



Revision to ASR and/or Attachments

Date: September 21, 2015
To: Clerk of the Board of Supervisors
Cc: County Executive Office
From: Shane L. Silsby, Director, OC Public Works
Re: ASR Control #: 15-001161, Meeting Date 9/22/15 Agenda Item No. #58
Subject: First Public Hearing on Proposed Santa Fe Pacific Pipeline, L.P. Franchise

CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS
2015 SEP 21 PM 1:01
RECEIVED

Explanation: Please exchange Attachment B with updated version as it has been revised.

- ☐ Revised Recommended Action(s)
- ☐ Make modifications to the:
- ☐ Subject ☐ Background Information ☐ Summary
- ☒ Revised Attachments (attach revised attachment)

ORDINANCE NO. _____

**AN ORDINANCE OF THE BOARD OF
SUPERVISORS OF THE COUNTY OF ORANGE
GRANTING TO SFPP, L.P., A DELAWARE
LIMITED PARTNERSHIP, A FRANCHISE FOR THE
TRANSPORTATION AND DISTRIBUTION OF
REFINED PETROLEUM PRODUCTS IN THE
COUNTY OF ORANGE FOR TEN (10) YEARS**

I. RECITALS

- (a) On **August 25, 2015**, the Board of Supervisors of the County of Orange adopted its Resolution No. **15-088** setting forth said Board's intention to grant a new franchise, to replace franchise Ordinance No. 1505, which expired August 7, 2002, under and pursuant to the provisions of Article 1 of Chapter 2 of Division 3 of the California Public Utilities Code, commencing at Section 6201, for certain purposes.
- (b) Pursuant to said Resolution No. **15-008** the Board of Supervisors set the date of **September 22, 2015** at the hour of **9:30 a.m.**, as the time for public hearing for interested persons to voice objections to the granting of the franchise to SFPP, L.P., a Delaware Limited Partnership.
- (c) Heretofore, this Board has held a public hearing on its intention to grant said franchise and it is now the desire of this Board to grant said franchise, in accordance with the terms and conditions specified in this Ordinance.
- (d) All legal prerequisites to the enactment of this Ordinance have occurred.

NOW, THEREFORE, IT IS ORDAINED by the Board of Supervisors of the County of Orange as follows:

II. DEFINITIONS

Whenever in this Ordinance the words or phrases set forth in this section are used, they shall have the respective meanings ascribed to them in the following definition (unless, in the given instance, the context wherein said words or phrases are used shall clearly import a different meaning):

- (a) "Act" means the Franchise Act of 1937 set forth in Public Utilities Code sections 6201-6302, as it may be amended from time to time.
- (b) "County" means the County of Orange, a political subdivision of the State of California.
- (c) "Code" means the California Public Utilities Code.
- (d) "CPUC" means the California Public Utilities Commission.

- (e) “Director” means the Director of OC Public Works or his or her designee, or the Director of the County agency charged with the administration of this franchise ordinance.
- (f) “Franchise” means the rights granted to Franchisee hereunder pursuant to County’s police power and applicable provisions of the Franchise Act of 1937, and any revisions thereto.
- (g) “Franchisee” means SFPP, L.P., a Delaware Limited Partnership.
- (h) “Lay and Use” means to lay, construct, erect, install, operate, maintain, use repair, replace or remove.
- (i) “Pipes and Appurtenances” means pipe, pipelines, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, ditch, flume, appliance, attachment and other appurtenances located or to be located in, upon, along, across or under the streets of the unincorporated area of the County, and used in transmitting and distributing refined petroleum products.
- (j) “Streets” means the public streets, ways and alleys as the same now or may hereafter exist within the unincorporated area of the County.
- (k) “Work” means any and all construction, installation, repair, maintenance, removal or relocation of any Pipes and Appurtenances or other improvements performed under this Franchise.

