operation of said pipes or pipelines, including conduits, cathodic protection devices, wires, cables, other appurtenances and fiber optic communications systems necessary or convenient for the exercise of the Grantee's business in, upon, along, across, under or over those streets of the City which are described in the attached Exhibit "A" which is incorporated by reference.

K. "BMC" means the Bellflower Municipal Code, as amended.

L. "Streets" means the public streets, ways, alleys and places within the City as the same now or may hereafter exist, and in which the City has the authority to grant a Franchise.

SECTION 3. Granting clause/Rights to Grantee; Term of Franchise

A. Pursuant to, and subject to, the Franchise Act of 1937 (California Public Utilities Code §§ 6201-6302; "Act"), City grants to Grantee a nonpublic utility franchise to use, or to lay and use pipes and appurtenances for transmitting and distributing oil or petroleum products for any and all purposes, under, along, across or upon the public streets within the City as described in Exhibit "A" and identified on the map attached as Exhibit "B" and incorporated by reference.

B. As part of this Franchise, Grantee may install, operate, maintain, replace, repair, abandon in place and/or remove such scraper traps, manholes, flanges, conduits, culverts, vaults, valves, appliances, cathodic protection systems, attachments and other appurtenances (collectively, "appurtenances") as may be necessary or convenient for the proper maintenance and operation of the pipelines under this franchise; provided, however, that Grantee must first secure the requisite permits and/or approvals from City for construction or excavation.

C. This Franchise is granted in lieu of all other franchises for pipelines held by the Grantee, or by any predecessor of the Grantee, for transmitting and distributing oil or petroleum products within the City's present or future jurisdictional limits. Acceptance of this franchise constitutes Grantee's abandonment of all such franchises within the City's present or future jurisdictional limits in lieu of which this franchise is granted, and as Grantee's agreement to comply with all of the Franchise's terms and conditions.

D. This Franchise has a term of ten (10) years from and after the effective date of this Ordinance ("initial term"), unless the following occurs:

1. Grantee voluntarily surrenders or abandons the Franchise; or

2. The property affected by this Franchise is purchased, condemned, or otherwise taken by a public entity rendering the Franchise useless; or

3. Grantee forfeits the Franchise by violating its terms and conditions or that of the Act.

E. Grantee has an option to extend this Franchise for an additional four (4) additional five-year (5-year) terms before the end of the then current term of this Franchise, upon the City's written approval, which approval will not be unreasonably withheld or conditioned. The parties must commence good faith negotiations on such extensions upon notification from Grantee to the City of its election to renew this Franchise, which notice must be given no more than one hundred twenty (120) and no less than sixty (60) days prior to the end of the then current term.

SECTION 4. **Compensation**. In consideration of City's granting of this Franchise, in addition to complying with the Franchise's terms and conditions, Grantee must pay to the City the following:

A. Granting Fee.

1. Grantee agrees to pay the City a base granting fee of Seven Thousand Five Hundred Dollars ($7,500) within thirty (30) days after the City Council adopts this Ordinance.

2. If at any time during the first five (5) years following the granting of this franchise additional pipeline is added which results in a total length of pipeline of one-quarter (1/4) mile or more, or if the diameter of the pipeline is increased by any measure, Grantee agrees to pay the City an additional granting fee of Seven Thousand Five Hundred Dollar ($7,500) at the same time said footage or width is added.

B. Renewal Fee.

1. If Grantee exercises an option to extend the term of this Franchise, then for each extended term, Grantee agrees to pay the City a renewal fee of Six Thousand Dollars ($6,000), plus an adjustment determined by the percentage increase in the Consumer Price Index (CPI) for All Urban Consumers, Los Angeles-Riverside-Orange County Area, for the five-year (5-year) period ended three (3) months prior to the renewal fee's payable date. Renewal fees will be due and payable to the City within thirty (30) days after the commencement of each renewed five-year (5-year) term.

C. Base Annual Fee.

1. During the term of this Franchise, Grantee agrees to pay the City a base annual fee for this Franchise based upon a base franchise fee rate for the pipeline area occupied by the pipelines at an annual rate of $1.68 per cubic foot. The pipeline area occupied by a pipeline or conduit including protective covering, pipe connections, cathodic protection facilities, pipe casings and other minor appurtenances shall be taken as equivalent to the volume occupied by a cylinder of equal length having a diameter of one (1) inch for metal pipe or two (2) inches for plastic pipe greater than the nominal internal diameter of the pipe or conduit but in no case with an equivalent cylinder diameter less than four (4) inches, and the payment rate therefore shall be computed to the nearest tenth of a cent per lineal foot of pipe. The Franchise fee will be prorated for the remainder of the calendar year based on a 360-day year, with the first payment of the Franchise fee accruing as of June 9, 2015.

2. Should Grantee partially abandon pipelines or should Grantee partially remove such pipelines, payments otherwise due the City for occupancy of the streets by such pipelines will be reduced by the length and diameter of pipeline abandoned or the actual pipeline removed, beginning with the first day of the next succeeding Franchise year, and for each subsequent franchise year. The base rate, however, will be modified to reflect the increase (as provided below) applicable to such abandoned or removed pipeline at the beginning of the next succeeding Franchise year following abandonment or removal.

3. The base annual fee is due and payable annually on March 1st, during the term of the Franchise for the preceding annual period, without demand and upon filing of the report required by this Section. Any fees or expenses charged to Grantee by City pursuant to this Section, or any other provision of this Franchise, unless disputed in good faith, must be paid when due or are deemed delinquent. Grantee will pay to the City a penalty equal to ten percent (10%) of the amount of fees due if payment to the City is thirty (30) days late. Grantee will pay to City an additional penalty of one percent (1%) of the amount of fees due under this Section for every period of thirty (30) days after the initial thirty (30) day period that payment remains unpaid, or any lesser amount if required by law. Any neglect, omission or refusal by Grantee to pay any undisputed delinquent fee with any late charges, within thirty (30) days of written demand for payment is grounds for the City to declare the Franchise forfeited.

4. Payments must be made to the Department of Finance, City of Bellflower, or at such place as the City may, from time to time, designate in writing. The base annual fee must be paid annually during the term of the Franchise, including the year of granting the Franchise.

D. Annual Increase.

1. The amount of each annual payment of the base annual fee is subject to an increase after the first year of the Franchise and each subsequent year during the term of this Franchise.

2. The amount of each annual payment shall be determined at the time of payment by multiplying the base franchise fee rate by the Consumer Price for the Los Angeles/Anaheim/Riverside area, all urban consumers, as published by the United States Department of Labor, Office of Information for the month of September immediately preceding the month in which payment is due and payable, and divided by the Consumer Price Index for June 30, 1989.

3. If the United States Department of Labor, Office of Information discontinues the preparation or publication of a Consumer Price Index for the Los Angeles/Anaheim/Riverside area, all urban consumers, or if no translation table prepared by the Department of Labor is available applicable to the index of June 30, 1989, then City shall prescribe a rate of payment which shall, in its judgment, vary from the rates specified in this section in approximate proportion as commodity consumer prices then current vary from commodity consumer prices current in December 1988. City's determination shall be final and conclusive.

4. Based upon the facilities shown in Exhibits A and B, the annual franchise amount, excluding the base grant of franchise fee, is calculated as follows:

   Sample of Annual Fee Calculation Using Sept. 2015 CPI:

   5,634.65 cubic feet x $1.68/cubic foot (base rate) x 1.907 (CPI adjustment using base CPI of June 1989) = $18,052.07

E. Reports Required.

1. The Grantee must file with the City Clerk and City's Finance Director, on or before March 1st after the expiration of the calendar year, or fractional calendar year, following the date of the granting of this Franchise and each calendar year thereafter, two copies of a report duly verified by the oath of the Grantee or by the oath of a duly authorized representative of the Grantee, showing for the immediately preceding franchise period:

   (a) The length of pipelines in lineal feet covered by this Franchise;

   (b) The nominal external diameter of such pipelines expressed in inches;

   (c) The rate per cubic foot per year (CPI-adjusted base rate); and

   (d) The total amount due the City.

2. As soon as practicable, but not longer than 30 days after it is complete, the Grantee must file with the Public Works Director, or designee, a copy of any report regarding the infrastructure status of any pipelines affected by this Franchise.

SECTION 5. Rights of the City.

A. This Franchise does not impair or affect any right of the City to acquire the property of the Grantee, either by purchase or through the exercise of the right of eminent domain, subject to Grantee's rights, remedies and defenses, and nothing in this Franchise may 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 in respect to the Grantee, nor will this Franchise be given any value before any court or other public authority in any proceeding of any character in excess of the necessary publication costs and any other sums paid by Grantee to the City at the time this Franchise was acquired.

B. In connection with any change in grade, alignment or width of any public street, way, alley or place ("the Streets"), or the construction of any subway or viaduct, or any other street improvement of any kind by the City, where Grantee's rights to occupy the Streets do not supersede the City's rights, Grantee must, at the City's direction and at Grantee's sole

cost and expense, comply with all of the following provisions, as applicable:

1. Within ninety (90) days after Grantee receives written notice from the City that work is to be done pursuant to any reserved right and specifying the general nature of the work and the area in which the same is to be performed, the Grantee must commence to do all things necessary to protect and support its franchise property during the progress of such work. If so ordered by the City, Grantee must relocate those pipes and appurtenances installed, used and maintained within the street to such extent, in such manner, and for such period as is necessary to permit the performance of such work in an economical manner, and to permit the maintenance, operation and use of such street improvement.

2. Grantee must pay to the City the full amount of any increase in cost for the construction, installation or repair of any bridge, or any artificial support in or underlying any street in which any pipes or appurtenances of the Grantee are located, if such increase in cost is required in order to provide for the installation, maintenance or operation of Grantee's pipes or appurtenances in or on the street area which the bridge or other artificial support covers or underlies.

3. Grantee must cooperate with the City to take all actions reasonably necessary in order to accomplish the completion of any City street improvement project within a reasonable period of time. After Grantee receives written notice from the City that work is to be done, the Grantee must diligently prosecute such work to completion.

4. In the decision process necessary to determine if Grantee's pipelines and/or appurtenances are required to be relocated, the City will also consider all known future projects that, if done separately, may cause multiple relocation of the pipelines and/or appurtenances. If such known future projects can be identified, full consideration of concurrent projects will be given by City. If the City requires the relocation within the public street, way, alley or place more than once within a period of ten (10) years, the City will pay the cost of the second and all subsequent relocations within such ten (10) year period.

5. In the event that the City changes the planned rearrangement of pipelines, or the notice given to Grantee, the Grantee will be given an additional period of not less than sixty (60) days to accomplish such work. When Grantee's rights to occupy the Streets predate or

supersede the City's rights, such relocations will be performed by Grantee as set forth above with the costs reimbursed to Grantee by City.

6. Except as otherwise provided above, when City requires a rearrangement of Grantee's facilities and such rearrangement is done for the accommodation of any person, firm, corporation or public agency other than the City, the cost of such rearrangement will be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, must (a) deposit with the Grantee either cash or a corporate surety bond in an amount, as in the reasonable discretion of the Grantee, to pay the costs of such rearrangement, and (b) execute an instrument agreeing to indemnify, defend and hold harmless Grantee from any and all damages or claims caused by such rearrangement. This provision will not be construed to require Grantee to rearrange its facilities. Any accommodation for rearrangement of Grantee's facilities will be made at the Grantee's sole discretion.

7. Nothing in this Agreement may be construed to require the City to move, alter, or relocate any of its pipelines upon public 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, or to move, alter, or relocate any part of its pipelines upon said streets for the convenience, accommodation or necessity of the Grantee.

SECTION 6. **Other obligations of Grantee; Indemnification.** The Grantee must comply with all of the following provisions:

A. Within sixty (60) days after the City Council adopts this Ordinance, Grantee must file with the Director improvement plans relating to all of Grantee's facilities located within the City, and a map or maps showing the location, length and size of all such facilities which have been installed, relocated, removed or abandoned by Grantee.

B. Within six (6) months after the installation of any new pipelines under this franchise, Grantee must file with the Director an "as built" map or maps showing the approximate location, length and size of all of Grantee's pipelines so installed.

C. Grantee must construct, install and maintain all pipes and appurtenances in a good and workmanlike manner, and of good materials, and operate in conformity with all applicable federal, state, and local laws including, without limitation, the Bellflower Municipal Code (BMC). In case of public utilities subject to the jurisdiction of the Public Utilities Commission of the State of California, the rules, regulations and orders of the Public Utilities Commission will govern whenever any conflict may exist between them and the applicable ordinances, codes, rules and regulations adopted or

prescribed by the City. To the extent required by applicable law, the Grantee must obtain and maintain a permit from the City of Bellflower Public Works Department and/or Building and Safety Division to construct, install, use, operate, repair or modify a pipeline for the transportation of flammable or combustible liquids.

D. Grantee must pay the City, on demand, the cost of all repairs to public property made necessary by any operations of the Grantee under this Franchise, provided Grantee fails to make such repairs after notice and reasonable opportunity to complete such repairs.

E. Grantee agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, and employees, from and against any and all claims, losses, liabilities, damages to persons or property, demands, actions, judgments, causes of action, assessments, penalties, costs and expenses (including, without limitation, reasonable fees of legal counsel, expert witnesses and accountants) arising out of or resulting from Grantee's operations under this franchise, except to the extent caused by City's sole active negligence, and for all damages proximately resulting from the failure of Grantee to faithfully observe and perform each and every provision of this franchise and of the Act. Grantee is solely responsible for complying with all laws, regulations, and other orders which are applicable to the installation, repair, relocation or removal of its facilities, whether federal, state or local. City's approval of such installation, repair, relocation or removal will not relieve Grantee of any liability Grantee may have for contaminated soils or other environmental liability attributable to or arising from Grantee's pipes, appurtenances and other facilities. Any fee paid by Grantee pursuant to this Agreement will in no way limit Grantee's obligation to compensate City for any damage, claim, expense or loss whatsoever, as set forth in this paragraph.

F. In addition, Grantee indemnifies and holds the City harmless from and against any claim, action, damages, costs (including, without limitation, reasonable attorney's fees and penalties), injuries, or liability, arising out of this Agreement, or its performance including, without limitation, damages or penalties arising from Grantee's removal, remediation, response or other plan concerning any Hazardous Materials resulting in the release of any hazardous substance into the environment. Should the City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or Grantee's performance, Grantee will defend the City (at the City's request and with counsel satisfactory to the City) and will indemnify the City for any judgment rendered against it or any sums paid out in settlement or otherwise.

1. The foregoing indemnity is intended to operate as an agreement pursuant to 42 USC § 9607(e) (the Comprehensive Environmental Response, Compensation and Liability Act; "CERCLA") and Health

& Safety Code § 25364 to defend, protect, hold harmless, and indemnify the City from all forms of liability under CERCLA, or other applicable law, for any and all matters addressed in this Franchise.

G. In no event will Grantee's indemnity obligation under this Franchise include indemnification for the City's negligence or willful misconduct.

SECTION 7. **Insurance.**

A. Before commencing performance under this Franchise, and at all other times this Agreement is effective, Grantee must procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

Type of Insurance	Limits (combined single)
Commercial general liability:	$2,000,000
Workers compensation	Statutory requirement.

B. Commercial general liability insurance must meet or exceed the requirements of ISO-CGL Form No. CG 00 01 11 85 or 88. The amount of insurance set forth above will be a combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. Liability policies will be endorsed to name the City, its officials, and employees as "additional insureds" under said insurance coverage and to state that such insurance will be deemed "primary" such that any other insurance that may be carried by CITY will be excess thereto. Such insurance must be on an "occurrence," not a "claims made," basis and will not be cancelable or subject to reduction except upon thirty (30) days prior written notice to the City.

C. Grantee will furnish to the City duly authenticated Certificates of Insurance evidencing maintenance of the insurance required under this Agreement, endorsements as required herein, and such other evidence of insurance or copies of policies as may be reasonably required by the City from time to time. Insurance must be placed with admitted insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A:VII." Certificate(s) must reflect that the insurer will provide thirty (30) day notice of any cancellation of coverage. Grantee will require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

D. Should Grantee, for any reason, fail to obtain and maintain the insurance required by this Agreement, the City may obtain such coverage at Grantee's expense or terminate this Franchise.

E. Grantee must deliver to City, in the manner provided for notices, copies or endorsements of all insurance certificates and endorsements required by this Ordinance, within the following time limits:

1. For insurance required at commencement of this Ordinance, within thirty (30) days after this Ordinance becomes effective;

2. For insurance becoming required at a later date, at least ten (10) days before the requirement becomes effective, or as soon thereafter the requirement, if new, becomes effective; and

3. For any renewal or replacement of a policy already in existence, at least twenty (20) days after expiration or other termination of the existing policy.

B. Notwithstanding anything to the contrary, Grantee may provide a program of self-insurance provided it can demonstrate that it had a net worth of $10,000,000.00 within the preceding year. The City, at its sole discretion, may allow Grantee to self-insure provided the self-insurance program complies with the provisions and specified limits contained herein, and is approved by the City Manager and City Attorney. If such approval for self-insurance is granted, the City will be precluded from exercising the remedies afforded to it pursuant to subsection D of this Section 7.

SECTION 8. **Presence of Hazardous Materials.** Except as otherwise provided below, Grantee may not or permit any Hazardous Materials to be discharged or released in, under, or about the streets or adjacent properties at any time. Grantee must, at its expense, procure, maintain in effect and comply with all conditions of any and all applicable permits, licenses, and other governmental and regulatory approvals required of Grantee for Grantee's use of the streets or adjacent properties. Upon expiration or earlier termination of the franchise term, Grantee must cause all Hazardous Materials released by Grantee in or under the Streets or adjacent properties, if any, to be removed from the streets or adjacent properties in accordance with and in compliance with all applicable laws. Grantee may not take any remedial action in response to the presence of any Hazardous Materials in or about the streets or adjacent properties, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with the streets or adjacent properties, without first notifying City of Grantee's intention to do so and affording City ample opportunity to appear, intervene or otherwise appropriately assess and protect City's interests.

SECTION 9. **Notice to Grantor**. Grantee must immediately notify City in writing of (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any applicable laws relative to the streets or adjacent properties; (ii) any claim made or threatened by any person against Grantee or the streets or adjacent properties relating to damage, contribution, cost recovery compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iii) any reports made to any governmental agency arising out of or in connection with any Hazardous Materials in or removed from the streets or adjacent properties, including any complaints, warnings or asserted violations in connection therewith. Grantee must also supply to City as promptly as possible copies of all claims, reports, complaints, notices, warnings or asserted violations, relating in any way to the streets or adjacent properties, or Grantee's use of the streets. Grantee

must promptly deliver to City copies of manifests reflecting the legal and proper disposal of all Hazardous Materials removed by the Grantee from the streets or adjacent properties.

SECTION 10. **Assignability**. Grantee may sell, transfer or assign this Franchise or any interest therein directly or indirectly, or any of the rights or privileges hereby granted, with the City's prior written consent, which will not be unreasonably withheld. Notwithstanding the above statement, Grantee may transfer or assign this Franchise to any parent, subsidiary or affiliate without obtaining the consent of City, provided Grantee provides written notification within thirty (30) days of said transfer or assignment and submits written evidence of the same, including a certification executed by a duly authorized officer of the Grantee. Upon compliance with the foregoing, this Franchise will be binding on the successors and assigns of the parties hereto, and inure to the benefit of the successors and assigns of the parties hereto.

SECTION 11. **Excavations.**

A. Grantee must obtain an excavation permit in accordance with the BMC, and pay the applicable fee therefor, before commencing any excavation in any street or public right of way, or before disturbing the earth beneath the surface of the street, except in the case of an emergency. Before any excavation permit is issued for the construction or installation of a pipeline for the transmission of flammable or combustible liquids, gases or hazardous materials, Grantee must obtain the applicable permits from the City. If the proposed location of the excavation does not, or will not, unreasonably interfere with the use of the streets by the City or if Grantee holds rights to occupy the area of the Streets which supersede the City's rights, and Grantee complies with all applicable laws, the Public Works Director will issue the appropriate permit(s).

