

Article XI. SFPP, L.P.Sec. 21-149. Definitions.

Whenever in this Ordinance the words or phrases hereinafter in this section defined are used, it is intended that they shall have the respective meanings assigned to them in the following definitions (unless, in the given instance, the context wherein they are used shall clearly import a different meaning):

- (a) The Words "Grantee" or "Franchisee" shall mean the entity to which the franchise contemplated in this ordinance is granted, and its lawful successors or assigns.
- (b) The Word "City" shall mean the City of Paramount, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.
- (c) The Word "Streets" shall mean the public streets, ways, alleys and places, except state freeways and highways, as the same now or may hereafter exist within said City.
- (d) The Phrase "Pipe and Appurtenances" shall mean pipes, pipelines and distribution and transmission systems consisting of mains, distribution and transmission pipes, testing and monitoring equipment, and other properties and facilities, together with services, traps, manholes and other necessary or appropriate appurtenances, for the purpose of transmitting and distributing refined petroleum products.
- (e) The Phrase "Lay and Use" shall mean to lay, construct, erect, install, operate, maintain, use, repair, relocate or remove.
- (f) The Word "Franchise" shall mean and include any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to lay and use pipes and appurtenances for transmitting and distributing refined petroleum products for any and all purposes under, along, across or upon the public streets, ways, alleys and places in the City, and shall include and be in lieu of any existing or future City requirements to obtain a license or permit for the privilege of laying and using pipes and appurtenances for transmitting and distributing refined petroleum products within the City. (Ord. No. 898)

Sec. 21-150. Grant.

The right, privilege and franchise, subject to each and all of the terms and conditions contained in this ordinance, and pursuant to and upon the terms and conditions of Division 3, Chapter 2, of the Public Utilities Code of the State of California, be and the same is hereby granted to SFPP, L.P., a Delaware limited partnership organized and existing under and by virtue of the laws of the State of California, to lay and use pipes and appurtenances for transmitting and distributing refined petroleum products for any and all purposes, under, along, across or upon the streets. (Ord. No. 898)

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Sec. 21-151. Term.

This term of this franchise shall commence on the effective date of this ordinance and shall expire on the date which completes twenty-five (25) years after the effective date unless it is voluntarily surrendered or abandoned by the Grantee, or until the State, City or some municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of this franchise and situated within the territorial limits of the State, City, municipal, or public corporation purchasing or condemning such property, or until this franchise is forfeited for noncompliance with its terms by the Grantee. (Ord. No. 898)

Sec. 21-152. Compensation to city.

As consideration for the franchise granted herein, the Grantee shall pay to the City the following fees:

- (a) Base annual fee. A base annual fee shall be paid within 60 days after the end of each calendar year and during the life of the franchise for each and every year, including the year of granting the franchise, according to the "franchise payment period" as set forth in California Public Utilities Code Section 6231.5 (3), by multiplying the pipe length expressed in feet by the applicable base rate as follows:

Pipe Size (Internal) Diameter in inches	Base Rate Per Lineal Foot
0-4	\$0.088
6	0.132
8	0.176
10	0.220
12	0.264
14	0.308
16	0.352
18	0.396
20	0.440
22	0.484
24	0.528
26	0.572
28	0.616
30	0.660

For pipelines with an internal diameter not listed above, the fees shall be in the same proportion to the fees of a twelve (12) inch diameter pipe as the diameter of the unlisted pipe is to twelve (12) inches. The formula used in arriving at the annual fee shall apply to any existing, replacement, modification or extension of the pipeline. (Ord. No. 898)

(b) Adjustments.

- (1) The amount of the fee provided for in subsection (a) of this section, shall be adjusted at the time payment is due by multiplying the base fee by the Consumer Price Index. All Urban Consumers for the Los Angeles -Anaheim -Riverside area 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 = 100.0. (Ord. No. 898)
- (2) In no event shall an annual fee be charged which is less than the base annual fee amount established by subsection (a) of this section. (Ord. No. 898)
- (3) The indices specified in paragraph 1 of this subsection (b) are calculated and published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau discontinues the calculation or publication of the Consumer Price Index, All Urban Consumers for the Los Angeles -Anaheim -Riverside area (June 30,1998=100), and no transposition table is available to convert to another index, then the amount of each annual adjustment in base fees shall be computed by using a comparable governmental index. (Ord. No. 898)

Sec. 21-153. Proration of payments.