III. GRANT AND TERM OF FRANCHISE; EXPIRATION; HOLDING OVER; NON-EXCLUSIVITY

- (a) Grant of Franchise. The right, privilege and franchise is hereby granted to Franchisee to use the Streets for transmitting and distributing refined petroleum products for any and all lawful purposes, including the right to Lay and Use all Pipes and Appurtenances.
- (b) Franchise Term. The term of this Franchise shall be for a period of ten (10) years beginning on the day of written acceptance in accordance with Section III below. This Franchise shall expire prior to the end of the term if (i) Franchisee voluntarily surrenders or abandons the Franchise; (ii) the State of California or any municipal or public corporation duly authorized by law purchases by voluntary agreement or condemns and takes under the power of eminent domain all property used in the exercise of this Franchise and located within its territorial limits; or (iii) the Franchise is forfeited for noncompliance with its terms by Franchisee.
- (c) Expiration. If Franchisee continues to operate its Pipes and Appurtenances upon expiration of this Franchise, then such holding over shall constitute a renewal of this Franchise on a quarterly basis, with the Franchise Fee during the holdover period to be paid in accordance with Section IV of this Franchise. Either Party shall be entitled to terminate such holdover status upon one hundred twenty (120) days prior written notice to the other party.
- (d) Non-Exclusivity. The granting of this Franchise shall not be construed to prevent the County from granting any identical or similar franchise to any entity other than Franchisee, so long as said grant does not unreasonably interfere with the rights granted to Grantee hereunder.

IV. FRANCHISE ACCEPTANCE

- (a) No later than thirty (30) days after the passage of this ordinance, the Franchisee shall file with the County Clerk a written acceptance of the Franchise hereby granted, and an agreement to comply with the terms and conditions hereof.
- (b) When so filed the acceptance constitutes a continuing agreement by the Franchisee that if and when the granting municipality thereafter annexes, or consolidates with, additional territory, all franchises, rights and privileges held by the Franchisee therein, except a franchise derived under Section 19 of Article XI of the Constitution as that section existed prior to the amendment thereof adopted October 10, 1911, shall be deemed abandoned within the limits of the additional territory.

V. FRANCHISE FEE AND COSTS

- (a) Franchise Fee. Franchisee shall, during the term of the Franchise, pay to County, a sum as specified in Section 6231.5 of the California Public Utilities Code. Specifically, the franchisee will pay to the County an annual fee based upon the length of pipe expressed in feet located within the franchised area which shall be multiplied by the applicable base rate and adjusted by the Consumer Price Index for the area.
- (b) Publication. Franchisee shall also pay to County a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of this Franchise, such payment to be made within thirty (30) days after the County furnishes Franchisee with a written statement of such expenses.
- (c) Administration. Franchisee acknowledges that it has paid County a one-time administrative cost in connection with the negotiation of this Franchise in the amount of **\$7,000.00.**

VI. VERIFIED STATEMENT; PAYMENT OF FRANCHISE FEE; AUDIT

- (a) Verified Statement. Franchisee shall file with the County Auditor-Controller, within three (3) months after expiration of the calendar year, or fractional calendar year, following the entry into force of this Franchise, and within three (3) months after the expiration of each and every calendar year thereafter, a statement verified by an officer of Franchisee showing in detail the following:
 - (1) The method and supporting calculations used to calculate the franchise fees which are payable to the County in accordance with this Franchise;
 - (2) Any change in the footage or internal diameter of pipelines, segregating such footage as to new pipelines laid or acquired during the preceding calendar year, pipelines in territory that was annexed or incorporated during the preceding calendar year and pipelines removed or abandoned in place during the preceding calendar year;