B. Where it is necessary to lay any underground pipes through, under or across any portion of a paved or macadamized street, such work, where deemed by Grantee in its sole discretion to be a safe method of installation, as well as practicable and economically feasible, may be done by a tunnel or bore so as not to disturb the foundation of such paved or macadamized street. If the same cannot be done, or if it is necessary to cut the street in order to access existing pipes and appurtenances, such work will be done pursuant to an excavation permit.

C. All work is subject to the City's inspection. All street coverings or openings, valves, vaults and manholes must at all times be kept flush with the surface of the streets; provided, however, that vents for underground vaults and manholes as well as cathodic protection devices, including pole-mounted rectifiers may, subject to the City's prior approval, extend above the surface of the streets when such vents and cathodic protection devices, including pole-mounted rectifiers, are located in parkways, between the curb and the property line. The Grantee must provide adequate traffic safety barriers, signs, devices and traffic safety warning

equipment in accordance with the BMC and comply with such additional safety measures as the City may direct.

D. In emergencies, Grantee may commence excavation of streets without prior permit; provided, however, Grantee acts in a reasonable and diligent manner as soon as practicable after the onset of said emergency to obtain a permit authorizing such work.

E. Grantee acknowledges that the City's records may not be complete and that pipes and appurtenances previously unknown to City are frequently discovered. Consequently, by granting this franchise or by approving any excavation permit requested by Grantee, the City does not warrant the accuracy of information supplied to the Grantee by the City regarding the location or existence of other facilities. Nothing herein will make the City, or any officer, agent or employee of the City, responsible or liable to the Grantee or to any other person by virtue of the City's approval of excavation permit plans, regardless of whether any information is supplied by the City to the Grantee pertaining to the location of existing pipes, facilities or other improvements on, in or under any street or other public property.

F. Except as otherwise provided, Grantee cannot excavate public streets that were resurfaced with an emulsified asphalt "slurry" or asphalt "cape seal" within the previous two (2) years, or improved with asphalt/concrete within the previous five (5) years, of the proposed excavation date.

G. Excavation of a public street will be allowed by permit under only the most unusual circumstances if the Public Works determines that relocation or boring is not feasible. Under such circumstances, the Director of Public Works will require the Grantee to meet the city's construction standards for excavating in recently resurfaced streets, pay all costs associated with such excavation, and provide such additional security to ensure the integrity of the recently resurfaced public street as may be reasonable required by the Director of Public Works.

SECTION 12. Grantee's Emergency Response Plan; Pipeline Accidents

A. The Grantee must develop and maintain an emergency response plan, reasonably satisfactory to the City, which covers all franchise operations within the City. In general, an emergency response plan meeting the requirements of Federal and State law and containing the information contained in this section is acceptable. The emergency response plan must include a 24-hour notification program and proof of arrangements capable of providing emergency response services, including without limitation to traffic control, street excavation pipeline repair, and supplies and services as necessary, within two (2) hours of notification of any problem, and such other information as the City may reasonably require. Repairs to a public street, alley or parkway must be completed within 72 hours of Grantee completing repairs to its facilities and clean-up of any materials released from its facilities, if reasonably possible, unless

otherwise authorized by the City. The City must be notified ten (10) days in advance of any proposed change in such arrangements. Any changes in or revisions to Grantee's emergency response plan must be submitted to the City on the first working day of the subsequent calendar year.

B. Whenever any pipeline or appurtenance breaks or leaks so as to cause the release of oil or petroleum products into or under the public right-of-way, Grantee, and any other person using or controlling the pipeline or appurtenance, must immediately notify the City's Police Department and Public Works Department and implement precautionary safety measures including traffic control, system shutdown, valve closures, and public notification. In the event of an emergency which threatens life, health, safety, or property, and where it is not possible to obtain an excavation permit before commencing the work, the Grantee may commence such work; provided, however, that within seventy-two (72) hours thereafter the Grantee must apply for an excavation permit. Adequate traffic safety barriers must be maintained at all times, and any damaged portion of the street must be restored to at least the condition that existed immediately before the damage.

C. If any portion of any City street is damaged by reason of defects, breaks or leaks in any of the pipes and appurtenances maintained or constructed by Grantee, or by reason of any other cause attributable to or arising from the operation of any pipes and appurtenances constructed or maintained by Grantee, the Grantee must, at its sole cost and expense, immediately repair all damage and restore the street to the condition existing before such damage occurred. All such work must be done under the City's direction, and to the City's reasonable satisfaction. Grantee must repair such damage and restore the street within three (3) working days after receiving a written demand from the City or such other reasonable period as the Director may authorize when required for the protection of the public health and safety.

D. Should Grantee, after reasonable notice, fail or refuse to pave, surface, grade, repave, resurface or regrade any damaged street as required by the provisions of this franchise, the City may cause the work to be done after written notice is given to Grantee and will keep an itemized account of all costs incurred. The Grantee agrees to, and must, reimburse the City for all such costs, including reasonable administrative overhead expenses, within thirty (30) days after presentation to Grantee of an itemized account of such costs.

SECTION 13. **Abandonment**. Should Grantee abandon all or any part of the pipes and appurtenances which encompass this Franchise, such abandonment must be accomplished by Grantee as required by the State of California Pipeline Safety Act, or other governing State or Federal laws or statutes. Grantee will not owe the City any compensation for the privilege of said abandonment. The ownership of all franchised property so abandoned in place, immediately vest in the City except that Grantee will

retain all liability for the installation or construction of those facilities, and any liability for Hazardous Materials, as those liabilities exist as of the date of the Abandonment.

SECTION 14. Default.

A. Effect of Default. Should Grantee default in the performance of any of the terms, covenants and conditions herein, and such default is curable, the City may give written notice to Grantee of such default. Should Grantee not commence the work necessary to cure such default within sixty (60) days after such notice is received by Grantee, or prosecute such work diligently to completion, the City may declare this Franchise forfeited. Upon giving written notice of forfeiture to Grantee, this Franchise will terminate and Grantee's rights will terminate. Should the Franchise be forfeited, Grantee must execute an instrument of surrender and deliver same to City. In the event of noncompliance by the Grantee with any of these conditions, the City may, in addition to all other remedies, bring suit for the forfeiture or termination of this Franchise.

B. Force Majeure. Should Grantee's performance of this Franchise be prevented due to fire, flood, explosion, war, embargo, government action, civil or military authority, the natural elements, or other similar causes beyond Grantee's control, then Grantee will not be deemed to be in default or forfeit its Franchise rights if it commences and prosecutes performance with all due diligence and promptness upon being able to do so.

C. Cumulative Remedies. No provision of this Franchise for enforcing the terms and conditions of this Franchise is an exclusive remedy or procedure for enforcement. These remedies and procedures are in addition to those provided by law and are cumulative.

SECTION 15. Dispute Resolution. If a dispute arises between the parties relating to this Franchise, the parties agree to use the following procedure before either party pursuing other available legal remedies, except when doing so would cause the expiration of an applicable statute of limitations. A meeting will be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) days after such meeting the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation. City and Grantee will equally advance a proportionate share of the costs of mediation. The parties will jointly appoint a mutually acceptable mediator within thirty (30) days from the conclusion of the negotiation period. The parties agree to participate in good faith in the mediation and related negotiations for a period of sixty (60) days. Any decision of the mediator must be supported by written findings of facts and conclusions of law. If the parties are not successful in resolving the dispute through the mediation, the matter

may be submitted to a court of law.

SECTION 16. **Notice.** Any notice required to be given under the terms of this Franchise, the manner of services of which is not specifically provided for here, may be served to the following identified addresses, or to such other address as may from time to time be furnished in writing by one party to the other, and by depositing said notice in the United States mail, postage prepaid. When the services of any such notice is made by mail, the time such notice will begin with and run from, is the date of deposit of the same in the United States mail.

Upon City: City of Bellflower
Public Works Department
Attn: Director of Public Works
16600 Civic Center Drive
Bellflower, California 90706

Upon Grantee: Tesoro SoCal Pipeline Company, LLC
Attention: Right of Way Dept.
6 Centerpointe Drive, Suite 500
La Palma, CA 90623

With a Copy to: Tesoro SoCal Pipeline Company, LLC
Attention: General Counsel
19100 Ridgeway Parkway
San Antonio, TX 78259

SECTION 17. **Grantee's Acceptance of Franchise.** Except as otherwise stated herein, Grantee must within thirty (30) days after this Franchise is adopted, file with the officers of the City designated herein the following instruments or documents:

A. File with the City Clerk Grantee's written acceptance of the terms and conditions of this ordinance.

B. File with the City Clerk certified copies of the policies of liability insurance and workers' compensation insurance, or, in lieu thereof, certificates evidencing such insurance, which policies must be in accordance with the terms and conditions of this ordinance. Notwithstanding anything to the contrary, Grantee may provide a program of self-insurance provided it can demonstrate that it had a net worth of $10 million within the preceding year. The City, at its sole discretion, may allow Grantee to self-insure provided the self-insurance program complies with the provision and specified limits contained herein, and is approved by the City Administrator and City Attorney.

C. File with the City Clerk, within ten (10) business days after the City Council

adopts and passes the ordinance granting this franchise and thereafter at all times during the life of the Franchise keep on file with the City Clerk, a bond issued by an admitted surety insurer, and in a form approved by the City Attorney, in the penal sum of One Hundred Thousand Dollars ($100,000), conditioned that the Grantee will well and truly observe, fulfill, and perform each condition of the Franchise and that in case of any breach of condition of the bond, the whole amount of the penal sum therein specified will be recoverable from the principal and surety upon said bond. If said bond is not filed, or if it does not receive the approval of the City Attorney, the Franchise may be revoked or forfeited and any money paid to the City in connection therewith will be retained by the City.

SECTION 18. Reimbursement for City's posting and publication expenses. The Grantee will pay the City a sum of money sufficient to reimburse the City for all posting and publication expenses incurred in connection with the granting of this Franchise. Such payment must be made by Grantee within thirty (30) days after the City provides to the Grantee a written statement of such expenses.

SECTION 19. Venue. The Parties agree that all actions or proceedings arising in connection with the ordinance will be tried and litigated in the State courts located in the County of Los Angeles, State of California. The Parties intend that this choice of venue be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Ordinance in any jurisdiction other than that specified in this Section. Each party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section, and stipulates that the State courts located in the County of Los Angeles, State of California have in person jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement.

SECTION 20. No Waiver. Grantee is not excused from complying with any of the terms and conditions of this Ordinance by any failure of the City upon any one (1) or more occasions to insist upon or to seek compliance with any such terms or conditions. No City waiver of any provision or consent to any action constitutes a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent constitutes a continuing waiver or consent or commit a party to provide a waiver in the future except to the extent specifically set forth in writing. Any waiver given by a party will be null and void if the party requesting such waiver has not provided full and complete disclosure of all material facts relevant to the waiver requested.

SECTION 21. Binding Effect. Each and all of the provisions hereof are binding on and inure to the benefit of the Parties and their respective heirs, successors, and permitted transferees and assigns.

SECTION 22. Amendment. No amendment, modification, or supplement to this ordinance is binding on any of the parties unless it is in writing, signed by the

parties, and approved through legislative action.

SECTION 23. **Entire Agreement.** This ordinance constitutes the entire agreement between the parties with regard to this subject matter. This ordinance supersedes all previous agreements between or among the parties. There are no agreements, representations, or warranties between or among the parties other than those set forth in this Agreement or the documents and agreements referred to in this agreement.

SECTION 24. **Construction.** Each party has been represented by counsel in the negotiation and execution of this ordinance. The terms of this ordinance were negotiated by the Parties and the language used in this Franchise is deemed to be the language chosen by the Parties to express their mutual intent. This Franchise will be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in the favor of the party receiving a particular benefit under this Agreement. No rule or strict construction will be applied against any Person.

SECTION 25. **Miscellaneous Provisions.**

A. Captions. The captions here are for convenience and reference only, and are not part of this Franchise, and do not in any way limit, define or amplify the terms and provisions hereof.

B. Governing Law. This Franchise has been made and will be construed and interpreted in accordance with the laws of the State of California.

C. Execution. The Mayor of the City will approve and sign and the City Clerk will attest to the passage of this Ordinance. This Ordinance will take effect thirty (30) days from the date of its adoption. Once this Ordinance becomes effective, it will be deemed to be applicable as of June 9, 2015.

SECTION 26. Repeal of any provision of the Bellflower Municipal Code will not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action of prosecuting violations occurring before the effective date of this Ordinance.

SECTION 27. **Severability.** If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 28. The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Bellflower's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it

to be published or posted in accordance with California law.

SECTION 29. This Ordinance will take effect on the 31st day following its final passage and adoption.

ORDINANCE NO. 1303 HAD ITS FIRST READING ON OCTOBER 10, 2016, ITS SECOND READING ON OCTOBER 24, 2016, AND WAS DULY PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BELLFLOWER AT ITS REGULAR MEETING OF OCTOBER 24, 2016.

Dan Koops, Mayor

Attest:

Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:

Karl H. Berger, City Attorney

Attachments:

Exhibit A – Pipeline Location
Exhibit B – Pipeline Map

CITY OF BELLFLOWER

ORDINANCE NO. 1303 – EXHIBIT A

PIPELINE LOCATION

In Clark Avenue from north City boundary in Foster Road to Cerritos Avenue; in Cerritos Avenue from Clark Avenue to Somerset Boulevard; in Somerset Boulevard from Cerritos Avenue to west City boundary on west line of Lakewood Boulevard; in Lakewood Boulevard from Somerset Boulevard to south City boundary approximately 230 feet south of Rose Street.

Grantee's facilities within these Streets consist of:

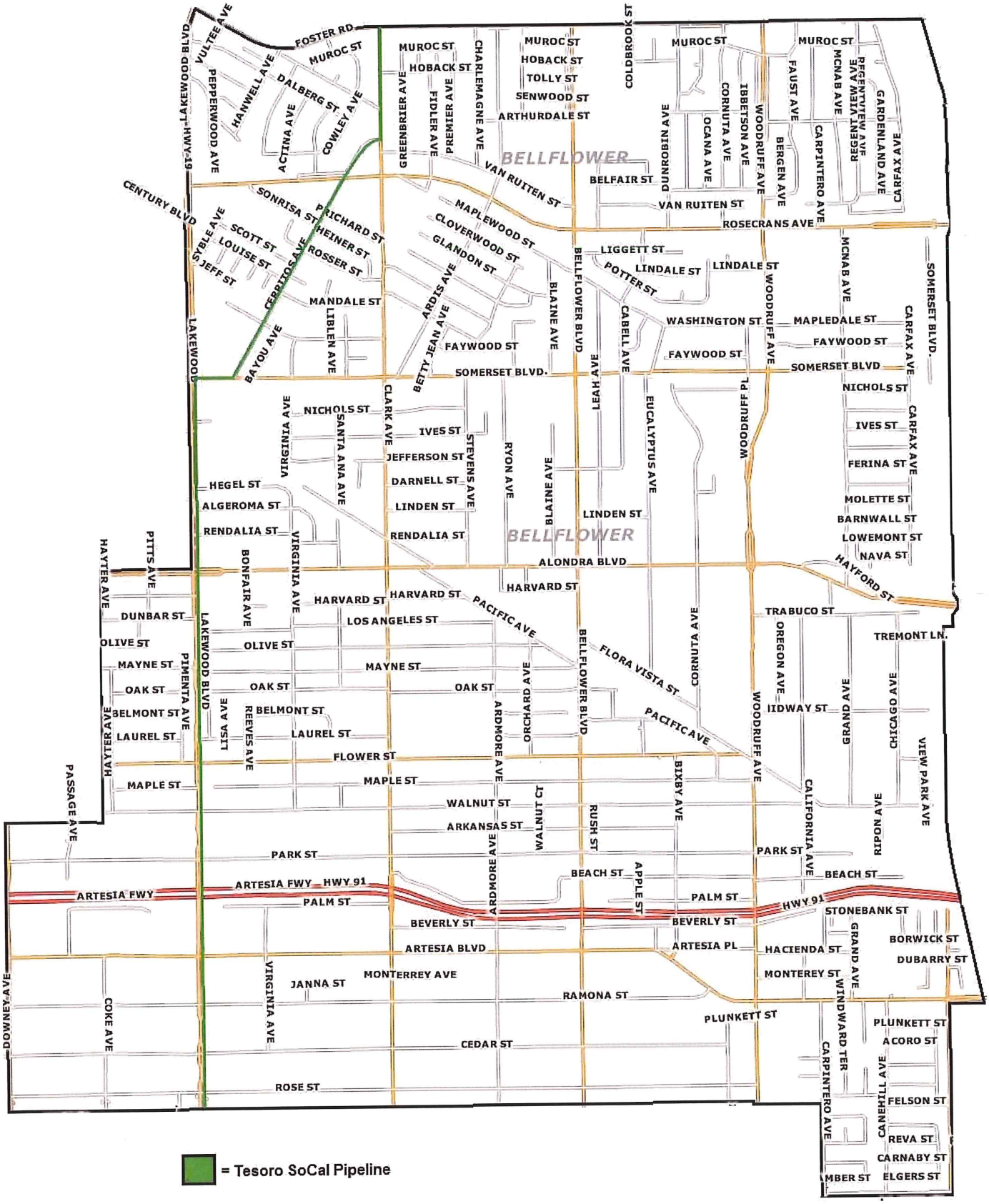
5,634.65 cubic feet of pipe for the purpose of determining the annual franchise fee.

This pipeline is a non-common carrier, nonpublic utility service pipeline.

EXHIBIT B

CITY OF BELLFLOWER

MAP OF TESORO SOCAL PIPELINE



= Tesoro SoCal Pipeline

CITY OF BELLFLOWER

ORDINANCE NO. 1304

AN ORDINANCE GRANTING TO LT PIPELINE, INC. AN OIL PIPELINE FRANCHISE WITHIN THE CITY OF BELLFLOWER

THE CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines as follows:

A. The City of Bellflower ("City") received an application from LT Pipeline, Inc. ("LT") for a franchise to lay and use pipes and appurtenances for transmitting and distributing oil or products thereof (as defined below), for any and all purposes in, under, along, across or upon the public streets, ways, alleys and places within the City of Bellflower.

B. LT had a 10-year oil pipeline franchise agreement with the City which expired on August 10, 2014, but which franchise agreement file no. 216.1 maintained in a holdover status by annually submitting payment of franchise fees calculated pursuant to the terms of such franchise agreement and the City's acceptance thereof. LT seeks to be granted by the City a new franchise agreement for ten (10) years, for the same pipelines.

C. In accordance with state law, the City Council, at a regular meeting held on October 12, 2015, declared its intention to grant said franchise agreement to LT by adopting Resolution No. 15-83.

D. The City Council also conducted a duly noticed public hearing on October 10, 2016, and after considering all oral and written testimony at said hearing, approved the granting of this franchise agreement to LT in accordance with the terms and conditions of this Ordinance.

SECTION 2. **Definitions.** Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this chapter.

A. "City" or "Grantor" means the City of Bellflower, a general law city and municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

B. "Director" means the Director of Public Works of the City.

C. "Engineer" means the City Engineer of the City, or designee.

D. "Facilities" means "Pipes and Appurtenances" as defined below.

E. "Franchise" means this Ordinance, including its terms and conditions, and includes the authorization by the City to transmit and distribute oil or petroleum products for any and all purposes under, along, across or upon the public streets, ways, alleys and places in the City by means of pipes and appurtenances.