In the event of abandonment of facilities, or in the event of removal of such facilities by the Grantee, or in the event of the grant of a franchise with an initial franchise payment period of less than one year, the annual franchise fee required under subsections (a) and (b) of Section 4 shall be prorated for the calendar year in which such removal or abandonment or grant occurs as of the end of the calendar month in which removed, abandoned or granted. (Ord. No. 898)

Sec. 21-154. Records.

Grantee shall keep and preserve for a period of five (5) years subsequent to the date of the most recent franchise fee determination all the records necessary to determine the amount of such franchise fee. (Ord. No. 898)

Sec. 21-155. Acceptance by grantee.

The franchise granted hereunder shall not become effective until written acceptance thereof shall have been filed by the Grantee thereof with the Clerk of the City. When so filed, such acceptance shall constitute a continuing agreement of the Grantee that if and when the City shall thereafter annex or consolidate with, additional territory, any and all franchises, rights and privileges owned by the Grantee therein shall likewise be deemed to be abandoned as to all streets within the limits of such territory. (Ord. No. 898)

Sec. 21-156. Location of facilities.

The City reserves the right to improve any street or portion thereof over and within the area for which said franchise is granted, including the change of grade, relocation of right-of-way, realignment of right-of-way, change in width, construction or reconstruction of any such street, or any portion thereof. Within ninety (90) days after receipt by Grantee of a notice in writing from the City of the fact that work is to be done pursuant to any such reserved right and specifying the general nature of the work and the area in which the same is to be performed, the Grantee shall do all things necessary to protect its franchise property during the progress of such work and if ordered by the City Council the Grantee shall disconnect, remove, or relocate its pipes and appurtenances within the street to such extent, in such manner, and for such period as shall be necessary to permit the performance of such work in an economical manner, and in accordance with the general recognized engineering and construction methods, and to permit the maintenance, operation and use of such public improvement of the street as so improved. If Grantee is required to relocate its pipes and appurtenances, as provided above, the City shall provide Grantee with space sufficient for the safe operation and maintenance of its facilities. All of such things shall be done and the work shall be performed by the Grantee at its sole cost and expense; provided however, Grantee shall not be required to bear the cost or expense of any removal or relocation made at the request of the City on behalf of or for the benefit of any private developer or governmental third party. In the event that the City shall hereafter construct, install, reconstruct or repair any bridge or artificial support in or underlying any street in which any pipes or appurtenances of the Grantee are located, and in the event that the cost thereof be increased in order to provide for the installation, maintenance or operation of any such pipes or appurtenances in or on the street area which said bridge or other artificial support covers or underlies, then the Grantee shall pay to the City the full amount of such increase of cost, upon completion of such construction, installation or repair. Any damage done directly or indirectly to any such public improvement by the Grantee, in exercising directly or indirectly any right, power or privilege under this franchise, or in performing any duty under or pursuant to the provisions of this franchise, shall be promptly repaired by said Grantee, at its sole cost and expense. (Ord. No. 898)

Sec. 21-157. Duties of grantee.

The Grantee of this franchise shall:

- (a) Construct, install and maintain all pipes, facilities and appurtenances in accordance and in conformity with all of the applicable ordinances, rules and regulations heretofore or hereafter adopted by the City Council in the exercising of its police powers and not in conflict with the authority of the State of California, and, as to State highways, subject to the provisions of general laws relating to the location and maintenance of such facilities therein; in constructing, installing and maintaining the pipes and appurtenances the Grantee shall make and backfill all excavations in such manner and way as to leave the surface of the public street, alley, highway, or public place in as good condition as it was prior to said excavation, as well as to conform to the statutes of the State of California and the ordinances of the City of Paramount as they now exist or may hereafter be amended with respect to the securing of permits for excavations filling and obstructions of City and State highways. 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 shall govern whenever any conflict may exist between them and the ordinance, codes, rules and regulations adopted or prescribed by the City. (Ord. No. 898)
- (b) Pay to the City, on demand, the cost of all repairs to public property made necessary by any operations of the Grantee under this franchise. (Ord. No. 898)