- (3) The permit number of each permit obtained during the year with respect to operations under this Franchise; and
 - (4) If cathodic protection is used for pipes or appurtenances installed or maintained pursuant to this Franchise, the location and types of anodes, including a description of the methods used as a protection against corrosion and electrolyte leakage.
- (b) Payment of Franchise Fee. By delivery to the County Clerk, Franchisee shall pay to the County within fifteen (15) days after the time for filing such statement, in lawful money of the United States, the aforesaid Franchise Fee, or such fractional calendar year, covered by such statement. Any neglect, omission or refusal by Franchisee to file such verified statement, or to pay said percentage at the time and in the manner specified in this agreement, shall be grounds for the declaration of a forfeiture of this Franchise and of all rights of Franchisee hereunder.
- (c) Delinquency. Franchise Fee due from Franchisee is delinquent if not received by the County Auditor-Controller on or before the due date during normal business hours. Should the due date occur on a weekend or holiday, the Franchise Fee must be received by the Auditor-Controller during the business hours of the first regular working day following the weekend or holiday. If Franchisee fails to remit the Franchise Fee on or before the due date, Franchisee shall pay interest at the rate of one percent (1%) per month of any fraction thereof on the amount of the Fee from the date on which the fee first became delinquent, until paid.
- (d) Audit. The County shall have the right to audit the books and records of Franchisee relating to the calculation of the franchise fee at the office of Franchisee in which such records are kept upon reasonable notice during normal business hours solely for the purpose of verifying the calculation of the franchise fee. County shall, to the extent permitted by applicable law, maintain the confidentiality of all information provided by Franchisee to County in connection with such audit that Franchisee has informed County is confidential. Nothing herein shall be construed to require Franchisee to make available information which constitutes private or confidential information pertaining to specific customers of Franchisee, without the prior written consent of such customers. All books and records of Franchisee relating to the calculation of the franchise fee for any calendar year shall be maintained by Grantee for a period of at least four (4) years following delivery of the verified statement for such year pursuant to Section V (a).

VII. INSURANCE

- (a) Prior to the provision of services under this Franchise, Franchisee agrees to purchase all required insurance at Franchisee's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all subcontractors performing work on behalf of Franchisee pursuant to this contract shall obtain insurance subject to the same terms and conditions as set forth herein for Franchisee.

- (b) All self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance. If no deductibles or SIRs apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. Franchisee shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance. Upon notice of any actual or alleged claim or loss arising out of subcontractor's work hereunder, subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the contractor and additional insureds.

If the Franchisee fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.

- (c) Qualified Insurer. The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's key Rating Guide/Property-Casualty/United States or ambest.com.

If the insurance carrier is not an admitted carrier in the state of California and does not have an A.M. Best rating of A-/VIII, the CEO/Office of Risk management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$5,000,000 per occurrence \$10,000,000 aggregate
Automobile Liability including coverage for owned, non-owned, and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Environmental/Pollution Liability (Optional coverage to be required when hazardous materials are involved.)	\$1,000,000 per claims made or occurrence

- (d) Required Coverage Forms. The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad. The limits of insurance can be satisfied with a primary and an excess/umbrella policy.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

- (e) Required Endorsements. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:
- (1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
 - (2) A primary non-contributing endorsement evidencing that the Franchisee's insurance is primary and any insurance maintained by the County of Orange shall be excess and non-contributing.
 - (3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO form CG2010 (ed. 11/85).
 - (4) The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, employees and agents.
- (f) All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

All insurance policies required by this contract shall give the County of Orange thirty (30) days notice in the event of cancellation and (ten) 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

VIII. CONSTRUCTION AND INSTALLATION

- (a) Construction Standards. Franchisee shall construct, install, maintain and repair all Pipes and Appurtenances in accordance with all applicable federal, state and local laws, rules or regulations theretofore, or hereafter adopted by the County in the exercise of its police powers, and in accordance with the terms and conditions of any permit issued by a County department or agency, and not in conflict with the paramount authority of the State of California, including the Code and the rules, regulations, orders and decisions of the CPUC, and, as to State highways, subject to the provisions of general laws relating to the location and maintenance of such facilities.
- (b) Use of Streets. Any work performed under the authority of this Franchise shall be done with the least possible hindrance to the use of the Streets for the purposes of travel. As soon as such Work is completed, all portions of the Streets that have been excavated or damaged thereby, shall be placed in as good condition as the same were before the commencement of such Work to the satisfaction of the Director. In the event that Franchisee fails or neglects to make such Street repair, replacement or restoration work, then thirty (30) days after written notice therefore has been given by the Director to the Franchisee, County may perform such Work at Franchisee's cost. Franchisee shall reimburse the County for all such costs within thirty (30) days of written invoice, plus the current rate of overhead charged by the County for all reimbursable work.

Franchisee shall pay to the County, on demand, the cost of all repairs to public property made necessary by any operations of the Franchisee under this Franchise.