F. "Grantee" means LT Pipeline, Inc., a California corporation and its lawful successors or assigns.

G. "Hazardous Materials" means any flammable, explosive, or radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any federal, state, local law or regulation or which, even if not so regulated, may or could pose a hazard to public health and safety, including, without limitation, asbestos, PCBs, petroleum products and byproducts, substances defined or listed as "hazardous substances" or "toxic substances" or similarly identified in, pursuant to, or for purposes of, the California Solid Waste Management, Resource Recovery and Recycling Act (Gov't. Code §§ 66700 *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*); California Health & Safety Code §§ 25117 or 25316, including the regulations promulgated thereto (*see* 22 Cal. Code of Regs. § 66261.3); any substances or mixture regulated under the Toxic Substance Control Act of 1976 (15 U.S.C. §§ 2601 *et seq.*); any "toxic pollutant" under the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*); and any hazardous air pollutant under the Clean Air Act (42 U.S.C. §§ 7901 *et seq.*).

H. "Lay and use" means to lay, construct, erect, install, operate, maintain, use, repair, replace, or remove.

I. "Oil or petroleum products" means oil, gas, gasoline, petroleum, wet gas, hydrocarbon substances, nitrogen and other industrial gases, water, waste water, mud, steam and other liquid substances not more hazardous than the aforesaid substances.

J. "Pipes and appurtenances" means pipes, pipelines, manholes, valves, appurtenances and service connections necessary or convenient for the operation of said pipes or pipelines, including conduits, cathodic protection devices, wires, cables, other appurtenances and fiber optic communications systems necessary or convenient for the exercise of the Grantee's business in, upon, along, across, under or over those streets of the City which are described in the attached Exhibit "A" which is incorporated by reference.

K. "BMC" means the Bellflower Municipal Code, as amended.

L. "Streets" means the public streets, ways, alleys and places within the City as the same now or may hereafter exist, and in which the City has the authority to grant a Franchise.

SECTION 3. Granting clause/Rights to Grantee; Term of Franchise

A. Pursuant to, and subject to, the Franchise Act of 1937 (California Public Utilities Code §§ 6201-6302; "Act"), City grants to Grantee a nonpublic utility franchise to use, or to lay and use pipes and appurtenances for transmitting and distributing oil or petroleum products for any and all purposes, under, along, across or upon the public streets within the City as described in Exhibit "A" and identified on the map attached as Exhibit "B" and incorporated by reference.

B. As part of this Franchise, Grantee may install, operate, maintain, replace, repair, abandon in place and/or remove such scraper traps, manholes, flanges, conduits, culverts, vaults, valves, appliances, cathodic protection systems, attachments and other appurtenances (collectively, "appurtenances") as may be necessary or convenient for the proper maintenance and operation of the pipelines under this franchise; provided, however, that Grantee must first secure the requisite permits and/or approvals from City for construction or excavation.

C. This Franchise is granted in lieu of all other franchises for pipelines held by the Grantee, or by any predecessor of the Grantee, for transmitting and distributing oil or petroleum products within the City's present or future jurisdictional limits. Acceptance of this franchise constitutes Grantee's abandonment of all such franchises within the City's present or future jurisdictional limits in lieu of which this franchise is granted, and as Grantee's agreement to comply with all of the Franchise's terms and conditions.

D. This Franchise has a term of ten (10) years from and after the effective date of this Ordinance ("initial term"), unless the following occurs:

1. Grantee voluntarily surrenders or abandons the Franchise; or

2. The property affected by this Franchise is purchased, condemned, or otherwise taken by a public entity rendering the Franchise useless; or

3. Grantee forfeits the Franchise by violating its terms and conditions or that of the Act.

E. Grantee has an option to extend this Franchise for an additional four (4) additional five-year (5-year) terms before the end of the then current term of this Franchise, upon the City's written approval, which approval will not be unreasonably withheld or conditioned. The parties must commence good faith negotiations on such extensions upon notification from Grantee to the City of its election to renew this Franchise, which notice must be given no more than one hundred twenty (120) and no less than sixty (60) days prior to the end of the then current term.

SECTION 4. **Compensation**. In consideration of City's granting of this Franchise, in addition to complying with the Franchise's terms and conditions, Grantee must pay to the City the following:

A. Granting Fee.

1. Grantee agrees to pay the City a base granting fee of Seven Thousand Five Hundred Dollars ($7,500) within thirty (30) days after the City Council adopts this Ordinance.

2. If at any time during the first five (5) years following the granting of this franchise additional pipeline is added which results in a total length of pipeline of one-quarter (1/4) mile or more, or if the diameter of the pipeline is increased by any measure, Grantee agrees to pay the City an additional granting fee of Seven Thousand Five Hundred Dollar ($7,500) at the same time said footage or width is added.

B. Renewal Fee.

1. If Grantee exercises an option to extend the term of this Franchise, then for each extended term, Grantee agrees to pay the City a renewal fee of Six Thousand Dollars ($6,000), plus an adjustment determined by the percentage increase in the Consumer Price Index (CPI) for All Urban Consumers, Los Angeles-Riverside-Orange County Area, for the five-year (5-year) period ended three (3) months prior to the renewal fee's payable date. Renewal fees will be due and payable to the City within thirty (30) days after the commencement of each renewed five-year (5-year) term.

C. Base Annual Fee.

1. During the term of this Franchise, Grantee agrees to pay the City a base annual fee for this Franchise based upon a base franchise fee rate for the pipeline area occupied by the pipelines at an annual rate of $1.68 per cubic foot. The pipeline area occupied by a pipeline or conduit including protective covering, pipe connections, cathodic protection facilities, pipe casings and other minor appurtenances shall be taken as equivalent to the volume occupied

by a cylinder of equal length having a diameter of one (1) inch for metal pipe or two (2) inches for plastic pipe greater than the nominal internal diameter of the pipe or conduit but in no case with an equivalent cylinder diameter less than four (4) inches, and the payment rate therefore shall be computed to the nearest tenth of a cent per lineal foot of pipe. The Franchise fee will be prorated for the remainder of the calendar year based on a 360-day year, with the first payment of the Franchise fee accruing as of August 11, 2014.

2. Should Grantee partially abandon pipelines or should Grantee partially remove such pipelines, payments otherwise due the City for occupancy of the streets by such pipelines will be reduced by the length and diameter of pipeline abandoned or the actual pipeline removed, beginning with the first day of the next succeeding Franchise year, and for each subsequent franchise year. The base rate, however, will be modified to reflect the increase (as provided below) applicable to such abandoned or removed pipeline at the beginning of the next succeeding Franchise year following abandonment or removal.

3. The base annual fee is due and payable annually on March 1st, during the term of the Franchise for the preceding annual period, without demand and upon filing of the report required by this Section. Any fees or expenses charged to Grantee by City pursuant to this Section, or any other provision of this Franchise, unless disputed in good faith, must be paid when due or are deemed delinquent. Grantee will pay to the City a penalty equal to ten percent (10%) of the amount of fees due if payment to the City is thirty (30) days late. Grantee will pay to City an additional penalty of one percent (1%) of the amount of fees due under this Section for every period of thirty (30) days after the initial thirty (30) day period that payment remains unpaid, or any lesser amount if required by law. Any neglect, omission or refusal by Grantee to pay any undisputed delinquent fee with any late charges, within thirty (30) days of written demand for payment is grounds for the City to declare the Franchise forfeited.

4. Payments must be made to the Department of Finance, City of Bellflower, or at such place as the City may, from time to time, designate in writing. The base annual fee must be paid annually during the term of the Franchise, including the year of granting the Franchise.

D. Annual Increase.

1. The amount of each annual payment of the base annual fee is subject to an increase after the first year of the Franchise and each subsequent year during the term of this Franchise.

2. The amount of each annual payment shall be determined at the time of payment by multiplying the base franchise fee rate by the Consumer Price for the Los Angeles/Anaheim/Riverside area, all urban consumers, as published by the United States Department of Labor, Office of Information for the month of September immediately preceding the month in which payment is due and payable, and divided by the Consumer Price Index for June 30, 1989.

3. If the United States Department of Labor, Office of Information discontinues the preparation or publication of a Consumer Price Index for the Los Angeles/Anaheim/Riverside area, all urban consumers, or if no translation table prepared by the Department of Labor is available applicable to the index of June 30, 1989, then City shall prescribe a rate of payment which shall, in its judgment, vary from the rates specified in this section in approximate proportion as commodity consumer prices then current vary from commodity consumer prices current in December 1988. City's determination shall be final and conclusive.

4. Based upon the facilities shown in Exhibits A and B, the annual franchise amount, excluding the base grant of franchise fee, is calculated as follows:

   Sample of Annual Fee Calculation Using Sept. 2015 CPI:

   803.03 cubic feet x $1.68/cubic foot (base rate) x 1.907 (CPI adjustment using base CPI of June 1989) = $2,572.72

E. Reports Required.

1. The Grantee must file with the City Clerk and City's Finance Director, on or before March 1st after the expiration of the calendar year, or fractional calendar year, following the date of the granting of this Franchise and each calendar year thereafter, two copies of a report duly verified by the oath of the Grantee or by the oath of a duly authorized representative of the Grantee, showing for the immediately preceding franchise period:

   (a) The length of pipelines in lineal feet covered by this Franchise;

(b) The nominal external diameter of such pipelines expressed in inches;

(c) The rate per cubic foot per year (CPI-adjusted base rate); and

(d) The total amount due the City.

2. As soon as practicable, but not longer than 30 days after it is complete, the Grantee must file with the Public Works Director, or designee, a copy of any report regarding the infrastructure status of any pipelines affected by this Franchise.

SECTION 5. **Rights of the City.**

A. This Franchise does not impair or affect any right of the City to acquire the property of the Grantee, either by purchase or through the exercise of the right of eminent domain, subject to Grantee's rights, remedies and defenses, and nothing in this Franchise may 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 in respect to the Grantee, nor will this Franchise be given any value before any court or other public authority in any proceeding of any character in excess of the necessary publication costs and any other sums paid by Grantee to the City at the time this Franchise was acquired.

B. In connection with any change in grade, alignment or width of any public street, way, alley or place ("the Streets"), or the construction of any subway or viaduct, or any other street improvement of any kind by the City, where Grantee's rights to occupy the Streets do not supersede the City's rights, Grantee must, at the City's direction and at Grantee's sole cost and expense, comply with all of the following provisions, as applicable:

1. Within ninety (90) days after Grantee receives written notice from the City that work is to be done pursuant to any reserved right and specifying the general nature of the work and the area in which the same is to be performed, the Grantee must commence to do all things necessary to protect and support its franchise property during the progress of such work. If so ordered by the City, Grantee must relocate those pipes and appurtenances installed, used and maintained within the street to such extent, in such manner, and for such period as is necessary to permit the performance of such work in an economical manner, and to permit the maintenance, operation and use of such street improvement.

2. Grantee must pay to the City the full amount of any increase in cost for the construction, installation or repair of any bridge, or any

artificial support in or underlying any street in which any pipes or appurtenances of the Grantee are located, if such increase in cost is required in order to provide for the installation, maintenance or operation of Grantee's pipes or appurtenances in or on the street area which the bridge or other artificial support covers or underlies.

3. Grantee must cooperate with the City to take all actions reasonably necessary in order to accomplish the completion of any City street improvement project within a reasonable period of time. After Grantee receives written notice from the City that work is to be done, the Grantee must diligently prosecute such work to completion.

4. In the decision process necessary to determine if Grantee's pipelines and/or appurtenances are required to be relocated, the City will also consider all known future projects that, if done separately, may cause multiple relocation of the pipelines and/or appurtenances. If such known future projects can be identified, full consideration of concurrent projects will be given by City. If the City requires the relocation within the public street, way, alley or place more than once within a period of ten (10) years, the City will pay the cost of the second and all subsequent relocations within such ten (10) year period.

5. In the event that the City changes the planned rearrangement of pipelines, or the notice given to Grantee, the Grantee will be given an additional period of not less than sixty (60) days to accomplish such work. When Grantee's rights to occupy the Streets predate or supersede the City's rights, such relocations will be performed by Grantee as set forth above with the costs reimbursed to Grantee by City.

6. Except as otherwise provided above, when City requires a rearrangement of Grantee's facilities and such rearrangement is done for the accommodation of any person, firm, corporation or public agency other than the City, the cost of such rearrangement will be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, must (a) deposit with the Grantee either cash or a corporate surety bond in an amount, as in the reasonable discretion of the Grantee, to pay the costs of such rearrangement, and (b) execute an instrument agreeing to indemnify, defend and hold harmless Grantee from any and all damages or claims caused by such rearrangement. This provision will not be construed to require Grantee to rearrange its facilities. Any accommodation for rearrangement of Grantee's facilities will be made at the Grantee's sole discretion.

7. Nothing in this Agreement may be construed to require the City to move, alter, or relocate any of its pipelines upon public 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, or to move, alter, or relocate any part of its pipelines upon said streets for the convenience, accommodation or necessity of the Grantee.

SECTION 6. **Other obligations of Grantee; Indemnification.** The Grantee must comply with all of the following provisions:

A. Within sixty (60) days after the City Council adopts this Ordinance, Grantee must file with the Director improvement plans relating to all of Grantee's facilities located within the City, and a map or maps showing the location, length and size of all such facilities which have been installed, relocated, removed or abandoned by Grantee.

B. Within six (6) months after the installation of any new pipelines under this franchise, Grantee must file with the Director an "as built" map or maps showing the approximate location, length and size of all of Grantee's pipelines so installed.

C. Grantee must construct, install and maintain all pipes and appurtenances in a good and workmanlike manner, and of good materials, and operate in conformity with all applicable federal, state, and local laws including, without limitation, the Bellflower Municipal Code (BMC). In case of public utilities subject to the jurisdiction of the Public Utilities Commission of the State of California, the rules, regulations and orders of the Public Utilities Commission will govern whenever any conflict may exist between them and the applicable ordinances, codes, rules and regulations adopted or prescribed by the City. To the extent required by applicable law, the Grantee must obtain and maintain a permit from the City of Bellflower Public Works Department and/or Building and Safety Division to construct, install, use, operate, repair or modify a pipeline for the transportation of flammable or combustible liquids.

D. Grantee must pay the City, on demand, the cost of all repairs to public property made necessary by any operations of the Grantee under this Franchise, provided Grantee fails to make such repairs after notice and reasonable opportunity to complete such repairs.

E. Grantee agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, and employees, from and against any and all claims, losses, liabilities, damages to persons or property, demands, actions, judgments, causes of action, assessments, penalties, costs and expenses (including, without limitation, reasonable fees of legal counsel, expert witnesses and accountants) arising out of or resulting from Grantee's operations under this franchise, except to the extent caused by City's sole active negligence, and for all damages proximately resulting from the failure of Grantee to faithfully observe and perform each and every provision of this franchise and of the Act. Grantee is solely responsible for complying with all laws, regulations, and other orders

which are applicable to the installation, repair, relocation or removal of its facilities, whether federal, state or local. City's approval of such installation, repair, relocation or removal will not relieve Grantee of any liability Grantee may have for contaminated soils or other environmental liability attributable to or arising from Grantee's pipes, appurtenances and other facilities. Any fee paid by Grantee pursuant to this Agreement will in no way limit Grantee's obligation to compensate City for any damage, claim, expense or loss whatsoever, as set forth in this paragraph.

F. In addition, Grantee indemnifies and holds the City harmless from and against any claim, action, damages, costs (including, without limitation, reasonable attorney's fees and penalties), injuries, or liability, arising out of this Agreement, or its performance including, without limitation, damages or penalties arising from Grantee's removal, remediation, response or other plan concerning any Hazardous Materials resulting in the release of any hazardous substance into the environment. Should the City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, Grantee will defend the City (at the City's request and with counsel satisfactory to the City) and will indemnify the City for any judgment rendered against it or any sums paid out in settlement or otherwise.

1. The foregoing indemnity is intended to operate as an agreement pursuant to 42 USC § 9607(e) (the Comprehensive Environmental Response, Compensation and Liability Act; "CERCLA") and Health & Safety Code § 25364 to defend, protect, hold harmless, and indemnify the City from all forms of liability under CERCLA, or other applicable law, for any and all matters addressed in this Franchise.

G. In no event will Grantee's indemnity obligation under this Franchise include indemnification for the City's gross negligence or willful misconduct.

SECTION 7. **Insurance.**

A. Before commencing performance under this Franchise, and at all other times this Agreement is effective, Grantee must procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

Type of Insurance	Limits (combined single)
Commercial general liability:	$2,000,000
Workers compensation	Statutory requirement.

B. Commercial general liability insurance must meet or exceed the requirements of ISO-CGL Form No. CG 00 01 11 85 or 88. The amount of insurance set forth above will be a combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. Liability policies will be endorsed to name the City, its officials,

and employees as "additional insureds" under said insurance coverage and to state that such insurance will be deemed "primary" such that any other insurance that may be carried by CITY will be excess thereto. Such insurance must be on an "occurrence," not a "claims made," basis and will not be cancelable or subject to reduction except upon thirty (30) days prior written notice to the City.

C. Grantee will furnish to the City duly authenticated Certificates of Insurance evidencing maintenance of the insurance required under this Agreement, endorsements as required herein, and such other evidence of insurance or copies of policies as may be reasonably required by the City from time to time. Insurance must be placed with admitted insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A:VII." Certificate(s) must reflect that the insurer will provide thirty (30) day notice of any cancellation of coverage. Grantee will require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

D. Should Grantee, for any reason, fail to obtain and maintain the insurance required by this Agreement, the City may obtain such coverage at Grantee's expense or terminate this Franchise.

E. Grantee must deliver to City, in the manner provided for notices, copies or endorsements of all insurance certificates and endorsements required by this Ordinance, within the following time limits:

1. For insurance required at commencement of this Ordinance, within thirty (30) days after this Ordinance becomes effective;

2. For insurance becoming required at a later date, at least ten (10) days before the requirement becomes effective, or as soon thereafter the requirement, if new, becomes effective; and

3. For any renewal or replacement of a policy already in existence, at least twenty (20) days after expiration or other termination of the existing policy.

B. Notwithstanding anything to the contrary, Grantee may provide a program of self-insurance provided it can demonstrate that it had a net worth of $10,000,000.00 within the preceding year. The City, at its sole discretion, may allow Grantee to self-insure provided the self-insurance program complies with the provisions and specified limits contained herein, and is approved by the City Manager and City Attorney. If such approval for self-insurance is granted, the City will be precluded from exercising the remedies afforded to it pursuant to subsection D of this Section 7.

SECTION 8. **Presence of Hazardous Materials.** Except as otherwise provided below, Grantee may not or permit any Hazardous Materials to be discharged or released in, under, or about the streets or adjacent properties at any time. Grantee

must, at its expense, procure, maintain in effect and comply with all conditions of any and all applicable permits, licenses, and other governmental and regulatory approvals required of Grantee for Grantee's use of the streets or adjacent properties. Upon expiration or earlier termination of the franchise term, Grantee must cause all Hazardous Materials released by Grantee in or under the Streets or adjacent properties, if any, to be removed from the streets or adjacent properties in accordance with and in compliance with all applicable laws. Grantee may not take any remedial action in response to the presence of any Hazardous Materials in or about the streets or adjacent properties, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with the streets or adjacent properties, without first notifying City of Grantee's intention to do so and affording City ample opportunity to appear, intervene or otherwise appropriately assess and protect City's interests.

SECTION 9. **Notice to Grantor**. Grantee must immediately notify City in writing of (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any applicable laws relative to the streets or adjacent properties; (ii) any claim made or threatened by any person against Grantee or the streets or adjacent properties relating to damage, contribution, cost recovery compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iii) any reports made to any governmental agency arising out of or in connection with any Hazardous Materials in or removed from the streets or adjacent properties, including any complaints, warnings or asserted violations in connection therewith. Grantee must also supply to City as promptly as possible copies of all claims, reports, complaints, notices, warnings or asserted violations, relating in any way to the streets or adjacent properties, or Grantee's use of the streets. Grantee must promptly deliver to City copies of manifests reflecting the legal and proper disposal of all Hazardous Materials removed by the Grantee from the streets or adjacent properties.