- (c) Indemnify, defend and hold harmless the City and its officers from any and all liability for damage proximately resulting from any operations under this franchise, and be liable to the City for all damages proximately resulting from the failure of said Grantee well and faithfully to observe and perform each and every provision of this franchise and each and every applicable provision of Division 3, chapter 2 of the Public Utilities Code of the State of California. Nothing contained in the foregoing indemnity provisions shall be construed to require the Grantee to indemnify the City against any responsibility or liability as may be caused by the sole negligence or willful misconduct of City or its officers, agents, employees or independent contractors. Grantee shall maintain general liability insurance for personal injury and property damage, naming the City of Paramount as an additional insured in the amount of not less than \$2,000,000.00. This insurance shall be in a form and content as approved by the Paramount City Attorney. (Ord. No. 898)
- (d) File with the City Council within sixty (60) days after any sale, transfer, assignment or lease of this franchise, or any part thereof, or of any of the rights or privileges granted thereby, written evidence of the same, certified thereto by the Grantee or its duly authorized officers. (Ord. No. 898)
- (e) Promptly repair, at the sole cost and expense of the Grantee and to the complete satisfaction of the City, any damage to any street or public improvement caused directly or indirectly by the Grantee in exercising, directly or indirectly, any right, power or privilege under this franchise or in performing any duty under or pursuant to any of the provisions of this franchise. (Ord. No. 898)
- (f) Not commence any excavation or encroachment work under the franchise until it shall have obtained such permit from the City as may be required, except in cases of emergency affecting public health, safety or welfare or the preservation of life or property, in which case the Grantee shall apply for such permit not later than the next business day. The application of the Grantee for such permit shall show the following facts: the length and proposed location of the pipeline and/or appurtenance intended to be used, and such other facts as may be required. The Grantee shall pay any and all permit inspection fees to the City. (Ord. No. 898)
- (g) Be responsible to the City and save the City, its officers, agents, and employees, free and harmless from all damages or liability arising from any damage or injury suffered by any person by reason of any excavation or obstruction being improperly guarded during any work authorized pursuant to the franchise or the failure or neglect of the Grantee to properly perform, maintain, or protect any phase of such work. (Ord. No. 898)
- (h) Have the right to construct, maintain and repair such monitoring and testing equipment, traps, manholes, conduits, valves, appliances, attachments and appurtenances (hereinafter collectively referred to as "appurtenances") as may be necessary or convenient for the proper maintenance and operation of the pipelines under said franchise, and said appurtenances shall be so located as to conform to any ordinance, rule or regulation of the City, or of any permit issued by the City in regard thereto and shall not interfere with the use of the street for travel. The Grantee shall have the right subject to such ordinances, rules or regulations as are now or may hereafter be in force, to make all necessary excavations in said streets for the construction, maintenance and repair of said appurtenances; provided, however, that the Grantee shall first obtain an excavation permit from the City for doing of any such work. (Ord. No. 898)
- (i) Complete all reconstruction improvements identified in that certain letter agreement dated October 8, 1998, attached hereto as Exhibit "A" and incorporated herein by reference as though fully set forth. (Ord. No. 898)

Sec. 21-158. Right of eminent domain preserved.

The franchise granted hereunder shall not in any way to any extent impair or affect the right of the City to acquire the property of the Grantee hereof either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the City's or the Grantee's rights of eminent domain before any court or other public authority in any proceeding of any character. (Ord. No. 898)

Sec. 21-159. Forfeiture of franchise.

- (a) If the Grantee shall fail, neglect or refuse to comply with any of the provisions or conditions hereof, and shall not, within ninety (90) day after written demand for compliance, begin the work of compliance, or after such beginning shall not prosecute the same with due diligence to completion, then the City Council may declare this franchise forfeited. (Ord. No. 898)
- (b) The City may sue in its own name for the forfeiture of this franchise, in the event of non-compliance by the Grantee, its successors or assignees, with any of the conditions thereof. (Ord. No. 898)

Sec. 21-160. Reimbursement of costs.

The Grantee shall pay to the City a sum of money sufficient to reimburse it for all publication and posting expenses incurred by it in connection with the granting of this franchise; such payment to be made within thirty (30) days after the City shall furnish such Grantee with a written statement of such expenses. (Ord. No. 898)

Sec. 21-161. Abandonment.

Upon application of the Grantee, the Director of Public Works, upon such terms and conditions as he may see fit to impose, may give the grantee permission to abandon in place, without removing, any pipelines laid or maintained under this franchise. The length of any pipeline so abandoned in place shall not be considered in calculating annual payments due under this franchise except for the time during which such pipeline was maintained prior to such abandonment. (Ord. No. 898)

Sec. 21-162. Repair of damaged streets.

The Grantee shall be responsible for maintenance of street surfaces and other surface improvements over any trench areas that may settle or be otherwise displaced as a result of settlement, displacement, or other failure within any underground construction of said pipelines and appurtenances. (Ord. No. 898)

(Ord. No. 898)