- (c) Tunneling and Boring. Where it is necessary to lay any underground pipes through, under or across any portion of a paved or macadamized street, the same, shall be done by a tunnel or bore, so as not to disturb the foundation of such paved or macadamized street.
- (d) Street Coverings. All street coverings or openings of traps, vaults, and manholes shall be constructed flush with the surface of the streets; provided, however, that vents for underground traps, vaults and manholes may extend above the surface of the streets if such vents are located in parkways, between the curb and the property line, and are not, in the reasonable opinion of the Director, hazardous to the public.
- (e) Permits. Franchisee shall not perform any work under this Franchise without first obtaining a permit from the Director; provided that in cases of emergencies affecting the public health and safety or the preservation of life and property, Franchisee shall apply for such permits no later than the next business day.
- (f) Plans and Specifications. The Director shall have the right to give the Franchisee such directions for the location of any Pipes and Appurtenances as may be reasonably necessary to avoid sewers, natural gas pipes, conduits or other structures lawfully in or under the streets; and prior to any work commenced by Franchisee, the Franchisee shall file with the Director plans and

specifications showing the location and work thereof. In addition, Pipes and Appurtenances shall be designed and constructed in accordance with all flow standards for fire protection purposes prescribed by the Orange County Fire Authority and fire hydrants shall be attached to the distribution system at the locations designated by the Orange County Fire Authority.

The Director shall have the right to review Franchisee's plans and specifications for the construction of any Pipes and Appurtenances for proper purposes, and, if, and to the extent permitted by the California Constitution and the rules, regulations, orders and decisions of the CPUC, approve such plans and specifications.

- (g) Bonds. Franchisee shall make such deposits of money or file such bonds at request of the County, with the County as may be required to ensure satisfaction and completion of any work under this Franchise.
- (h) Hazardous Waste. In the event of a release of hazardous waste, as that term is defined in Section 1004(3) of the Resource Conservation and Recovery Act (RCRA) (42 USC § 6903(5)), by Franchisee or from any Pipes and Appurtenances, Franchisee shall immediately notify County, begin remedial work and pay for all related remedial costs incurred by Franchisee and County.

IX. RELOCATION, ABANDONMENT & REMOVAL

- (a) Relocation. Franchisee shall, at the request of the County and Franchisee's sole cost and expense, remove or relocate any Pipes and Appurtenances installed, used or maintained under this Franchise if and when made necessary by the lawful change in grade, alignment or width of any street, including the construction of any subway or viaduct by the County, or any other street improvement of any kind required by the County, the Orange County Development Agency, the Orange County Flood Control District or other legal entity of the County. Franchisee shall remove or relocate its Pipes and Appurtenances to the nearest alternative location as reasonably established by the Director, and within such time as the Director establishes. If Franchisee fails to relocate its Pipes and Appurtenances within the required time, the County may cause the work to be done and shall keep an itemized account of the entire cost thereof, and Franchisee shall reimburse the County other public entity for its costs within ninety (90) days of Franchisee's receipt of the itemized account of costs. The County may consider Franchisee in default of this Franchise should Franchisee fail to comply with the notice, timing or direction to relocate its Pipes and Appurtenances.
- (b) Abandonment & Removal. Franchisee shall notify the County within thirty (30) days prior to any determination made by Franchisee to abandon the use of any Pipes and Appurtenances of its intent either to abandon the Pipes and Appurtenances in place, or remove all or a portion of the Pipes and Appurtenances. The Franchisee may thereafter abandon or remove the Pipes and Appurtenances in accordance with such terms and conditions consistent with the standards imposed by the California State Fire Marshal under the California Pipeline Safety Act, or those that are applicable under Federal law as they relate to the abandonment of interstate pipelines.