SECTION 10. **Assignability**. Grantee may sell, transfer or assign this Franchise or any interest therein directly or indirectly, or any of the rights or privileges hereby granted, with the City's prior written consent, which will not be unreasonably withheld. Notwithstanding the above statement, Grantee may transfer or assign this Franchise to any parent, subsidiary or affiliate without obtaining the consent of City, provided Grantee provides written notification within thirty (30) days of said transfer or assignment and submits written evidence of the same, including a certification executed by a duly authorized officer of the Grantee. Upon compliance with the foregoing, this Franchise will be binding on the successors and assigns of the parties hereto, and inure to the benefit of the successors and assigns of the parties hereto.

SECTION 11. **Excavations.**

A. Grantee must obtain an excavation permit in accordance with the BMC, and pay the applicable fee therefor, before commencing any excavation in any street or public right of way, or before disturbing the earth beneath the surface of the street, except in the case of an emergency. Before any excavation permit is issued for the construction or installation of a pipeline for the transmission of flammable or combustible liquids, gases or

hazardous materials, Grantee must obtain the applicable permits from the City. If the proposed location of the excavation does not, or will not, unreasonably interfere with the use of the streets by the City or if Grantee holds rights to occupy the area of the Streets which supersede the City's rights, and Grantee complies with all applicable laws, the Director of Public Works will issue the appropriate permit(s).

B. Where it is necessary to lay any underground pipes through, under or across any portion of a paved or macadamized street, such work, where deemed by Grantee in its sole discretion to be a safe method of installation, as well as practicable and economically feasible, may be done by a tunnel or bore so as not to disturb the foundation of such paved or macadamized street. If the same cannot be done, or if it is necessary to cut the street in order to access existing pipes and appurtenances, such work will be done pursuant to an excavation permit.

C. All work is subject to the City's inspection. All street coverings or openings, valves, vaults and manholes must at all times be kept flush with the surface of the streets; provided, however, that vents for underground vaults and manholes as well as cathodic protection devices, including pole-mounted rectifiers may, subject to the City's prior approval, extend above the surface of the streets when such vents and cathodic protection devices, including pole-mounted rectifiers, are located in parkways, between the curb and the property line. The Grantee must provide adequate traffic safety barriers, signs, devices and traffic safety warning equipment in accordance with the BMC and comply with such additional safety measures as the City may direct.

D. In emergencies, Grantee may commence excavation of streets without prior permit; provided, however, Grantee acts in a reasonable and diligent manner as soon as practicable after the onset of said emergency to obtain a permit authorizing such work.

E. Grantee acknowledges that the City's records may not be complete and that pipes and appurtenances previously unknown to City are frequently discovered. Consequently, by granting this franchise or by approving any excavation permit requested by Grantee, the City does not warrant the accuracy of information supplied to the Grantee by the City regarding the location or existence of other facilities. Nothing herein will make the City, or any officer, agent or employee of the City, responsible or liable to the Grantee or to any other person by virtue of the City's approval of excavation permit plans, regardless of whether any information is supplied by the City to the Grantee pertaining to the location of existing pipes, facilities or other improvements on, in or under any street or other public property.

F. Except as otherwise provided, Grantee cannot excavate public streets that were resurfaced with an emulsified asphalt "slurry" or asphalt "cape seal" within the previous two (2) years, or improved with asphalt/concrete within the previous five (5) years, of the proposed excavation date.

G. Excavation of a public street will be allowed by permit under only the most unusual circumstances if the Public Works determines that relocation or boring is not feasible. Under such circumstances, the Director of Public Works will require the Grantee to meet the city's construction standards for excavating in recently resurfaced streets, pay all costs associated with such excavation, and provide such additional security to ensure the integrity of the recently resurfaced public street as may be reasonable required by the Director of Public Works.

SECTION 12. Grantee's Emergency Response Plan; Pipeline Accidents

A. The Grantee must develop and maintain an emergency response plan, reasonably satisfactory to the City, which covers all franchise operations within the City. In general, an emergency response plan meeting the requirements of Federal and State law and containing the information contained in this section is acceptable. The emergency response plan must include a 24-hour notification program and proof of arrangements capable of providing emergency response services, including without limitation to traffic control, street excavation pipeline repair, and supplies and services as necessary, within two (2) hours of notification of any problem, and such other information as the City may reasonably require. Repairs to a public street, alley or parkway must be completed within 72 hours of Grantee completing repairs to its facilities and clean-up of any materials released from its facilities, if reasonably possible, unless otherwise authorized by the City. The City must be notified ten (10) days in advance of any proposed change in such arrangements. Any changes in or revisions to Grantee's emergency response plan must be submitted to the City on the first working day of the subsequent calendar year.

B. Whenever any pipeline or appurtenance breaks or leaks so as to cause the release of oil or petroleum products into or under the public right-of-way, Grantee, and any other person using or controlling the pipeline or appurtenance, must immediately notify the City's Police Department and Public Works Department and implement precautionary safety measures including traffic control, system shutdown, valve closures, and public notification. In the event of an emergency which threatens life, health, safety, or property, and where it is not possible to obtain an excavation permit before commencing the work, the Grantee may commence such work; provided, however, that within seventy-two (72) hours thereafter the Grantee must apply for an excavation permit. Adequate traffic safety barriers must be maintained at all times, and any damaged portion of the street must be restored to at least the condition that existed immediately before the damage.

C. If any portion of any City street is damaged by reason of defects, breaks or leaks in any of the pipes and appurtenances maintained or constructed by Grantee, or by reason of any other cause attributable to or arising from the operation of any pipes and appurtenances constructed or maintained by Grantee, the Grantee must, at its sole cost and expense, immediately repair all damage and restore the street to the condition existing before such damage occurred. All such work must be done under the City's direction, and to the City's reasonable satisfaction. Grantee must repair such damage and restore the street within three (3) working days after receiving a written demand from the City or such other reasonable period as the Director may authorize when required for the protection of the public health and safety.

D. Should Grantee, after reasonable notice, fail or refuse to pave, surface, grade, repave, resurface or regrade any damaged street as required by the provisions of this franchise, the City may cause the work to be done after written notice is given to Grantee and will keep an itemized account of all costs incurred. The Grantee agrees to, and must, reimburse the City for all such costs, including reasonable administrative overhead expenses, within thirty (30) days after presentation to Grantee of an itemized account of such costs.

SECTION 13. **Abandonment**. Should Grantee abandon all or any part of the pipes and appurtenances which encompass this Franchise, such abandonment must be accomplished by Grantee as required by the State of California Pipeline Safety Act, or other governing State or Federal laws or statutes. Grantee will not owe the City any compensation for the privilege of said abandonment. The ownership of all franchised property so abandoned in place, immediately vest in the City except that Grantee will retain all liability for the installation or construction of those facilities, and any liability for Hazardous Materials, as those liabilities exist as of the date of the Abandonment.

SECTION 14. **Default.**

A. Effect of Default. Should Grantee default in the performance of any of the terms, covenants and conditions herein, and such default is curable, the City may give written notice to Grantee of such default. Should Grantee not commence the work necessary to cure such default within sixty (60) days after such notice is received by Grantee, or prosecute such work diligently to completion, the City may declare this Franchise forfeited. Upon giving written notice of forfeiture to Grantee, this Franchise will terminate and Grantee's rights will terminate. Should the Franchise be forfeited, Grantee must execute an instrument of surrender and deliver same to City. In the event of noncompliance by the Grantee with any of these conditions, the City may, in addition to all other remedies, bring suit for the forfeiture or termination of this Franchise.

B. Force Majeure. Should Grantee's performance of this Franchise be prevented due to fire, flood, explosion, war, embargo, government action, civil or military authority, the natural elements, or other similar causes beyond Grantee's control, then Grantee will not be deemed to be in default or forfeit its Franchise rights if it commences and prosecutes performance with all due diligence and promptness upon being able to do so.

C. Cumulative Remedies. No provision of this Franchise for enforcing the terms and conditions of this Franchise is an exclusive remedy or procedure for enforcement. These remedies and procedures are in addition to those provided by law and are cumulative.

SECTION 15. **Dispute Resolution.** If a dispute arises between the parties relating to this Franchise, the parties agree to use the following procedure before either party pursuing other available legal remedies, except when doing so would cause the expiration of an applicable statute of limitations. A meeting will be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) days after such meeting the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation. City and Grantee will equally advance a proportionate share of the costs of mediation. The parties will jointly appoint a mutually acceptable mediator within thirty (30) days from the conclusion of the negotiation period. The parties agree to participate in good faith in the mediation and related negotiations for a period of sixty (60) days. Any decision of the mediator must be supported by written findings of facts and conclusions of law. If the parties are not successful in resolving the dispute through the mediation, the matter may be submitted to a court of law.

SECTION 16. **Notice.** Any notice required to be given under the terms of this Franchise, the manner of services of which is not specifically provided for here, may be served to the following identified addresses, or to such other address as may from time to time be furnished in writing by one party to the other, and by depositing said notice in the United States mail, postage prepaid. When the services of any such notice is made by mail, the time such notice will begin with and run from, is the date of deposit of the same in the United States mail.

Upon City:
City of Bellflower
Public Works Department
Attn: Director of Public Works
16600 Civic Center Drive
Bellflower, California 90706

Upon Grantee:
LT Pipeline, Inc.
Attention: Robert S. Roth, Co-President
9302 Garfield Avenue
South Gate, CA 90280

SECTION 17. Grantee's Acceptance of Franchise. Except as otherwise stated herein, Grantee must within thirty (30) days after this Franchise is adopted, file with the officers of the City designated herein the following instruments or documents:

A. File with the City Clerk Grantee's written acceptance of the terms and conditions of this ordinance.

B. File with the City Clerk certified copies of the policies of liability insurance and workers' compensation insurance, or, in lieu thereof, certificates evidencing such insurance, which policies must be in accordance with the terms and conditions of this ordinance. Notwithstanding anything to the contrary, Grantee may provide a program of self-insurance provided it can demonstrate that it had a net worth of $10 million within the preceding year. The City, at its sole discretion, may allow Grantee to self-insure provided the self-insurance program complies with the provision and specified limits contained herein, and is approved by the City Administrator and City Attorney.

C. File with the City Clerk, within ten (10) business days after the City Council adopts and passes the ordinance granting this franchise and thereafter at all times during the life of the Franchise keep on file with the City Clerk, a bond issued by an admitted surety insurer, and in a form approved by the City Attorney, in the penal sum of One Hundred Thousand Dollars ($100,000), conditioned that the Grantee will well and truly observe, fulfill, and perform each condition of the Franchise and that in case of any breach of condition of the bond, the whole amount of the penal sum therein specified will be recoverable from the principal and surety upon said bond. If said bond is not filed, or if it does not receive the approval of the City Attorney, the Franchise may be revoked or forfeited and any money paid to the City in connection therewith will be retained by the City.

SECTION 18. Reimbursement for City's posting and publication expenses. The Grantee will pay the City a sum of money sufficient to reimburse the City for all posting and publication expenses incurred in connection with the granting of this Franchise. Such payment must be made by Grantee within thirty (30) days after the City provides to the Grantee a written statement of such expenses.

SECTION 19. Venue. The Parties agree that all actions or proceedings arising in connection with the ordinance will be tried and litigated in the State courts located in the County of Los Angeles, State of California. The Parties intend that this choice of venue be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Ordinance in any jurisdiction other than that specified in this Section. Each party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section, and stipulates that the State courts located in the County of Los Angeles, State

of California have in person jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement.

SECTION 20. **No Waiver.** Grantee is not excused from complying with any of the terms and conditions of this Ordinance by any failure of the City upon any one (1) or more occasions to insist upon or to seek compliance with any such terms or conditions. No City waiver of any provision or consent to any action constitutes a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent constitutes a continuing waiver or consent or commit a party to provide a waiver in the future except to the extent specifically set forth in writing. Any waiver given by a party will be null and void if the party requesting such waiver has not provided full and complete disclosure of all material facts relevant to the waiver requested.

SECTION 21. **Binding Effect.** Each and all of the provisions hereof are binding on and inure to the benefit of the Parties and their respective heirs, successors, and permitted transferees and assigns.

SECTION 22. **Amendment.** No amendment, modification, or supplement to this ordinance is binding on any of the parties unless it is in writing, signed by the parties, and approved through legislative action.

SECTION 23. **Entire Agreement.** This ordinance constitutes the entire agreement between the parties with regard to this subject matter. This ordinance supersedes all previous agreements between or among the parties. There are no agreements, representations, or warranties between or among the parties other than those set forth in this Agreement or the documents and agreements referred to in this agreement.

SECTION 24. **Construction.** Each party has been represented by counsel in the negotiation and execution of this ordinance. The terms of this ordinance were negotiated by the Parties and the language used in this Franchise is deemed to be the language chosen by the Parties to express their mutual intent. This Franchise will be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in the favor of the party receiving a particular benefit under this Agreement. No rule or strict construction will be applied against any Person.

SECTION 25. **Miscellaneous Provisions.**

A. Captions. The captions here are for convenience and reference only, and are not part of this Franchise, and do not in any way limit, define or amplify the terms and provisions hereof.

B. Governing Law. This Franchise has been made and will be construed and interpreted in accordance with the laws of the State of California.

C. Execution. The Mayor of the City will approve and sign and the City Clerk will attest to the passage of this Ordinance. This Ordinance will take effect thirty (30) days from the date of its adoption. Once this Ordinance becomes effective, it will be deemed to be applicable as of August 11, 2014.

SECTION 26. Repeal of any provision of the Bellflower Municipal Code will not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action of prosecuting violations occurring before the effective date of this Ordinance.

SECTION 27. **Severability.** If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 28. The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Bellflower's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 29. This Ordinance will take effect on the 31st day following its final passage and adoption.

ORDINANCE NO. 1304 HAD ITS FIRST READING ON OCTOBER 10, 2016, ITS SECOND READING ON 0CT9OBER 24, 2016, AND WAS DULY PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BELLFLOWER AT ITS REGULAR MEETING OF OCTOBER 24, 2016.

_____
Dan Koops, Mayor

Attest:

_____
Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:

_____
Karl H. Berger, City Attorney

Attachments:

Exhibit A – Pipeline Location
Exhibit B – Pipeline Map

CITY OF BELLFLOWER

ORDINANCE NO. 1304 – EXHIBIT A

PIPELINE LOCATION

In Clark Avenue from north City boundary in Foster Road to Cerritos Avenue; in Cerritos Avenue from Clark Avenue to Somerset Boulevard; in Somerset Boulevard from Cerritos Avenue to west City boundary on west line of Lakewood Boulevard.

Grantee's facilities within these Streets consist of:

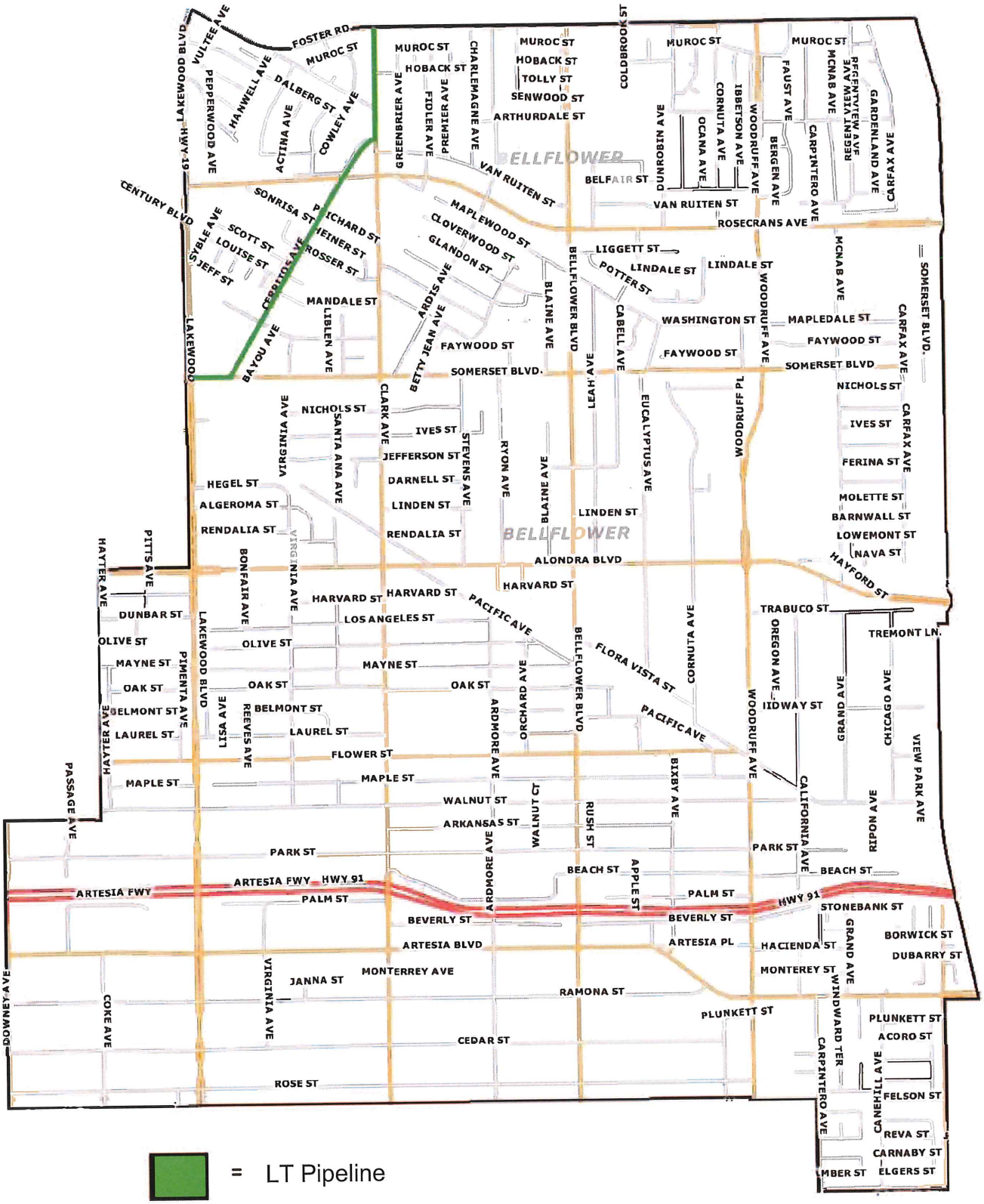
5,889.28 linear feet of 4" internal diameter pipe, calculated as 803.03 cubic feet for the purpose of determining the annual franchise fee.

This pipeline is a non-common carrier, nonpublic utility service pipeline.

EXHIBIT B

CITY OF BELLFLOWER

PIPELINE MAP



CITY OF BELLFLOWER

ORDINANCE NO. 1305

AN ORDINANCE GRANTING TO CARDINAL PIPELINE, L.P. AN OIL PIPELINE FRANCHISE WITHIN THE CITY OF BELLFLOWER

THE CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines as follows:

A. The City of Bellflower ("City") received an application from Cardinal Pipeline, L.P. ("Cardinal") for a franchise to lay and use pipes and appurtenances for transmitting and distributing oil or products thereof (as defined below), for any and all purposes in, under, along, across or upon the public streets, ways, alleys and places within the City of Bellflower.

B. Cardinal had a 10-year oil pipeline franchise agreement with the City which expired on October 26, 2014, but which franchise agreement file no. 217.1 maintained in a holdover status by annually submitting payment of franchise fees calculated pursuant to the terms of such franchise agreement and the City's acceptance thereof. Cardinal seeks to be granted by the City a new franchise agreement for ten (10) years, for the same pipelines.

C. In accordance with state law, the City Council, at a regular meeting held on October 12, 2015, declared its intention to grant said franchise agreement to Cardinal by adopting Resolution No. 15-84.

D. The City Council also conducted a duly noticed public hearing on October 10, 2016, and after considering all oral and written testimony at said hearing, approved the granting of this franchise agreement to Cardinal in accordance with the terms and conditions of this Ordinance.

SECTION 2. **Definitions.** Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this chapter.

A. "City" or "Grantor" means the City of Bellflower, a general law city and municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

B. "Director" means the Director of Public Works of the City.

C. "Engineer" means the City Engineer of the City, or designee.

D. "Facilities" means "Pipes and Appurtenances" as defined below.

E. "Franchise" means this Ordinance, including its terms and conditions, and includes the authorization by the City to transmit and distribute oil or petroleum products for any and all purposes under, along, across or upon the public streets, ways, alleys and places in the City by means of pipes and appurtenances.

F. "Grantee" means Cardinal Pipeline, L.P., a California limited partnership and its lawful successors or assigns.

G. "Hazardous Materials" means any flammable, explosive, or radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any federal, state, local law or regulation or which, even if not so regulated, may or could pose a hazard to public health and safety, including, without limitation, asbestos, PCBs, petroleum products and byproducts, substances defined or listed as "hazardous substances" or "toxic substances" or similarly identified in, pursuant to, or for purposes of, the California Solid Waste Management, Resource Recovery and Recycling Act (Gov't. Code §§ 66700 *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*); California Health & Safety Code §§ 25117 or 25316, including the regulations promulgated thereto (*see* 22 Cal. Code of Regs. § 66261.3); any substances or mixture regulated under the Toxic Substance Control Act of 1976 (15 U.S.C. §§ 2601 *et seq.*); any "toxic pollutant" under the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*); and any hazardous air pollutant under the Clean Air Act (42 U.S.C. §§ 7901 *et seq.*).

H. "Lay and use" means to lay, construct, erect, install, operate, maintain, use, repair, replace, or remove.

I. "Oil or petroleum products" means oil, gas, gasoline, petroleum, wet gas, hydrocarbon substances, nitrogen and other industrial gases, water, waste water, mud, steam and other liquid substances not more hazardous than the aforesaid substances.

J. "Pipes and appurtenances" means pipes, pipelines, manholes, valves, appurtenances and service connections necessary or convenient for the operation of said pipes or pipelines, including conduits, cathodic protection devices, wires, cables, other appurtenances and fiber optic communications systems necessary or convenient for the exercise of the Grantee's business in, upon, along, across, under or over those streets of the City which are described in the attached Exhibit "A" which is incorporated by reference.

K. "BMC" means the Bellflower Municipal Code, as amended.

L. "Streets" means the public streets, ways, alleys and places within the City as the same now or may hereafter exist, and in which the City has the authority to grant a Franchise.

SECTION 3. Granting clause/Rights to Grantee; Term of Franchise

A. Pursuant to, and subject to, the Franchise Act of 1937 (California Public Utilities Code §§ 6201-6302; "Act"), City grants to Grantee a nonpublic utility franchise to use, or to lay and use pipes and appurtenances for transmitting and distributing oil or petroleum products for any and all purposes, under, along, across or upon the public streets within the City as described in Exhibit "A" and identified on the map attached as Exhibit "B" and incorporated by reference.

B. As part of this Franchise, Grantee may install, operate, maintain, replace, repair, abandon in place and/or remove such scraper traps, manholes, flanges, conduits, culverts, vaults, valves, appliances, cathodic protection systems, attachments and other appurtenances (collectively, "appurtenances") as may be necessary or convenient for the proper maintenance and operation of the pipelines under this franchise; provided, however, that Grantee must first secure the requisite permits and/or approvals from City for construction or excavation.

C. This Franchise is granted in lieu of all other franchises for pipelines held by the Grantee, or by any predecessor of the Grantee, for transmitting and distributing oil or petroleum products within the City's present or future jurisdictional limits. Acceptance of this franchise constitutes Grantee's abandonment of all such franchises within the City's present or future jurisdictional limits in lieu of which this franchise is granted, and as Grantee's agreement to comply with all of the Franchise's terms and conditions.

D. This Franchise has a term of ten (10) years from and after the effective date of this Ordinance ("initial term"), unless the following occurs:

1. Grantee voluntarily surrenders or abandons the Franchise; or

2. The property affected by this Franchise is purchased, condemned, or otherwise taken by a public entity rendering the Franchise useless; or

3. Grantee forfeits the Franchise by violating its terms and conditions or that of the Act.

E. Grantee has an option to extend this Franchise for an additional four (4) additional five-year (5-year) terms before the end of the then current term of this Franchise, upon the City's written approval, which approval will not be unreasonably withheld or conditioned. The parties must commence good faith negotiations on such extensions upon notification from Grantee to the City of its election to renew this Franchise, which notice must be given no more than one hundred twenty (120) and no less than sixty (60) days prior to the end of the then current term.

SECTION 4. **Compensation**. In consideration of City's granting of this Franchise, in addition to complying with the Franchise's terms and conditions, Grantee must pay to the City the following:

A. Granting Fee.

1. Grantee agrees to pay the City a base granting fee of Seven Thousand Five Hundred Dollars ($7,500) within thirty (30) days after the City Council adopts this Ordinance.

2. If at any time during the first five (5) years following the granting of this franchise additional pipeline is added which results in a total length of pipeline of one-quarter (1/4) mile or more, or if the diameter of the pipeline is increased by any measure, Grantee agrees to pay the City an additional granting fee of Seven Thousand Five Hundred Dollar ($7,500) at the same time said footage or width is added.

B. Renewal Fee.

1. If Grantee exercises an option to extend the term of this Franchise, then for each extended term, Grantee agrees to pay the City a renewal fee of Six Thousand Dollars ($6,000), plus an adjustment determined by the percentage increase in the Consumer Price Index (CPI) for All Urban Consumers, Los Angeles-Riverside-Orange County Area, for the five-year (5-year) period ended three (3) months prior to the renewal fee's payable date. Renewal fees will be due and payable to the City within thirty (30) days after the commencement of each renewed five-year (5-year) term.

C. Base Annual Fee.

1. During the term of this Franchise, Grantee agrees to pay the City a base annual fee for this Franchise based upon a base franchise fee rate for the pipeline area occupied by the pipelines at an annual rate of $1.68 per cubic foot. The pipeline area occupied by a pipeline or conduit including protective covering, pipe connections, cathodic protection facilities, pipe casings and other minor

appurtenances shall be taken as equivalent to the volume occupied by a cylinder of equal length having a diameter of one (1) inch for metal pipe or two (2) inches for plastic pipe greater than the nominal internal diameter of the pipe or conduit but in no case with an equivalent cylinder diameter less than four (4) inches, and the payment rate therefore shall be computed to the nearest tenth of a cent per lineal foot of pipe. The Franchise fee will be prorated for the 2014 calendar year based on a 360-day year, with the first payment of the Franchise fee accruing as of October 27, 2014.

2. Should Grantee partially abandon pipelines or should Grantee partially remove such pipelines, payments otherwise due the City for occupancy of the streets by such pipelines will be reduced by the length and diameter of pipeline abandoned or the actual pipeline removed, beginning with the first day of the next succeeding Franchise year, and for each subsequent franchise year. The base rate, however, will be modified to reflect the increase (as provided below) applicable to such abandoned or removed pipeline at the beginning of the next succeeding Franchise year following abandonment or removal.

3. The base annual fee is due and payable annually on March 1st, during the term of the Franchise for the preceding annual period, without demand and upon filing of the report required by this Section. Any fees or expenses charged to Grantee by City pursuant to this Section, or any other provision of this Franchise, unless disputed in good faith, must be paid when due or are deemed delinquent. Grantee will pay to the City a penalty equal to ten percent (10%) of the amount of fees due if payment to the City is thirty (30) days late. Grantee will pay to City an additional penalty of one percent (1%) of the amount of fees due under this Section for every period of thirty (30) days after the initial thirty (30) day period that payment remains unpaid, or any lesser amount if required by law. Any neglect, omission or refusal by Grantee to pay any undisputed delinquent fee with any late charges, within thirty (30) days of written demand for payment is grounds for the City to declare the Franchise forfeited.

4. Payments must be made to the Department of Finance, City of Bellflower, or at such place as the City may, from time to time, designate in writing. The base annual fee must be paid annually during the term of the Franchise, including the year of granting the Franchise.

D. Annual Increase.

1. The amount of each annual payment of the base annual fee is subject to an increase after the first year of the Franchise and each subsequent year during the term of this Franchise.

2. The amount of each annual payment shall be determined at the time of payment by multiplying the base franchise fee rate by the Consumer Price for the Los Angeles/Anaheim/Riverside area, all urban consumers, as published by the United States Department of Labor, Office of Information for the month of September immediately preceding the month in which payment is due and payable, and divided by the Consumer Price Index for June 30, 1989.

3. If the United States Department of Labor, Office of Information discontinues the preparation or publication of a Consumer Price Index for the Los Angeles/Anaheim/Riverside area, all urban consumers, or if no translation table prepared by the Department of Labor is available applicable to the index of June 30, 1989, then City shall prescribe a rate of payment which shall, in its judgment, vary from the rates specified in this section in approximate proportion as commodity consumer prices then current vary from commodity consumer prices current in December 1988. City's determination shall be final and conclusive.

4. Based upon the facilities shown in Exhibits A and B, the annual franchise amount, excluding the base grant of franchise fee, is calculated as follows:

   Sample of Annual Fee Calculation Using Sept. 2015 CPI:

   For 6" internal diameter pipe:
   4365.85 cubic feet x $1.68/cubic foot (base rate) x 1.907 (CPI adjustment using base CPI of June 1989) = $13,987.14

   For 7" internal diameter pipe:
   76.79 cubic feet x $1.68/cubic foot (base rate) x 1.907 (CPI adjustment using base CPI of June 1989) = $246.02

   Total = $13,987.14 + $246.02 = $14,233.16

E. Reports Required.

1. The Grantee must file with the City Clerk and City's Finance Director, on or before March 1st after the expiration of the calendar year, or fractional calendar year, following the date of the granting of this Franchise and each calendar year thereafter, two copies of a

report duly verified by the oath of the Grantee or by the oath of a duly authorized representative of the Grantee, showing for the immediately preceding franchise period:

(a) The length of pipelines in lineal feet covered by this Franchise;

(b) The nominal external diameter of such pipelines expressed in inches;

(c) The rate per cubic foot per year (CPI-adjusted base rate); and

(d) The total amount due the City.

2. As soon as practicable, but not longer than 30 days after it is complete, the Grantee must file with the Public Works Director, or designee, a copy of any report regarding the infrastructure status of any pipelines affected by this Franchise.

SECTION 5. **Rights of the City.**

A. This Franchise does not impair or affect any right of the City to acquire the property of the Grantee, either by purchase or through the exercise of the right of eminent domain, subject to Grantee's rights, remedies and defenses, and nothing in this Franchise may 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 in respect to the Grantee, nor will this Franchise be given any value before any court or other public authority in any proceeding of any character in excess of the necessary publication costs and any other sums paid by Grantee to the City at the time this Franchise was acquired.

B. In connection with any change in grade, alignment or width of any public street, way, alley or place ("the Streets"), or the construction of any subway or viaduct, or any other street improvement of any kind by the City, where Grantee's rights to occupy the Streets do not supersede the City's rights, Grantee must, at the City's direction and at Grantee's sole cost and expense, comply with all of the following provisions, as applicable:

1. Within ninety (90) days after Grantee receives written notice from the City that work is to be done pursuant to any reserved right and specifying the general nature of the work and the area in which the same is to be performed, the Grantee must commence to do all things necessary to protect and support its franchise property during the progress of such work. If so ordered by the City, Grantee must relocate those pipes and appurtenances installed, used and maintained within the street to such extent, in such manner, and for such period as is necessary to permit the performance of such work

in an economical manner, and to permit the maintenance, operation and use of such street improvement.

2. Grantee must pay to the City the full amount of any increase in cost for the construction, installation or repair of any bridge, or any artificial support in or underlying any street in which any pipes or appurtenances of the Grantee are located, if such increase in cost is required in order to provide for the installation, maintenance or operation of Grantee's pipes or appurtenances in or on the street area which the bridge or other artificial support covers or underlies.

3. Grantee must cooperate with the City to take all actions reasonably necessary in order to accomplish the completion of any City street improvement project within a reasonable period of time. After Grantee receives written notice from the City that work is to be done, the Grantee must diligently prosecute such work to completion.

4. In the decision process necessary to determine if Grantee's pipelines and/or appurtenances are required to be relocated, the City will also consider all known future projects that, if done separately, may cause multiple relocation of the pipelines and/or appurtenances. If such known future projects can be identified, full consideration of concurrent projects will be given by City. If the City requires the relocation within the public street, way, alley or place more than once within a period of ten (10) years, the City will pay the cost of the second and all subsequent relocations within such ten (10) year period.

5. In the event that the City changes the planned rearrangement of pipelines after the notice given to Grantee, the Grantee will be given an additional period of not less than sixty (60) days to accomplish such work. When Grantee's rights to occupy the Streets predate or supersede the City's rights, such relocations will be performed by Grantee as set forth above with the costs reimbursed to Grantee by City.

6. Except as otherwise provided above, when City requires a rearrangement of Grantee's facilities and such rearrangement is done for the accommodation of any person, firm, corporation or public agency other than the City, the cost of such rearrangement will be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, must (a) deposit with the Grantee either cash or a corporate surety bond in an amount, as in the reasonable discretion of the Grantee, to pay the costs of such rearrangement, and (b) execute an instrument agreeing to indemnify, defend and hold harmless Grantee from any and all damages or claims caused by such rearrangement. This provision

will not be construed to require Grantee to rearrange its facilities. Any accommodation for rearrangement of Grantee's facilities will be made at the Grantee's sole discretion.

7. Nothing in this Agreement may be construed to require the City to move, alter, or relocate any of its pipelines upon public 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, or to move, alter, or relocate any part of its pipelines upon said streets for the convenience, accommodation or necessity of the Grantee.

SECTION 6. **Other obligations of Grantee; Indemnification.** The Grantee must comply with all of the following provisions:

A. Within sixty (60) days after the City Council adopts this Ordinance, Grantee must file with the Director improvement plans relating to all of Grantee's facilities located within the City, and a map or maps showing the location, length and size of all such facilities which have been installed, relocated, removed or abandoned by Grantee.

B. Within six (6) months after the installation of any new pipelines under this franchise, Grantee must file with the Director an "as built" map or maps showing the approximate location, length and size of all of Grantee's pipelines so installed.

C. Grantee must construct, install and maintain all pipes and appurtenances in a good and workmanlike manner, and of good materials, and operate in conformity with all applicable federal, state, and local laws including, without limitation, the Bellflower Municipal Code (BMC). In case of public utilities subject to the jurisdiction of the Public Utilities Commission of the State of California, the rules, regulations and orders of the Public Utilities Commission will govern whenever any conflict may exist between them and the applicable ordinances, codes, rules and regulations adopted or prescribed by the City. To the extent required by applicable law, the Grantee must obtain and maintain a permit from the City of Bellflower Public Works Department and/or Building and Safety Division to construct, install, use, operate, repair or modify a pipeline for the transportation of flammable or combustible liquids.

D. Grantee must pay the City, on demand, the cost of all repairs to public property made necessary by any operations of the Grantee under this Franchise, provided Grantee fails to make such repairs after notice and reasonable opportunity to complete such repairs.

E. Grantee agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, and employees, from and against any and all claims, losses, liabilities, damages to persons or property, demands, actions, judgments, causes of action, assessments, penalties, costs and expenses (including, without limitation, reasonable fees of legal

counsel, expert witnesses and accountants) arising out of or resulting from Grantee's operations under this franchise, except to the extent caused by City's sole active negligence, and for all damages proximately resulting from the failure of Grantee to faithfully observe and perform each and every provision of this franchise and of the Act. Grantee is solely responsible for complying with all laws, regulations, and other orders which are applicable to the installation, repair, relocation or removal of its facilities, whether federal, state or local. City's approval of such installation, repair, relocation or removal will not relieve Grantee of any liability Grantee may have for contaminated soils or other environmental liability attributable to or arising from Grantee's pipes, appurtenances and other facilities. Any fee paid by Grantee pursuant to this Agreement will in no way limit Grantee's obligation to compensate City for any damage, claim, expense or loss whatsoever, as set forth in this paragraph.

F. In addition, Grantee indemnifies and holds the City harmless from and against any claim, action, damages, costs (including, without limitation, reasonable attorney's fees and penalties), injuries, or liability, arising out of this Agreement, or its performance including, without limitation, damages or penalties arising from Grantee's removal, remediation, response or other plan concerning any Hazardous Materials resulting in the release of any hazardous substance into the environment. Should the City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, Grantee will defend the City (at the City's request and with counsel satisfactory to the City) and will indemnify the City for any judgment rendered against it or any sums paid out in settlement or otherwise.

1. The foregoing indemnity is intended to operate as an agreement pursuant to 42 USC § 9607(e) (the Comprehensive Environmental Response, Compensation and Liability Act; "CERCLA") and Health & Safety Code § 25364 to defend, protect, hold harmless, and indemnify the City from all forms of liability under CERCLA, or other applicable law, for any and all matters addressed in this Franchise.

G. In no event will Grantee's indemnity obligation under this Franchise include indemnification for the City's gross negligence or willful misconduct.

SECTION 7. **Insurance**.

A. Before commencing performance under this Franchise, and at all other times this Agreement is effective, Grantee must procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

Type of Insurance	Limits (combined single)

Commercial general liability:	$2,000,000
Workers compensation	Statutory requirement.

B. Commercial general liability insurance must meet or exceed the requirements of ISO-CGL Form No. CG 00 01 11 85 or 88. The amount of insurance set forth above will be a combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. Liability policies will be endorsed to name the City, its officials, and employees as "additional insureds" under said insurance coverage and to state that such insurance will be deemed "primary" such that any other insurance that may be carried by CITY will be excess thereto. Such insurance must be on an "occurrence," not a "claims made," basis and will not be cancelable or subject to reduction except upon thirty (30) days prior written notice to the City.

C. Grantee will furnish to the City duly authenticated Certificates of Insurance evidencing maintenance of the insurance required under this Agreement, endorsements as required herein, and such other evidence of insurance or copies of policies as may be reasonably required by the City from time to time. Insurance must be placed with admitted insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A:VII." Certificate(s) must reflect that the insurer will provide thirty (30) day notice of any cancellation of coverage. Grantee will require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

D. Should Grantee, for any reason, fail to obtain and maintain the insurance required by this Agreement, the City may obtain such coverage at Grantee's expense or terminate this Franchise.

E. Grantee must deliver to City, in the manner provided for notices, copies or endorsements of all insurance certificates and endorsements required by this Ordinance, within the following time limits:

1. For insurance required at commencement of this Ordinance, within thirty (30) days after this Ordinance becomes effective;

2. For insurance becoming required at a later date, at least ten (10) days before the requirement becomes effective, or as soon thereafter the requirement, if new, becomes effective; and

3. For any renewal or replacement of a policy already in existence, at least twenty (20) days after expiration or other termination of the existing policy.

B. Notwithstanding anything to the contrary, Grantee may provide a program of self-insurance provided it can demonstrate that it had a net worth of $10,000,000.00 within the preceding year. The City, at its sole discretion, may allow Grantee to self-insure provided the self-insurance program complies with the provisions and specified limits contained herein, and is approved by the City Manager and City Attorney. If such approval for self-

insurance is granted, the City will be precluded from exercising the remedies afforded to it pursuant to subsection D of this Section 7.