X. MAPS AND PLANS

- (a) Provision of Maps and Plans. County and the Orange County Flood Control District regularly perform improvement projects whereby facility maps and plans of Franchisee's Pipes and Appurtenances are needed to properly design and construct the project. Upon written request by the County or the Orange County Flood Control District, Franchisee shall, within thirty (30) days of the receipt of said request, send a copy of the facility maps and plans for its Pipes and Appurtenances within the project area. Franchisee shall provide said information in an electronic format (or by mail if the electronic format is not available) at no charge. In lieu of filing a map or maps as set forth in this section, a grantee may satisfy the requirements of this section by filing maps with the Pipeline and Hazardous Materials Safety Administration National Pipeline Mapping System. If a grantee's maps are so filed, the grantee shall allow the County staff to inspect the maps at grantee's facilities.
- (b) Content of Maps and Plans. The Franchisee's maps and plans shall include, but not be limited to, information indicating the length of the Franchisee's main lines, the nominal external diameter of such mainlines and the points where they enter and exit the Streets; old main lines abandoned in place, including the internal diameter of such main lines laid, removed, and/or abandoned in place; the footage of new conduits laid for wires, cables, telegraph, or telephone lines, old conduits removed, old conduits abandoned in place; and the diameter of such conduits laid, removed, and/or abandoned in place.
- (c) Potholing. Upon County written notice, and in accordance with the County's schedule for a County improvement project, Franchisee shall determine horizontal and vertical location of its Pipes and Appurtenances and provide such information to County for County design purposes.
- (d) Map Supplements. Within ninety (90) days following the installation, change, removal or abandonment of any Pipes and Appurtenances in accordance with Sections VII and VIII, above, Franchisee shall file a map or maps showing the accurate location and size of the Pipes and Appurtenances installed, changed, removed or abandoned, unless such Maps are filed per Section (a), above.
- (e) Emergency Response Plans. Franchisee shall at all times during the term of this Franchise maintain emergency response plans as required by regulatory agencies having jurisdiction.

XI. PERFORMANCE BOND

Within thirty (30) days after the adoption of this Franchise, Franchisee shall provide to the Director a faithful performance bond in the sum of not less than **\$50,000** payable to the County executed by a corporate surety licensed to transact business as a surety in the State of California. Such bond shall be condition upon the faithful performance by the Grantee of the terms and conditions of this Franchise and shall provide that, in the case of any material breach of any condition of this Franchise, the penal sum therein shall be recoverable.

XII. TRANSFER

This Franchise shall not be revised, sold, leased, assigned or otherwise alienated, without the mutual express written consent of the County and the Franchisee, which shall not be unreasonably withheld by either party.

XIII. INDEMNIFICATION

Franchisee agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the County of Orange Board of Supervisors acts as the governing Board (“County Indemnitees”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to grantee’s acts and/or omissions with respect to its operations under this Franchise. If judgment is entered against Franchisee and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Franchisee and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

XIV. EMINENT DOMAIN

- (a) The Franchise granted hereunder shall not in any way or to any extent impair or affect the right of the County to acquire the property of the Franchisee 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 to abridge the County’s right of eminent domain in respect to the Franchisee.
- (b) This Franchise shall not be given any value before any court or other public authority in any proceeding of any character in excess of the cost to the Franchisee of the necessary publication and any other sum paid by it to the County therefor at the time of the acquisition thereof.

XV. REMEDIES

If the Franchisee shall fail, neglect or refuse to comply with any of the provisions or conditions of this Franchise, and shall not, within ten (10) days 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 County, may declare this Franchise forfeited as provided herein, and the County may thereafter sue in its own name for the forfeiture of this Franchise.

XVI. NOTICES

All notices, requests and demands hereunder must be in writing to be effective. All notices required to be given hereunder or by operation of law in connection with the performance or enforcement hereof shall be deemed given upon delivery if delivered personally (which includes notices delivered by messenger or overnight courier) or, if delivered by mail, shall be deemed given three days after being deposited by first class mail in any duly authorized United States mail depository, postage prepaid. All such notices shall be addressed as follows, or to such other address or addresses as the Parties may from time to time specify in writing:

COUNTY:	County of Orange OC Public Works 300 N. Flower St. PO Box 4048 Santa Ana, CA 92702-4048 Attn: Larry Stansifer, Manager, Administrative Services/Business Services
SFPP, L.P.:	Kinder Morgan 1100 Town and Country Road Orange, CA 92868 Attn: Jeff Reynolds, Manager, Right of Way

XVII. INDEPENDENT CONTRACTOR

Nothing herein contained shall be deemed to create an agency, joint venture, or partnership between the County and Franchisee.