SECTION 8. **Presence of Hazardous Materials.** Except as otherwise provided below, Grantee may not or permit any Hazardous Materials to be discharged or released in, under, or about the streets or adjacent properties at any time. Grantee must, at its expense, procure, maintain in effect and comply with all conditions of any and all applicable permits, licenses, and other governmental and regulatory approvals required of Grantee for Grantee's use of the streets or adjacent properties. Upon expiration or earlier termination of the franchise term, Grantee must cause all Hazardous Materials released by Grantee in or under the Streets or adjacent properties, if any, to be removed from the streets or adjacent properties in accordance with and in compliance with all applicable laws. Grantee may not take any remedial action in response to the presence of any Hazardous Materials in or about the streets or adjacent properties, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with the streets or adjacent properties, without first notifying City of Grantee's intention to do so and affording City ample opportunity to appear, intervene or otherwise appropriately assess and protect City's interests.

SECTION 9. **Notice to Grantor**. Grantee must immediately notify City in writing of (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any applicable laws relative to the streets or adjacent properties; (ii) any claim made or threatened by any person against Grantee or the streets or adjacent properties relating to damage, contribution, cost recovery compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iii) any reports made to any governmental agency arising out of or in connection with any Hazardous Materials in or removed from the streets or adjacent properties, including any complaints, warnings or asserted violations in connection therewith. Grantee must also supply to City as promptly as possible copies of all claims, reports, complaints, notices, warnings or asserted violations, relating in any way to the streets or adjacent properties, or Grantee's use of the streets. Grantee must promptly deliver to City copies of manifests reflecting the legal and proper disposal of all Hazardous Materials removed by the Grantee from the streets or adjacent properties.

SECTION 10. **Assignability**. Grantee may sell, transfer or assign this Franchise or any interest therein directly or indirectly, or any of the rights or privileges hereby granted, with the City's prior written consent, which will not be unreasonably withheld. Notwithstanding the above statement, Grantee may transfer or assign this Franchise to any parent, subsidiary or affiliate without obtaining the consent of City, provided Grantee provides written notification within thirty (30) days of said transfer or assignment and submits written evidence of the same, including a certification executed by a duly authorized officer of the Grantee. Upon compliance with the foregoing, this Franchise will be binding on the successors and assigns of the parties hereto, and inure to the benefit of the successors and assigns of the parties hereto.

SECTION 11. Excavations.

A. Grantee must obtain an excavation permit in accordance with the BMC, and pay the applicable fee therefor, before commencing any excavation in any street or public right of way, or before disturbing the earth beneath the surface of the street, except in the case of an emergency. Before any excavation permit is issued for the construction or installation of a pipeline for the transmission of flammable or combustible liquids, gases or hazardous materials, Grantee must obtain the applicable permits from the City. If the proposed location of the excavation does not, or will not, unreasonably interfere with the use of the streets by the City or if Grantee holds rights to occupy the area of the Streets which supersede the City's rights, and Grantee complies with all applicable laws, the Director of Public Works will issue the appropriate permit(s).

B. Where it is necessary to lay any underground pipes through, under or across any portion of a paved or macadamized street, such work, where deemed by Grantee in its sole discretion to be a safe method of installation, as well as practicable and economically feasible, may be done by a tunnel or bore so as not to disturb the foundation of such paved or macadamized street. If the same cannot be done, or if it is necessary to cut the street in order to access existing pipes and appurtenances, such work will be done pursuant to an excavation permit.

C. All work is subject to the City's inspection. All street coverings or openings, valves, vaults and manholes must at all times be kept flush with the surface of the streets; provided, however, that vents for underground vaults and manholes as well as cathodic protection devices, including pole-mounted rectifiers may, subject to the City's prior approval, extend above the surface of the streets when such vents and cathodic protection devices, including pole-mounted rectifiers, are located in parkways, between the curb and the property line. The Grantee must provide adequate traffic safety barriers, signs, devices and traffic safety warning equipment in accordance with the BMC and comply with such additional safety measures as the City may direct.

D. In emergencies, Grantee may commence excavation of streets without prior permit; provided, however, Grantee acts in a reasonable and diligent manner as soon as practicable after the onset of said emergency to obtain a permit authorizing such work.

E. Grantee acknowledges that the City's records may not be complete and that pipes and appurtenances previously unknown to City are frequently discovered. Consequently, by granting this franchise or by approving any excavation permit requested by Grantee, the City does not warrant the accuracy of information supplied to the Grantee by the City regarding the location or existence of other facilities. Nothing herein will make the City, or any officer, agent or employee of the City, responsible or liable to the

Grantee or to any other person by virtue of the City's approval of excavation permit plans, regardless of whether any information is supplied by the City to the Grantee pertaining to the location of existing pipes, facilities or other improvements on, in or under any street or other public property.

F. Except as otherwise provided, Grantee cannot excavate public streets that were resurfaced with an emulsified asphalt "slurry" or asphalt "cape seal" within the previous two (2) years, or improved with asphalt/concrete within the previous five (5) years, of the proposed excavation date.

G. Excavation of a public street will be allowed by permit under only the most unusual circumstances if the Public Works determines that relocation or boring is not feasible. Under such circumstances, the Director of Public Works will require the Grantee to meet the city's construction standards for excavating in recently resurfaced streets, pay all costs associated with such excavation, and provide such additional security to ensure the integrity of the recently resurfaced public street as may be reasonable required by the Director of Public Works.

SECTION 12. Grantee's Emergency Response Plan; Pipeline Accidents

A. The Grantee must develop and maintain an emergency response plan, reasonably satisfactory to the City, which covers all franchise operations within the City. In general, an emergency response plan meeting the requirements of Federal and State law and containing the information contained in this section is acceptable. The emergency response plan must include a 24-hour notification program and proof of arrangements capable of providing emergency response services, including without limitation to traffic control, street excavation pipeline repair, and supplies and services as necessary, within two (2) hours of notification of any problem, and such other information as the City may reasonably require. Repairs to a public street, alley or parkway must be completed within 72 hours of Grantee completing repairs to its facilities and clean-up of any materials released from its facilities, if reasonably possible, unless otherwise authorized by the City. The City must be notified ten (10) days in advance of any proposed change in such arrangements. Any changes in or revisions to Grantee's emergency response plan must be submitted to the City on the first working day of the subsequent calendar year.

B. Whenever any pipeline or appurtenance breaks or leaks so as to cause the release of oil or petroleum products into or under the public right-of-way, Grantee, and any other person using or controlling the pipeline or appurtenance, must immediately notify the City's Police Department and Public Works Department and implement precautionary safety measures including traffic control, system shutdown, valve closures, and public notification. In the event of an emergency which threatens life, health, safety, or property, and where it is not possible to obtain an excavation permit before commencing the work, the Grantee may commence such work; provided, however, that within seventy-two (72) hours thereafter the

Grantee must apply for an excavation permit. Adequate traffic safety barriers must be maintained at all times, and any damaged portion of the street must be restored to at least the condition that existed immediately before the damage.

C. If any portion of any City street is damaged by reason of defects, breaks or leaks in any of the pipes and appurtenances maintained or constructed by Grantee, or by reason of any other cause attributable to or arising from the operation of any pipes and appurtenances constructed or maintained by Grantee, the Grantee must, at its sole cost and expense, immediately repair all damage and restore the street to the condition existing before such damage occurred. All such work must be done under the City's direction, and to the City's reasonable satisfaction. Grantee must repair such damage and restore the street within three (3) working days after receiving a written demand from the City or such other reasonable period as the Director may authorize when required for the protection of the public health and safety.

D. Should Grantee, after reasonable notice, fail or refuse to pave, surface, grade, repave, resurface or regrade any damaged street as required by the provisions of this franchise, the City may cause the work to be done after written notice is given to Grantee and will keep an itemized account of all costs incurred. The Grantee agrees to, and must, reimburse the City for all such costs, including reasonable administrative overhead expenses, within thirty (30) days after presentation to Grantee of an itemized account of such costs.

SECTION 13. **Abandonment**. Should Grantee abandon all or any part of the pipes and appurtenances which encompass this Franchise, such abandonment must be accomplished by Grantee as required by the State of California Pipeline Safety Act, or other governing State or Federal laws or statutes. Grantee will not owe the City any compensation for the privilege of said abandonment. The ownership of all franchised property so abandoned in place, immediately vest in the City except that Grantee will retain all liability for the installation or construction of those facilities, and any liability for Hazardous Materials, as those liabilities exist as of the date of the Abandonment.

SECTION 14. **Default.**

A. Effect of Default. Should Grantee default in the performance of any of the terms, covenants and conditions herein, and such default is curable, the City may give written notice to Grantee of such default. Should Grantee not commence the work necessary to cure such default within sixty (60) days after such notice is received by Grantee, or prosecute such work diligently to completion, the City may declare this Franchise forfeited. Upon giving written notice of forfeiture to Grantee, this Franchise will terminate and Grantee's rights will terminate. Should the Franchise be forfeited, Grantee must execute an instrument of surrender and deliver same to City. In the event of noncompliance by the Grantee with any of these conditions, the City may, in addition to all other remedies, bring suit for the forfeiture or termination of this Franchise.

B. Force Majeure. Should Grantee's performance of this Franchise be prevented due to fire, flood, explosion, war, embargo, government action, civil or military authority, the natural elements, or other similar causes beyond Grantee's control, then Grantee will not be deemed to be in default or forfeit its Franchise rights if it commences and prosecutes performance with all due diligence and promptness upon being able to do so.

C. Cumulative Remedies. No provision of this Franchise for enforcing the terms and conditions of this Franchise is an exclusive remedy or procedure for enforcement. These remedies and procedures are in addition to those provided by law and are cumulative.

SECTION 15. **Dispute Resolution.** If a dispute arises between the parties relating to this Franchise, the parties agree to use the following procedure before either party pursuing other available legal remedies, except when doing so would cause the expiration of an applicable statute of limitations. A meeting will be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) days after such meeting the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation. City and Grantee will equally advance a proportionate share of the costs of mediation. The parties will jointly appoint a mutually acceptable mediator within thirty (30) days from the conclusion of the negotiation period. The parties agree to participate in good faith in the mediation and related negotiations for a period of sixty (60) days. Any decision of the mediator must be supported by written findings of facts and conclusions of law. If the parties are not successful in resolving the dispute through the mediation, the matter may be submitted to a court of law.

SECTION 16. **Notice.** Any notice required to be given under the terms of this Franchise, the manner of services of which is not specifically provided for here, may be served to the following identified addresses, or to such other address as may from time to time be furnished in writing by one party to the other, and by depositing said notice in the United States mail, postage prepaid. When the services of any such notice is made by mail, the time such notice will begin with and run from, is the date of deposit of the same in the United States mail.

Upon City:
City of Bellflower
Public Works Department
Attn: Director of Public Works
16600 Civic Center Drive
Bellflower, California 90706

Upon Grantee:
Cardinal California Pipeline, L.P.
Attention: Land Department
3780 Kilroy Airport Way, Suite 400
Long Beach, CA 90806

SECTION 17. Grantee's Acceptance of Franchise. Except as otherwise stated herein, Grantee must within thirty (30) days after this Franchise is adopted, file with the officers of the City designated herein the following instruments or documents:

A. File with the City Clerk Grantee's written acceptance of the terms and conditions of this ordinance.

B. File with the City Clerk certified copies of the policies of liability insurance and workers' compensation insurance, or, in lieu thereof, certificates evidencing such insurance, which policies must be in accordance with the terms and conditions of this ordinance. Notwithstanding anything to the contrary, Grantee may provide a program of self-insurance provided it can demonstrate that it had a net worth of $10 million within the preceding year. The City, at its sole discretion, may allow Grantee to self-insure provided the self-insurance program complies with the provision and specified limits contained herein, and is approved by the City Administrator and City Attorney.

C. File with the City Clerk, within ten (10) business days after the City Council adopts and passes the ordinance granting this franchise and thereafter at all times during the life of the Franchise keep on file with the City Clerk, a bond issued by an admitted surety insurer, and in a form approved by the City Attorney, in the penal sum of One Hundred Thousand Dollars ($100,000), conditioned that the Grantee will well and truly observe, fulfill, and perform each condition of the Franchise and that in case of any breach of condition of the bond, the whole amount of the penal sum therein specified will be recoverable from the principal and surety upon said bond. If said bond is not filed, or if it does not receive the approval of the City Attorney, the Franchise may be revoked or forfeited and any money paid to the City in connection therewith will be retained by the City.

SECTION 18. Reimbursement for City's posting and publication expenses. The Grantee will pay the City a sum of money sufficient to reimburse the City for all posting and publication expenses incurred in connection with the granting of this Franchise. Such payment must be made by Grantee within thirty (30) days after the City provides to the Grantee a written statement of such expenses.

SECTION 19. Venue. The Parties agree that all actions or proceedings arising in connection with the ordinance will be tried and litigated in the State courts located in the County of Los Angeles, State of California. The Parties intend that this choice of venue be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Ordinance in any jurisdiction other than that specified in this Section. Each party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section, and stipulates that the State courts located in the County of Los Angeles, State of California have in person jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement.

SECTION 20. **No Waiver.** Grantee is not excused from complying with any of the terms and conditions of this Ordinance by any failure of the City upon any one (1) or more occasions to insist upon or to seek compliance with any such terms or conditions. No City waiver of any provision or consent to any action constitutes a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent constitutes a continuing waiver or consent or commit a party to provide a waiver in the future except to the extent specifically set forth in writing. Any waiver given by a party will be null and void if the party requesting such waiver has not provided full and complete disclosure of all material facts relevant to the waiver requested.

SECTION 21. **Binding Effect.** Each and all of the provisions hereof are binding on and inure to the benefit of the Parties and their respective heirs, successors, and permitted transferees and assigns.

SECTION 22. **Amendment.** No amendment, modification, or supplement to this ordinance is binding on any of the parties unless it is in writing, signed by the parties, and approved through legislative action.

SECTION 23. **Entire Agreement.** This ordinance constitutes the entire agreement between the parties with regard to this subject matter. This ordinance supersedes all previous agreements between or among the parties. There are no agreements, representations, or warranties between or among the parties other than those set forth in this Agreement or the documents and agreements referred to in this agreement.

SECTION 24. **Construction.** Each party has been represented by counsel in the negotiation and execution of this ordinance. The terms of this ordinance were negotiated by the Parties and the language used in this Franchise is deemed to be the language chosen by the Parties to express their mutual intent. This Franchise will be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in the favor of the party receiving a particular benefit under this Agreement. No rule or strict construction will be applied against any Person.

SECTION 25. **Miscellaneous Provisions.**

A. Captions. The captions here are for convenience and reference only, and are not part of this Franchise, and do not in any way limit, define or amplify the terms and provisions hereof.

B. Governing Law. This Franchise has been made and will be construed and interpreted in accordance with the laws of the State of California.

C. Execution. The Mayor of the City will approve and sign and the City Clerk will attest to the passage of this Ordinance. This Ordinance will take effect thirty (30) days from the date of its adoption. Once this Ordinance becomes effective, it will be deemed to be applicable as of October 27, 2014.

SECTION 26. Repeal of any provision of the Bellflower Municipal Code will not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action of prosecuting violations occurring before the effective date of this Ordinance.

SECTION 27. **Severability.** If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 28. The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Bellflower's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 29. This Ordinance will take effect on the 31st day following its final passage and adoption.

ORDINANCE NO. 1305 HAD ITS FIRST READING ON OCTOBER10, 2016, ITS SECOND READING ON OCTOBER 24, 2016, AND WAS DULY PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BELLFLOWER AT ITS REGULAR MEETING OF OCTOBER 24, 2016

_____
Dan Koops, Mayor

Attest:

_____
Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:

_____
Karl H. Berger, City Attorney

Attachments:

Exhibit A – Pipeline Location
Exhibit B – Pipeline Map

CITY OF BELLFLOWER

ORDINANCE NO. 1305 – EXHIBIT A

PIPELINE LOCATION

In Flora Vista Street from the San Gabriel River Flood Control Channel to the Metropolitan Transportation Authority (MTA) Right-of-Way; in Walnut Street from the MTA Right-of-Way to Woodruff Avenue; in Woodruff Avenue from Walnut Street to Park Street; In Park Street from Woodruff Avenue to Downey Avenue; and in Downey Avenue from Park Street to South city limit.

Grantee's facilities within these Streets consist of:

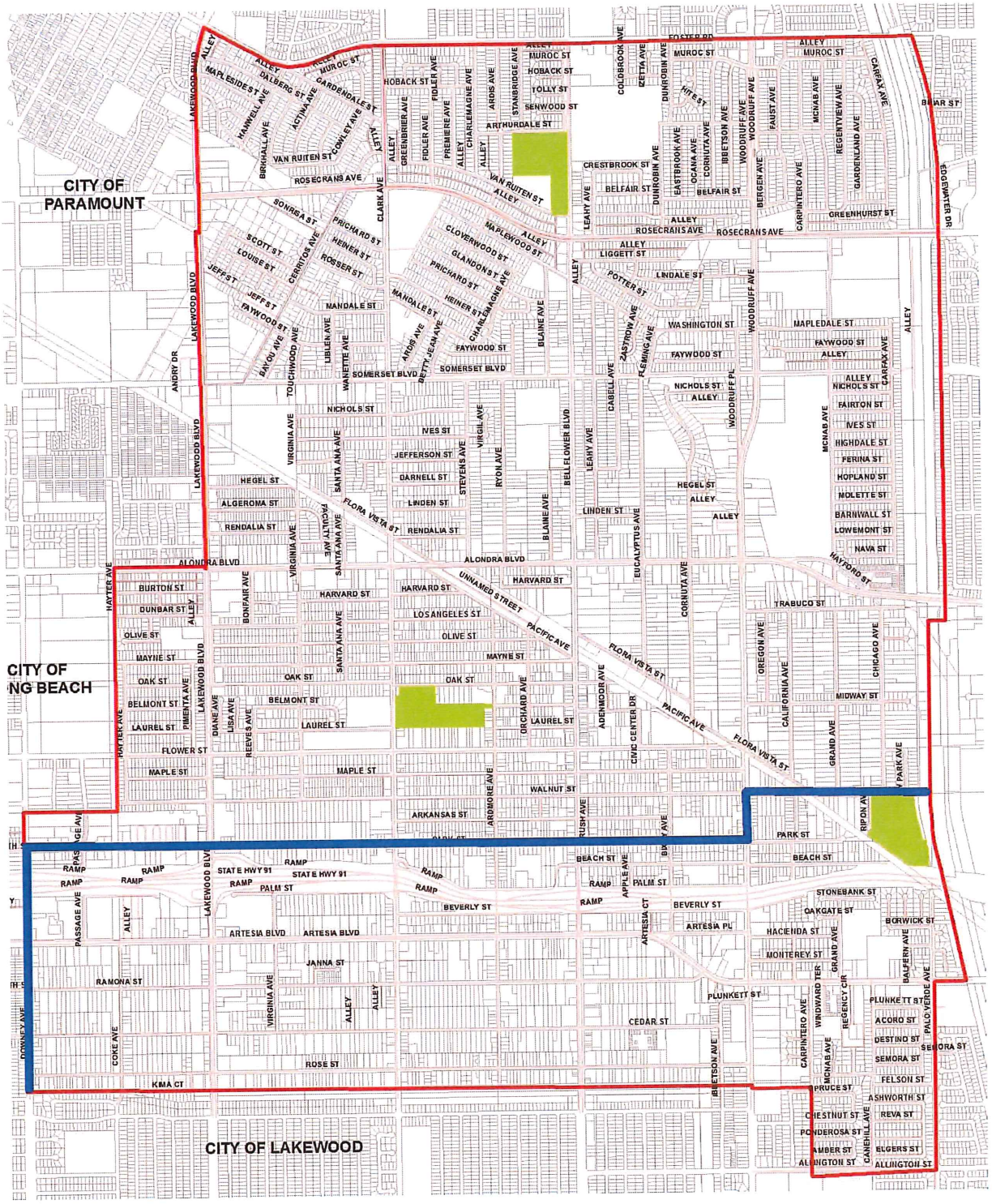
16,336 linear feet of 6" internal diameter pipe, calculated as 4365.85 cubic feet for the purpose of determining the annual franchise fee.