XVIII. ENTIRE AGREEMENT

This Franchise constitutes the entire agreement between the Parties hereto and supersedes any and all prior agreements, whether oral or written, relating to the subject matter of the Franchise. Any modification of this Franchise will be effective only if it is in writing executed by County and Franchisee.

XIX. GOVERNING LAW AND VENUE

The Franchisee and County understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the Parties to this Franchise and also govern the interpretation of this Franchise. In the event of any legal action to enforce or interpret this Franchise, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the County and Franchisee agree to and to hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

XX. CONSENT TO BREACH NOT WAIVER

No term or provision of this Agreement shall be deemed waived and no breach excused, unless such a waiver or consent shall be in writing and signed by the County and Franchisee claimed to have waived or consented. Any consent by the County and Franchisee to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

XXI. CALENDAR DAYS

Any reference to the word “day” or “days” shall mean calendar day or calendar days respectively, unless otherwise expressly provided.

XXII. ATTORNEY’S FEES

In any action or proceeding to enforce or interpret any provision of this Franchise or where any provisions hereof is validly asserted as a defense, County and Franchisee shall bear their own attorney’s fees, costs and expenses.

XXIII. INTERPRETATION

This Franchise has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Franchise. In addition, County and Franchisee have been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Franchise by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law, (including California Civil Code section 1654) or legal decision that would require interpretation of any ambiguities in this Franchise against the Party that drafted it is not applicable and it deemed waived.

The provisions of this Franchise shall be interpreted in a reasonable manner to affect the purpose of the Parties to this Agreement.

XXIV. SEVERABILITY

If any term, condition, provision or article of this Franchise is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

XXV. AUTHORITY TO EXECUTE THIS AGREEMENT

County and Franchisee represent and warrant that this Franchise has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

XXVI. CONDITIONS OF EFFECTIVENESS

This ordinance shall take effect and be in full force thirty (30) days from and after its adoption and, before the expiration of fifteen (15) days after the passage thereof, provided that Franchisee has filed written acceptance thereof as provided in Section III (a). The County Clerk shall certify to the adoption of this ordinance and shall cause the same to be published as required by law.

ORDINANCE NO. _____

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GRANTING TO SFPP, L.P., A DELAWARE LIMITED PARTNERSHIP, A FRANCHISE FOR
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~~The Board of Supervisors of the County of Orange ordains as follows:~~

I. RECITALS

- (a) On August 25, 2015, the Board of Supervisors of the County of Orange adopted its Resolution No. 15-088 setting forth said Board's intention to grant a new franchise, to replace franchise Ordinance No. 1505, which expired August 7, 2002, under and pursuant to the provisions of Article 1 of Chapter 2 of Division 3 of the California Public Utilities Code, commencing at Section 6201, for certain purposes.
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III. DEFINITIONS

Whenever in this Ordinance the words or phrases set forth in this section are used, they shall have the respective meanings ascribed to them in the following definition (unless, in the given instance, the context wherein said words or phrases are used shall clearly import a different meaning):

- (a) "Act" means the Franchise Act of 1937 set forth in Public Utilities Code sections 6201-6302, as it may be amended from time to time.
- (b) "County" means the County of Orange, a political subdivision of the State of California.
- (c) "Code" means the California Public Utilities Code.
- (d) "CPUC" means the California Public Utilities Commission.
- (e) "Director" means the Director of OC Public Works or his or her designee, or the Director of the County agency charged with the administration of this franchise ordinance.

- (f) "Franchise" means the rights granted to Franchisee hereunder pursuant to County's police power and applicable provisions of the Franchise Act of 1937, and any revisions thereto.
- (g) "Franchisee" means SFPP, L.P., a Delaware Limited Partnership.
- (h) "Lay and Use" means to lay, construct, erect, install, operate, maintain, use repair, replace or remove.
- (i) "Pipes and Appurtenances" means pipe, pipelines, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, ditch, flume, appliance, attachment and other appurtenances located or to be located in, upon, along, across or under the streets of the unincorporated area of the County, and used in transmitting and distributing refined petroleum products.
- (j) "Streets" means the public streets, ways and alleys as the same now or may hereafter exist within the unincorporated area of the County.
- (k) "Work" means any and all construction, installation, repair, maintenance, removal or relocation of any Pipes and Appurtenances or other improvements performed under this Franchise.

IV. GRANT AND TERM OF FRANCHISE; EXPIRATION; HOLDING OVER; NON-EXCLUSIVITY

- (a) Grant of Franchise. The right, privilege and franchise is hereby granted to Franchisee to use the Streets for transmitting and distributing refined petroleum products for any and all lawful purposes, including the right to Lay and Use all Pipes and Appurtenances.
- (b) Franchise Term. The term of this Franchise shall be for a period of ten (10) years beginning on the day of written acceptance in accordance with Section III below. This Franchise shall expire prior to the end of the term if (i) Franchisee voluntarily surrenders or abandons the Franchise; (ii) the State of California or any municipal or public corporation duly authorized by law purchases by voluntary agreement or condemns and takes under the power of eminent domain all property used in the exercise of this Franchise and located within its territorial limits; or (iii) the Franchise is forfeited for noncompliance with its terms by Franchisee.
- (c) Expiration. If Franchisee continues to operate its Pipes and Appurtenances upon expiration of this Franchise, then such holding over shall constitute a renewal of this Franchise on a quarterly basis, with the Franchise Fee during the holdover period to be paid in accordance with Section IV of this Franchise. Either Party shall be entitled to terminate such holdover status upon one hundred twenty (120) days prior written notice to the other party.
- (d) Non-Exclusivity. The granting of this Franchise shall not be construed to prevent the County from granting any identical or similar franchise to any entity other than Franchisee, so long as said grant does not unreasonably interfere with the rights granted to Grantee hereunder.

~~III~~. IV. FRANCHISE ACCEPTANCE

- (a) No later than thirty (30) days after the passage of this ordinance, the Franchisee shall file with the County Clerk a written acceptance of the Franchise hereby granted, and an agreement to comply with the terms and conditions hereof.
- (b) When so filed the acceptance constitutes a continuing agreement by the Franchisee that if and when the granting municipality thereafter annexes, or consolidates with, additional territory, all franchises, rights and privileges held by the Franchisee therein, except a franchise derived under Section 19 of Article XI of the Constitution as that section existed prior to the amendment thereof adopted October 10, 1911, shall be deemed abandoned within the limits of the additional territory.

~~IV~~. V. FRANCHISE FEE AND COSTS

- (a) Franchise Fee. Franchisee shall, during the term of the Franchise, pay to County, a sum as specified in Section 6231.5 of the California Public Utilities Code. Specifically, the franchisee will pay to the County an annual fee based upon the length of pipe expressed in feet located within the franchised area which shall be multiplied by the applicable base rate and adjusted by the Consumer Price Index for the area.
- (b) Publication. Franchisee shall also pay to County a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of this Franchise, such payment to be made within thirty (30) days after the County furnishes Franchisee with a written statement of such expenses.
- (c) Administration. Franchisee acknowledges that it has paid County a one-time administrative cost in connection with the negotiation of this Franchise in the amount of \$7,000.00.

~~V~~. VI. VERIFIED STATEMENT ~~OF GROSS RECEIPTS~~; PAYMENT OF FRANCHISE FEE; AUDIT

- (a) Verified Statement. Franchisee shall file with the County Auditor-Controller, within three (3) months after expiration of the calendar year, or fractional calendar year, following the entry into force of this Franchise, and within three (3) months after the expiration of each and every calendar year thereafter, a statement verified by an officer of Franchisee showing in detail the following:
 - (1) The method and supporting calculations used to calculate the franchise fees which are payable to the County in accordance with this Franchise;
 - (2) Any change in the footage or internal diameter of pipelines, segregating such footage as to new pipelines laid or acquired during the preceding calendar year, pipelines in territory that was annexed or incorporated during the preceding calendar year and pipelines removed or abandoned in place during the preceding calendar year;