220 linear feet of 7" internal diameter pipe, calculated as 76.79 cubic feet for the purpose of determining the annual franchise fee.

This pipeline is a non-common carrier, nonpublic utility service pipeline.

EXHIBIT B

CITY OF BELLFLOWER
PIPELINE MAP



= Cardinal Pipeline, L.P.

CITY OF BELLFLOWER

ORDINANCE NO. 1306

AN ORDINANCE GRANTING TO CRIMSON CALIFORNIA PIPELINE, L.P. AN OIL PIPELINE FRANCHISE WITHIN THE CITY OF BELLFLOWER

THE CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines as follows:

A. The City of Bellflower ("City") received an application from Crimson California Pipeline, L.P. ("Crimson") for a franchise to lay and use pipes and appurtenances for transmitting and distributing oil or products thereof (as defined below), for any and all purposes in, under, along, across or upon the public streets, ways, alleys and places within the City of Bellflower.

B. Crimson had a 10-year oil pipeline franchise agreement with the City which expired on October 26, 2014, but which franchise agreement file no. 218.1 maintained in a holdover status by annually submitting payment of franchise fees calculated pursuant to the terms of such franchise agreement and the City's acceptance thereof. Crimson seeks to be granted by the City a new franchise agreement for ten (10) years, for the same pipelines.

C. In accordance with state law, the City Council, at a regular meeting held on October 12, 2015, declared its intention to grant said franchise agreement to Crimson by adopting Resolution No. 15-85.

D. The City Council also conducted a duly noticed public hearing on October 10, 2016, and after considering all oral and written testimony at said hearing, approved the granting of this franchise agreement to Crimson in accordance with the terms and conditions of this Ordinance.

SECTION 2. **Definitions.** Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this chapter.

A. "City" or "Grantor" means the City of Bellflower, a general law city and municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

B. "Director" means the Director of Public Works of the City.

C. "Engineer" means the City Engineer of the City, or designee.

D. "Facilities" means "Pipes and Appurtenances" as defined below.

E. "Franchise" means this Ordinance, including its terms and conditions, and includes the authorization by the City to transmit and distribute oil or petroleum products for any and all purposes under, along, across or upon the public streets, ways, alleys and places in the City by means of pipes and appurtenances.

F. "Grantee" means Crimson California Pipeline, L.P., a California limited partnership and its lawful successors or assigns.

G. "Hazardous Materials" means any flammable, explosive, or radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any federal, state, local law or regulation or which, even if not so regulated, may or could pose a hazard to public health and safety, including, without limitation, asbestos, PCBs, petroleum products and byproducts, substances defined or listed as "hazardous substances" or "toxic substances" or similarly identified in, pursuant to, or for purposes of, the California Solid Waste Management, Resource Recovery and Recycling Act (Gov't. Code §§ 66700 *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*); California Health & Safety Code §§ 25117 or 25316, including the regulations promulgated thereto (*see* 22 Cal. Code of Regs. § 66261.3); any substances or mixture regulated under the Toxic Substance Control Act of 1976 (15 U.S.C. §§ 2601 *et seq.*); any "toxic pollutant" under the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*); and any hazardous air pollutant under the Clean Air Act (42 U.S.C. §§ 7901 *et seq.*).

H. "Lay and use" means to lay, construct, erect, install, operate, maintain, use, repair, replace, or remove.

I. "Oil or petroleum products" means oil, gas, gasoline, petroleum, wet gas, hydrocarbon substances, nitrogen and other industrial gases, water, waste water, mud, steam and other liquid substances not more hazardous than the aforesaid substances.

J. "Pipes and appurtenances" means pipes, pipelines, manholes, valves, appurtenances and service connections necessary or convenient for the operation of said pipes or pipelines, including conduits, cathodic protection devices, wires, cables, other appurtenances and fiber optic communications systems necessary or convenient for the exercise of the Grantee's business in, upon, along, across, under or over those streets of the City which are described in the attached Exhibit "A" which is incorporated by reference.

K. "BMC" means the Bellflower Municipal Code, as amended.

L. "Streets" means the public streets, ways, alleys and places within the City as the same now or may hereafter exist, and in which the City has the authority to grant a Franchise.

SECTION 3. **Granting clause/Rights to Grantee; Term of Franchise**

A. Pursuant to, and subject to, the Franchise Act of 1937 (California Public Utilities Code §§ 6201-6302; "Act"), City grants to Grantee a public utility franchise to use, or to lay and use pipes and appurtenances for transmitting and distributing oil or petroleum products for any and all purposes, under, along, across or upon the public streets within the City as described in Exhibit "A" and identified on the map attached as Exhibit "B" and incorporated by reference.

B. As part of this Franchise, Grantee may install, operate, maintain, replace, repair, abandon in place and/or remove such scraper traps, manholes, flanges, conduits, culverts, vaults, valves, appliances, cathodic protection systems, attachments and other appurtenances (collectively, "appurtenances") as may be necessary or convenient for the proper maintenance and operation of the pipelines under this franchise; provided, however, that Grantee must first secure the requisite permits and/or approvals from City for construction or excavation.

C. This Franchise is granted in lieu of all other franchises for pipelines held by the Grantee, or by any predecessor of the Grantee, for transmitting and distributing oil or petroleum products within the City's present or future jurisdictional limits. Acceptance of this franchise constitutes Grantee's abandonment of all such franchises within the City's present or future jurisdictional limits in lieu of which this franchise is granted, and as Grantee's agreement to comply with all of the Franchise's terms and conditions.

D. This Franchise has a term of ten (10) years from and after the effective date of this Ordinance ("initial term"), unless the following occurs:

1. Grantee voluntarily surrenders or abandons the Franchise; or

2. The property affected by this Franchise is purchased, condemned, or otherwise taken by a public entity rendering the Franchise useless; or

3. Grantee forfeits the Franchise by violating its terms and conditions or that of the Act.

E. Grantee has an option to extend this Franchise for an additional four (4) additional five-year (5-year) terms before the end of the then current term of this Franchise, upon the City's written approval, which approval will not be unreasonably withheld or conditioned. The parties must commence good faith negotiations on such extensions upon notification from Grantee to the City of its election to renew this Franchise, which notice must be given no more than one hundred twenty (120) and no less than sixty (60) days prior to the end of the then current term.

SECTION 4. **Compensation**. In consideration of City's granting of this Franchise, in addition to complying with the Franchise's terms and conditions, Grantee must pay to the City the following:

A. Base Annual Fee.

1. During the term of this Franchise, Grantee agrees to pay the City a base annual fee for this Franchise as set forth in § 6231.5 of the Act. The base fee is subject to increase to the maximum rate established in subsequent amendments of the Act. The Franchise fee will be prorated for the 2014 calendar year based on a 360-day year, with the first payment of the Franchise fee accruing as of October 27, 2014.

2. Should Grantee partially abandon pipelines or should Grantee partially remove such pipelines, payments otherwise due the City for occupancy of the streets by such pipelines will be reduced by the length and diameter of pipeline abandoned or the actual pipeline removed, beginning with the first day of the next succeeding Franchise year, and for each subsequent franchise year. The base rate, however, will be modified to reflect the increase (as provided below) applicable to such abandoned or removed pipeline at the beginning of the next succeeding Franchise year following abandonment or removal.

3. The base annual fee is due and payable annually on March 1st, during the term of the Franchise for the preceding annual period, without demand and upon filing of the report required by this Section. Any fees or expenses charged to Grantee by City pursuant to this Section, or any other provision of this Franchise, unless disputed in good faith, must be paid when due or are deemed delinquent. Grantee will pay to the City a penalty equal to ten percent (10%) of the amount of fees due if payment to the City is thirty (30) days late. Grantee will pay to City an additional penalty of one percent (1%) of the amount of fees due under this Section for every period of thirty (30) days after the initial thirty (30) day period that payment remains unpaid, or any lesser amount if required by law. Any neglect, omission or refusal by Grantee to pay any undisputed delinquent fee with any late charges, within thirty (30) days of written demand for payment is grounds for the City to declare the Franchise forfeited.

4. Payments must be made to the Department of Finance, City of Bellflower, or at such place as the City may, from time to time, designate in writing. The base annual fee must be paid annually during the term of the Franchise, including the year of granting the Franchise.

B. Annual Increase.

1. The amount of each annual payment of the base annual fee is subject to an increase after the first year of the Franchise and each subsequent year during the term of this Franchise, based on § 6231.5 of the Act, as amended.

2. The amount of each annual payment shall be determined at the time of payment by multiplying the base franchise fee rate by the Consumer Price for the Los Angeles/Anaheim/Riverside area, all urban consumers, as published by the United States Department of Labor, Office of Information for the month of September immediately preceding the month in which payment is due and payable, and divided by the Consumer Price Index for June 30, 1989, which is declared to be 100.0. Under no circumstances shall the multiplying factor be less than one.

3. If the United States Department of Labor, Office of Information discontinues the preparation or publication of a Consumer Price Index for the Los Angeles/Anaheim/Riverside area, all urban consumers, or if no translation table prepared by the Department of Labor is available applicable to the index of June 30, 1989, then City shall prescribe a rate of payment which shall, in its judgment, vary from the rates specified in this section in approximate proportion as commodity consumer prices then current vary from commodity consumer prices current in December 1988. City's determination shall be final and conclusive.

4. Based upon the facilities shown in Exhibits A and B, the annual franchise amount, is calculated as follows:

   Sample of Annual Fee Calculation Using Sept. 2015 CPI:

   14,668 LF x $0.22 (10" pipe base rate) x 2.454 (CPI adjustment using base CPI of June 1989 (declared to be 100.0)) = $7,918.96

C. Reports Required.

1. The Grantee must file with the City Clerk and City's Finance Director, on or before March 1st after the expiration of the calendar year, or fractional calendar year, following the date of the granting

of this Franchise and each calendar year thereafter, two copies of a report duly verified by the oath of the Grantee or by the oath of a duly authorized representative of the Grantee, showing for the immediately preceding franchise period:

(a) The length of pipelines in lineal feet covered by this Franchise;

(b) The nominal external diameter of such pipelines expressed in inches;

(c) The rate per cubic foot per year (CPI-adjusted base rate); and

(d) The total amount due the City.

2. As soon as practicable, but not longer than 30 days after it is complete, the Grantee must file with the Public Works Director, or designee, a copy of any report regarding the infrastructure status of any pipelines affected by this Franchise.

SECTION 5. **Rights of the City.**

A. This Franchise does not impair or affect any right of the City to acquire the property of the Grantee, either by purchase or through the exercise of the right of eminent domain, subject to Grantee's rights, remedies and defenses, and nothing in this Franchise may 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 in respect to the Grantee, nor will this Franchise be given any value before any court or other public authority in any proceeding of any character in excess of the necessary publication costs and any other sums paid by Grantee to the City at the time this Franchise was acquired.

B. In connection with any change in grade, alignment or width of any public street, way, alley or place ("the Streets"), or the construction of any subway or viaduct, or any other street improvement of any kind by the City, where Grantee's rights to occupy the Streets do not supersede the City's rights, Grantee must, at the City's direction and at Grantee's sole cost and expense, comply with all of the following provisions, as applicable:

1. Within ninety (90) days after Grantee receives written notice from the City that work is to be done pursuant to any reserved right and specifying the general nature of the work and the area in which the same is to be performed, the Grantee must commence to do all things necessary to protect and support its franchise property during the progress of such work. If so ordered by the City, Grantee must relocate those pipes and appurtenances installed, used and maintained within the street to such extent, in such manner, and for

such period as is necessary to permit the performance of such work in an economical manner, and to permit the maintenance, operation and use of such street improvement.

2. Grantee must pay to the City the full amount of any increase in cost for the construction, installation or repair of any bridge, or any artificial support in or underlying any street in which any pipes or appurtenances of the Grantee are located, if such increase in cost is required in order to provide for the installation, maintenance or operation of Grantee's pipes or appurtenances in or on the street area which the bridge or other artificial support covers or underlies.

3. Grantee must cooperate with the City to take all actions reasonably necessary in order to accomplish the completion of any City street improvement project within a reasonable period of time. After Grantee receives written notice from the City that work is to be done, the Grantee must diligently prosecute such work to completion.

4. In the decision process necessary to determine if Grantee's pipelines and/or appurtenances are required to be relocated, the City will also consider all known future projects that, if done separately, may cause multiple relocation of the pipelines and/or appurtenances. If such known future projects can be identified, full consideration of concurrent projects will be given by City. If the City requires the relocation within the public street, way, alley or place more than once within a period of ten (10) years, the City will pay the cost of the second and all subsequent relocations within such ten (10) year period.

5. In the event that the City changes the planned rearrangement of pipelines after notice given to Grantee, the Grantee will be given an additional period of not less than sixty (60) days to accomplish such work. When Grantee's rights to occupy the Streets predate or supersede the City's rights, such relocations will be performed by Grantee as set forth above with the costs reimbursed to Grantee by City.

6. Except as otherwise provided above, when City requires a rearrangement of Grantee's facilities and such rearrangement is done for the accommodation of any person, firm, corporation or public agency other than the City, the cost of such rearrangement will be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, must (a) deposit with the Grantee either cash or a corporate surety bond in an amount, as in the reasonable discretion of the Grantee, to pay the costs of such rearrangement, and (b) execute an instrument agreeing to indemnify, defend and hold harmless Grantee from any and all

damages or claims caused by such rearrangement. This provision will not be construed to require Grantee to rearrange its facilities. Any accommodation for rearrangement of Grantee's facilities will be made at the Grantee's sole discretion.

7. Nothing in this Agreement may be construed to require the City to move, alter, or relocate any of its pipelines upon public 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, or to move, alter, or relocate any part of its pipelines upon said streets for the convenience, accommodation or necessity of the Grantee.

SECTION 6. **Other obligations of Grantee; Indemnification.** The Grantee must comply with all of the following provisions:

A. Within sixty (60) days after the City Council adopts this Ordinance, Grantee must file with the Director improvement plans relating to all of Grantee's facilities located within the City, and a map or maps showing the location, length and size of all such facilities which have been installed, relocated, removed or abandoned by Grantee.

B. Within six (6) months after the installation of any new pipelines under this franchise, Grantee must file with the Director an "as built" map or maps showing the approximate location, length and size of all of Grantee's pipelines so installed.

C. Grantee must construct, install and maintain all pipes and appurtenances in a good and workmanlike manner, and of good materials, and operate in conformity with all applicable federal, state, and local laws including, without limitation, the Bellflower Municipal Code (BMC). In case of public utilities subject to the jurisdiction of the Public Utilities Commission of the State of California, the rules, regulations and orders of the Public Utilities Commission will govern whenever any conflict may exist between them and the applicable ordinances, codes, rules and regulations adopted or prescribed by the City. To the extent required by applicable law, the Grantee must obtain and maintain a permit from the City of Bellflower Public Works Department and/or Building and Safety Division to construct, install, use, operate, repair or modify a pipeline for the transportation of flammable or combustible liquids.

D. Grantee must pay the City, on demand, the cost of all repairs to public property made necessary by any operations of the Grantee under this Franchise, provided Grantee fails to make such repairs after notice and reasonable opportunity to complete such repairs.

E. Grantee agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, and employees, from and against any and all claims, losses, liabilities, damages to persons or property, demands, actions, judgments, causes of action, assessments, penalties,

costs and expenses (including, without limitation, reasonable fees of legal counsel, expert witnesses and accountants) arising out of or resulting from Grantee's operations under this franchise, except to the extent caused by City's sole active negligence, and for all damages proximately resulting from the failure of Grantee to faithfully observe and perform each and every provision of this franchise and of the Act. Grantee is solely responsible for complying with all laws, regulations, and other orders which are applicable to the installation, repair, relocation or removal of its facilities, whether federal, state or local. City's approval of such installation, repair, relocation or removal will not relieve Grantee of any liability Grantee may have for contaminated soils or other environmental liability attributable to or arising from Grantee's pipes, appurtenances and other facilities. Any fee paid by Grantee pursuant to this Agreement will in no way limit Grantee's obligation to compensate City for any damage, claim, expense or loss whatsoever, as set forth in this paragraph.

F. In addition, Grantee indemnifies and holds the City harmless from and against any claim, action, damages, costs (including, without limitation, reasonable attorney's fees and penalties), injuries, or liability, arising out of this Agreement, or its performance including, without limitation, damages or penalties arising from Grantee's removal, remediation, response or other plan concerning any Hazardous Materials resulting in the release of any hazardous substance into the environment. Should the City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, Grantee will defend the City (at the City's request and with counsel satisfactory to the City) and will indemnify the City for any judgment rendered against it or any sums paid out in settlement or otherwise.

1. The foregoing indemnity is intended to operate as an agreement pursuant to 42 USC § 9607(e) (the Comprehensive Environmental Response, Compensation and Liability Act; "CERCLA") and Health & Safety Code § 25364 to defend, protect, hold harmless, and indemnify the City from all forms of liability under CERCLA, or other applicable law, for any and all matters addressed in this Franchise.

G. In no event will Grantee's indemnity obligation under this Franchise include indemnification for the City's gross negligence or willful misconduct.

SECTION 7. **Insurance.**

A. Before commencing performance under this Franchise, and at all other times this Agreement is effective, Grantee must procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

Type of Insurance	Limits (combined single)
Commercial general liability:	$2,000,000
Workers compensation	Statutory requirement.

B. Commercial general liability insurance must meet or exceed the requirements of ISO-CGL Form No. CG 00 01 11 85 or 88. The amount of insurance set forth above will be a combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. Liability policies will be endorsed to name the City, its officials, and employees as "additional insureds" under said insurance coverage and to state that such insurance will be deemed "primary" such that any other insurance that may be carried by CITY will be excess thereto. Such insurance must be on an "occurrence," not a "claims made," basis and will not be cancelable or subject to reduction except upon thirty (30) days prior written notice to the City.

C. Grantee will furnish to the City duly authenticated Certificates of Insurance evidencing maintenance of the insurance required under this Agreement, endorsements as required herein, and such other evidence of insurance or copies of policies as may be reasonably required by the City from time to time. Insurance must be placed with admitted insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A:VII." Certificate(s) must reflect that the insurer will provide thirty (30) day notice of any cancellation of coverage. Grantee will require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

D. Should Grantee, for any reason, fail to obtain and maintain the insurance required by this Agreement, the City may obtain such coverage at Grantee's expense or terminate this Franchise.

E. Grantee must deliver to City, in the manner provided for notices, copies or endorsements of all insurance certificates and endorsements required by this Ordinance, within the following time limits:

1. For insurance required at commencement of this Ordinance, within thirty (30) days after this Ordinance becomes effective;

2. For insurance becoming required at a later date, at least ten (10) days before the requirement becomes effective, or as soon thereafter the requirement, if new, becomes effective; and

3. For any renewal or replacement of a policy already in existence, at least twenty (20) days after expiration or other termination of the existing policy.

B. Notwithstanding anything to the contrary, Grantee may provide a program of self-insurance provided it can demonstrate that it had a net worth of $10,000,000.00 within the preceding year. The City, at its sole discretion, may allow Grantee to self-insure provided the self-insurance program

complies with the provisions and specified limits contained herein, and is approved by the City Manager and City Attorney. If such approval for self-insurance is granted, the City will be precluded from exercising the remedies afforded to it pursuant to subsection D of this Section 7.

SECTION 8. **Presence of Hazardous Materials.** Except as otherwise provided below, Grantee may not or permit any Hazardous Materials to be discharged or released in, under, or about the streets or adjacent properties at any time. Grantee must, at its expense, procure, maintain in effect and comply with all conditions of any and all applicable permits, licenses, and other governmental and regulatory approvals required of Grantee for Grantee's use of the streets or adjacent properties. Upon expiration or earlier termination of the franchise term, Grantee must cause all Hazardous Materials released by Grantee in or under the Streets or adjacent properties, if any, to be removed from the streets or adjacent properties in accordance with and in compliance with all applicable laws. Grantee may not take any remedial action in response to the presence of any Hazardous Materials in or about the streets or adjacent properties, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with the streets or adjacent properties, without first notifying City of Grantee's intention to do so and affording City ample opportunity to appear, intervene or otherwise appropriately assess and protect City's interests.

SECTION 9. **Notice to Grantor**. Grantee must immediately notify City in writing of (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any applicable laws relative to the streets or adjacent properties; (ii) any claim made or threatened by any person against Grantee or the streets or adjacent properties relating to damage, contribution, cost recovery compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iii) any reports made to any governmental agency arising out of or in connection with any Hazardous Materials in or removed from the streets or adjacent properties, including any complaints, warnings or asserted violations in connection therewith. Grantee must also supply to City as promptly as possible copies of all claims, reports, complaints, notices, warnings or asserted violations, relating in any way to the streets or adjacent properties, or Grantee's use of the streets. Grantee must promptly deliver to City copies of manifests reflecting the legal and proper disposal of all Hazardous Materials removed by the Grantee from the streets or adjacent properties.

SECTION 10. **Assignability**. Grantee may sell, transfer or assign this Franchise or any interest therein directly or indirectly, or any of the rights or privileges hereby granted, with the City's prior written consent, which will not be unreasonably withheld. Notwithstanding the above statement, Grantee may transfer or assign this Franchise to any parent, subsidiary or affiliate without obtaining the consent of City, provided Grantee provides written notification within thirty (30) days of said transfer or assignment and submits written evidence of the same, including a certification executed by a duly authorized officer of the Grantee. Upon compliance with the foregoing, this Franchise will be binding on the successors and assigns of the parties hereto, and inure to the benefit of the successors and assigns of the parties hereto.

SECTION 11. Excavations.

A. Grantee must obtain an excavation permit in accordance with the BMC, and pay the applicable fee therefor, before commencing any excavation in any street or public right of way, or before disturbing the earth beneath the surface of the street, except in the case of an emergency. Before any excavation permit is issued for the construction or installation of a pipeline for the transmission of flammable or combustible liquids, gases or hazardous materials, Grantee must obtain the applicable permits from the City. If the proposed location of the excavation does not, or will not, unreasonably interfere with the use of the streets by the City or if Grantee holds rights to occupy the area of the Streets which supersede the City's rights, and Grantee complies with all applicable laws, the Director of Public Works will issue the appropriate permit(s).

B. Where it is necessary to lay any underground pipes through, under or across any portion of a paved or macadamized street, such work, where deemed by Grantee in its sole discretion to be a safe method of installation, as well as practicable and economically feasible, may be done by a tunnel or bore so as not to disturb the foundation of such paved or macadamized street. If the same cannot be done, or if it is necessary to cut the street in order to access existing pipes and appurtenances, such work will be done pursuant to an excavation permit.

C. All work is subject to the City's inspection. All street coverings or openings, valves, vaults and manholes must at all times be kept flush with the surface of the streets; provided, however, that vents for underground vaults and manholes as well as cathodic protection devices, including pole-mounted rectifiers may, subject to the City's prior approval, extend above the surface of the streets when such vents and cathodic protection devices, including pole-mounted rectifiers, are located in parkways, between the curb and the property line. The Grantee must provide adequate traffic safety barriers, signs, devices and traffic safety warning equipment in accordance with the BMC and comply with such additional safety measures as the City may direct.

D. In emergencies, Grantee may commence excavation of streets without prior permit; provided, however, Grantee acts in a reasonable and diligent manner as soon as practicable after the onset of said emergency to obtain a permit authorizing such work.

E. Grantee acknowledges that the City's records may not be complete and that pipes and appurtenances previously unknown to City are frequently discovered. Consequently, by granting this franchise or by approving any excavation permit requested by Grantee, the City does not warrant the accuracy of information supplied to the Grantee by the City regarding the location or existence of other facilities. Nothing herein will make the City, or any officer, agent or employee of the City, responsible or liable to the Grantee or to any other person by virtue of the City's approval of excavation permit plans, regardless of whether any information is supplied

by the City to the Grantee pertaining to the location of existing pipes, facilities or other improvements on, in or under any street or other public property.

F. Except as otherwise provided, Grantee cannot excavate public streets that were resurfaced with an emulsified asphalt "slurry" or asphalt "cape seal" within the previous two (2) years, or improved with asphalt/concrete within the previous five (5) years, of the proposed excavation date.

G. Excavation of a public street will be allowed by permit under only the most unusual circumstances if the Public Works determines that relocation or boring is not feasible. Under such circumstances, the Director of Public Works will require the Grantee to meet the city's construction standards for excavating in recently resurfaced streets, pay all costs associated with such excavation, and provide such additional security to ensure the integrity of the recently resurfaced public street as may be reasonable required by the Director of Public Works.

SECTION 12. Grantee's Emergency Response Plan; Pipeline Accidents

A. The Grantee must develop and maintain an emergency response plan, reasonably satisfactory to the City, which covers all franchise operations within the City. In general, an emergency response plan meeting the requirements of Federal and State law and containing the information contained in this section is acceptable. The emergency response plan must include a 24-hour notification program and proof of arrangements capable of providing emergency response services, including without limitation to traffic control, street excavation pipeline repair, and supplies and services as necessary, within two (2) hours of notification of any problem, and such other information as the City may reasonably require. Repairs to a public street, alley or parkway must be completed within 72 hours of Grantee completing repairs to its facilities and clean-up of any materials released from its facilities, if reasonably possible, unless otherwise authorized by the City. The City must be notified ten (10) days in advance of any proposed change in such arrangements. Any changes in or revisions to Grantee's emergency response plan must be submitted to the City on the first working day of the subsequent calendar year.

B. Whenever any pipeline or appurtenance breaks or leaks so as to cause the release of oil or petroleum products into or under the public right-of-way, Grantee, and any other person using or controlling the pipeline or appurtenance, must immediately notify the City's Police Department and Public Works Department and implement precautionary safety measures including traffic control, system shutdown, valve closures, and public notification. In the event of an emergency which threatens life, health, safety, or property, and where it is not possible to obtain an excavation permit before commencing the work, the Grantee may commence such work; provided, however, that within seventy-two (72) hours thereafter the Grantee must apply for an excavation permit. Adequate traffic safety barriers must be maintained at all times, and any damaged portion of the

street must be restored to at least the condition that existed immediately before the damage.

C. If any portion of any City street is damaged by reason of defects, breaks or leaks in any of the pipes and appurtenances maintained or constructed by Grantee, or by reason of any other cause attributable to or arising from the operation of any pipes and appurtenances constructed or maintained by Grantee, the Grantee must, at its sole cost and expense, immediately repair all damage and restore the street to the condition existing before such damage occurred. All such work must be done under the City's direction, and to the City's reasonable satisfaction. Grantee must repair such damage and restore the street within three (3) working days after receiving a written demand from the City or such other reasonable period as the Director may authorize when required for the protection of the public health and safety.

D. Should Grantee, after reasonable notice, fail or refuse to pave, surface, grade, repave, resurface or regrade any damaged street as required by the provisions of this franchise, the City may cause the work to be done after written notice is given to Grantee and will keep an itemized account of all costs incurred. The Grantee agrees to, and must, reimburse the City for all such costs, including reasonable administrative overhead expenses, within thirty (30) days after presentation to Grantee of an itemized account of such costs.

SECTION 13. **Abandonment**. Should Grantee abandon all or any part of the pipes and appurtenances which encompass this Franchise, such abandonment must be accomplished by Grantee as required by the State of California Pipeline Safety Act, or other governing State or Federal laws or statutes. Grantee will not owe the City any compensation for the privilege of said abandonment. The ownership of all franchised property so abandoned in place, immediately vest in the City except that Grantee will retain all liability for the installation or construction of those facilities, and any liability for Hazardous Materials, as those liabilities exist as of the date of the Abandonment.

SECTION 14. **Default.**

A. Effect of Default. Should Grantee default in the performance of any of the terms, covenants and conditions herein, and such default is curable, the City may give written notice to Grantee of such default. Should Grantee not commence the work necessary to cure such default within sixty (60) days after such notice is received by Grantee, or prosecute such work diligently to completion, the City may declare this Franchise forfeited. Upon giving written notice of forfeiture to Grantee, this Franchise will terminate and Grantee's rights will terminate. Should the Franchise be forfeited, Grantee must execute an instrument of surrender and deliver same to City. In the event of noncompliance by the Grantee with any of these conditions, the City may, in addition to all other remedies, bring suit for the forfeiture or termination of this Franchise.

B. Force Majeure. Should Grantee's performance of this Franchise be prevented due to fire, flood, explosion, war, embargo, government action, civil or military authority, the natural elements, or other similar causes beyond Grantee's control, then Grantee will not be deemed to be in default or forfeit its Franchise rights if it commences and prosecutes performance with all due diligence and promptness upon being able to do so.

C. Cumulative Remedies. No provision of this Franchise for enforcing the terms and conditions of this Franchise is an exclusive remedy or procedure for enforcement. These remedies and procedures are in addition to those provided by law and are cumulative.

SECTION 15. Dispute Resolution. If a dispute arises between the parties relating to this Franchise, the parties agree to use the following procedure before either party pursuing other available legal remedies, except when doing so would cause the expiration of an applicable statute of limitations. A meeting will be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) days after such meeting the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation. City and Grantee will equally advance a proportionate share of the costs of mediation. The parties will jointly appoint a mutually acceptable mediator within thirty (30) days from the conclusion of the negotiation period. The parties agree to participate in good faith in the mediation and related negotiations for a period of sixty (60) days. Any decision of the mediator must be supported by written findings of facts and conclusions of law. If the parties are not successful in resolving the dispute through the mediation, the matter may be submitted to a court of law.

SECTION 16. Notice. Any notice required to be given under the terms of this Franchise, the manner of services of which is not specifically provided for here, may be served to the following identified addresses, or to such other address as may from time to time be furnished in writing by one party to the other, and by depositing said notice in the United States mail, postage prepaid. When the services of any such notice is made by mail, the time such notice will begin with and run from, is the date of deposit of the same in the United States mail.

Upon City:
City of Bellflower
Public Works Department
Attn: Director of Public Works
16600 Civic Center Drive
Bellflower, California 90706

Upon Grantee:
Crimson California Pipeline, L.P.
Attention: Land Department
3780 Kilroy Airport Way, Suite 400
Long Beach, CA 90806

SECTION 17. Grantee's Acceptance of Franchise. Except as otherwise stated herein, Grantee must within thirty (30) days after this Franchise is adopted, file with the officers of the City designated herein the following instruments or documents:

A. File with the City Clerk Grantee's written acceptance of the terms and conditions of this ordinance.

B. File with the City Clerk certified copies of the policies of liability insurance and workers' compensation insurance, or, in lieu thereof, certificates evidencing such insurance, which policies must be in accordance with the terms and conditions of this ordinance. Notwithstanding anything to the contrary, Grantee may provide a program of self-insurance provided it can demonstrate that it had a net worth of $10 million within the preceding year. The City, at its sole discretion, may allow Grantee to self-insure provided the self-insurance program complies with the provision and specified limits contained herein, and is approved by the City Administrator and City Attorney.

C. File with the City Clerk, within ten (10) business days after the City Council adopts and passes the ordinance granting this franchise and thereafter at all times during the life of the Franchise keep on file with the City Clerk, a bond issued by an admitted surety insurer, and in a form approved by the City Attorney, in the penal sum of One Hundred Thousand Dollars ($100,000), conditioned that the Grantee will well and truly observe, fulfill, and perform each condition of the Franchise and that in case of any breach of condition of the bond, the whole amount of the penal sum therein specified will be recoverable from the principal and surety upon said bond. If said bond is not filed, or if it does not receive the approval of the City Attorney, the Franchise may be revoked or forfeited and any money paid to the City in connection therewith will be retained by the City.

SECTION 18. Reimbursement for City's posting and publication expenses. The Grantee will pay the City a sum of money sufficient to reimburse the City for all posting and publication expenses incurred in connection with the granting of this Franchise. Such payment must be made by Grantee within thirty (30) days after the City provides to the Grantee a written statement of such expenses.

SECTION 19. Venue. The Parties agree that all actions or proceedings arising in connection with the ordinance will be tried and litigated in the State courts located in the County of Los Angeles, State of California. The Parties intend that this choice of venue be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Ordinance in any jurisdiction other than that specified in this Section. Each party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section, and stipulates that the State courts located in the County of Los Angeles, State of California have in person jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement.

SECTION 20. No Waiver. Grantee is not excused from complying with any of the terms and conditions of this Ordinance by any failure of the City upon any one (1) or more occasions to insist upon or to seek compliance with any such terms or conditions. No City waiver of any provision or consent to any action constitutes a waiver of any

other provision or consent to any other action, whether or not similar. No waiver or consent constitutes a continuing waiver or consent or commit a party to provide a waiver in the future except to the extent specifically set forth in writing. Any waiver given by a party will be null and void if the party requesting such waiver has not provided full and complete disclosure of all material facts relevant to the waiver requested.

SECTION 21. **Binding Effect.** Each and all of the provisions hereof are binding on and inure to the benefit of the Parties and their respective heirs, successors, and permitted transferees and assigns.

SECTION 22. **Amendment.** No amendment, modification, or supplement to this ordinance is binding on any of the parties unless it is in writing, signed by the parties, and approved through legislative action.

SECTION 23. **Entire Agreement.** This ordinance constitutes the entire agreement between the parties with regard to this subject matter. This ordinance supersedes all previous agreements between or among the parties. There are no agreements, representations, or warranties between or among the parties other than those set forth in this Agreement or the documents and agreements referred to in this agreement.

SECTION 24. **Construction.** Each party has been represented by counsel in the negotiation and execution of this ordinance. The terms of this ordinance were negotiated by the Parties and the language used in this Franchise is deemed to be the language chosen by the Parties to express their mutual intent. This Franchise will be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in the favor of the party receiving a particular benefit under this Agreement. No rule or strict construction will be applied against any Person.

SECTION 25. **Miscellaneous Provisions.**

A. Captions. The captions here are for convenience and reference only, and are not part of this Franchise, and do not in any way limit, define or amplify the terms and provisions hereof.

B. Governing Law. This Franchise has been made and will be construed and interpreted in accordance with the laws of the State of California.

C. Execution. The Mayor of the City will approve and sign and the City Clerk will attest to the passage of this Ordinance. This Ordinance will take effect thirty (30) days from the date of its adoption. Once this Ordinance becomes effective, it will be deemed to be applicable as of October 27, 2014.

SECTION 26. Repeal of any provision of the Bellflower Municipal Code will not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action of prosecuting violations occurring before the effective date of this Ordinance.

SECTION 27. **Severability.** If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 28. The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Bellflower's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 29. This Ordinance will take effect on the 31st day following its final passage and adoption.

ORDINANCE NO. 1306 HAD ITS FIRST READING ON OCTOBER 10, 2016 ITS SECOND READING ON OCTOBER 24, 2016, AND WAS DULY PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BELLFLOWER AT ITS REGULAR MEETING OF OCTOBER 24, 2016.

_____
Dan Koops, Mayor

Attest:

_____
Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:

_____
Karl H. Berger, City Attorney

Attachments:

Exhibit A – Pipeline Location
Exhibit B – Pipeline Map

CITY OF BELLFLOWER

ORDINANCE NO. 1306 – EXHIBIT A

PIPELINE LOCATION

In Flora Vista from the San Gabriel River Flood Control Channel to the Metropolitan Transportation Authority (MTA) Right-of-Way; in Walnut Street from the MTA Right-of-Way to Woodruff Avenue; in Woodruff Avenue from Walnut Street to Artesia Boulevard; in Artesia Place from Woodruff Avenue to Bixby Avenue; and in Artesia Boulevard form Bixby Avenue to Downey Avenue.

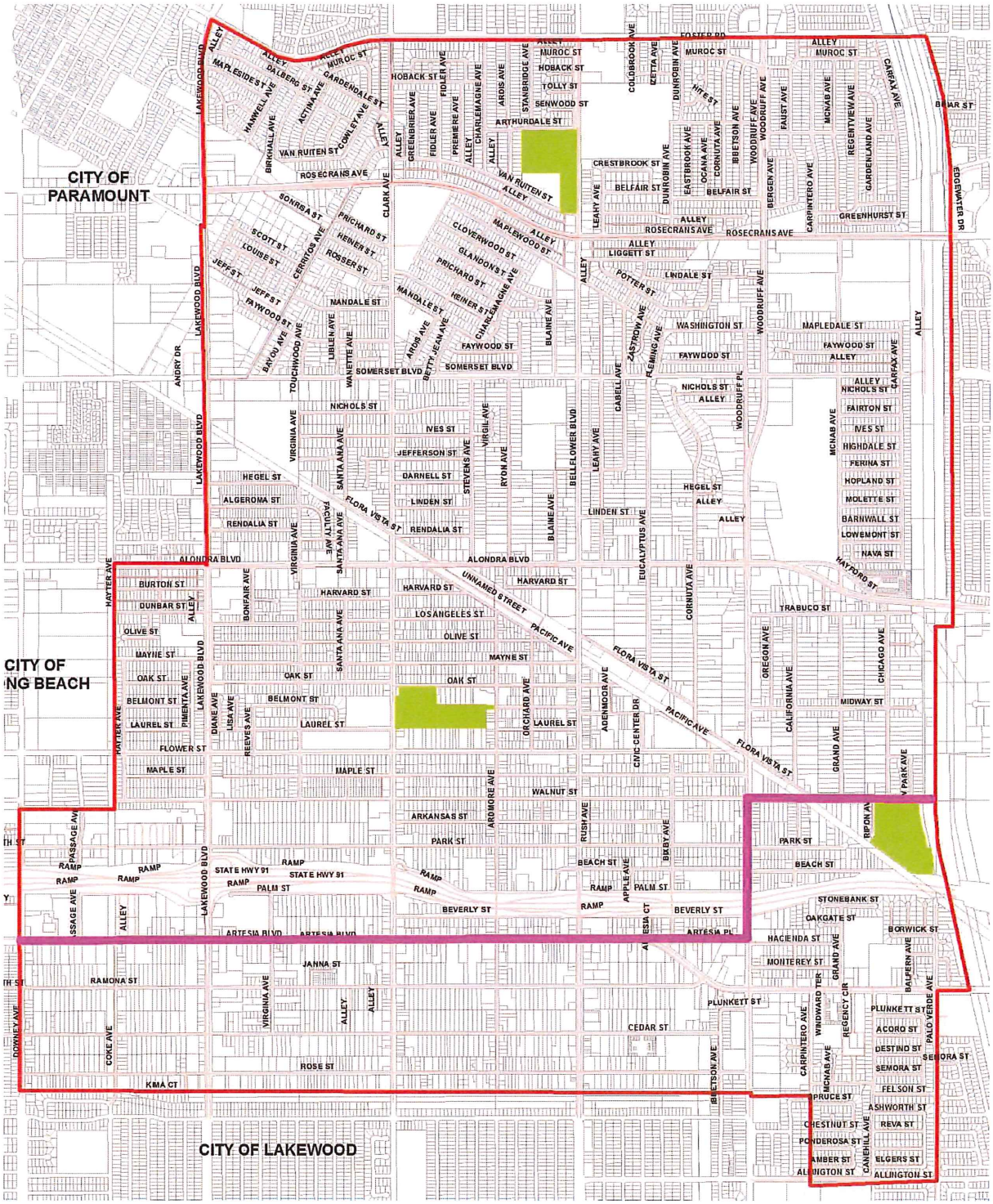
Grantee's facilities within these Streets consist of:

14,668 linear feet of 10" internal diameter pipe.

This pipeline is a common carrier, public utility service pipeline.

EXHIBIT B

CITY OF BELLFLOWER
PIPELINE MAP



= Crimson California Pipeline, L.P.