- (3) The permit number of each permit obtained during the year with respect to operations under this Franchise; and
 - (4) If cathodic protection is used for pipes or appurtenances installed or maintained pursuant to this Franchise, the location and types of anodes, including a description of the methods used as a protection against corrosion and electrolyte leakage.
- (b) Payment of Franchise Fee. By delivery to the County Clerk, Franchisee shall pay to the County within fifteen (15) days after the time for filing such statement, in lawful money of the United States, the aforesaid Franchise Fee, or such fractional calendar year, covered by such statement. Any neglect, omission or refusal by Franchisee to file such verified statement, or to pay said percentage at the time and in the manner specified in this agreement, shall be grounds for the declaration of a forfeiture of this Franchise and of all rights of Franchisee hereunder.
- (c) Delinquency. Franchise Fee due from Franchisee is delinquent if not received by the County Auditor-Controller on or before the due date during normal business hours. Should the due date occur on a weekend or holiday, the Franchise Fee must be received by the Auditor-Controller during the business hours of the first regular working day following the weekend or holiday. If Franchisee fails to remit the Franchise Fee on or before the due date, Franchisee shall pay interest at the rate of one percent (1%) per month of any fraction thereof on the amount of the Fee from the date on which the fee first became delinquent, until paid.
- (d) Audit. The County shall have the right to audit the books and records of Franchisee relating to the calculation of the franchise fee at the office of Franchisee in which such records are kept upon reasonable notice during normal business hours solely for the purpose of verifying the calculation of the franchise fee. County shall, to the extent permitted by applicable law, maintain the confidentiality of all information provided by Franchisee to County in connection with such audit that Franchisee has informed County is confidential. Nothing herein shall be construed to require Franchisee to make available information which constitutes private or confidential information pertaining to specific customers of Franchisee, without the prior written consent of such customers. All books and records of Franchisee relating to the calculation of the franchise fee for any calendar year shall be maintained by Grantee for a period of at least four (4) years following delivery of the verified statement for such year pursuant to Section V (a).

VI.VII. INSURANCE

- (a) Prior to the provision of services under this Franchise, Franchisee agrees to purchase all required insurance at Franchisee's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all subcontractors performing work on behalf of Franchisee pursuant to this contract shall obtain insurance subject to the same terms and conditions as set forth herein for Franchisee.

- (b) All self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance. If no deductibles or SIRs apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. Franchisee shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance. Upon notice of any actual or alleged claim or loss arising out of subcontractor's work hereunder, subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the contractor and additional insureds.

If the Franchisee fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.

- (c) Qualified Insurer. The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's key Rating Guide/Property-Casualty/United States or ambest.com.

If the insurance carrier is not an admitted carrier in the state of California and does not have an A.M. Best rating of A-/VIII, the CEO/Office of Risk management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$5,000,000 per occurrence \$10,000,000 aggregate
Automobile Liability including coverage for owned, non-owned, and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Environmental/Pollution Liability (Optional coverage to be required when hazardous materials are involved.)	\$1,000,000 per claims made or occurrence

- (d) Required Coverage Forms. The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad. The limits of insurance can be satisfied with a primary and an excess/umbrella policy.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

- (e) Required Endorsements. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:
- (1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
 - (2) A primary non-contributing endorsement evidencing that the Franchisee's insurance is primary and any insurance maintained by the County of Orange shall be excess and non-contributing.
 - (3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO form CG2010 (ed. 11/85).
 - (4) The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, employees and agents.
- (f) All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

All insurance policies required by this contract shall give the County of Orange thirty (30) days notice in the event of cancellation and (ten) 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

~~VII.~~VIII. CONSTRUCTION AND INSTALLATION

- (a) Construction Standards. Franchisee shall construct, install, maintain and repair all Pipes and Appurtenances in accordance with all applicable federal, state and local laws, rules or regulations theretofore, or hereafter adopted by the County in the exercise of its police powers, and in accordance with the terms and conditions of any permit issued by a County department or agency, and not in conflict with the paramount authority of the State of California, including the Code and the rules, regulations, orders and decisions of the CPUC, and, as to State highways, subject to the provisions of general laws relating to the location and maintenance of such facilities.
- (b) Use of Streets. Any work performed under the authority of this Franchise shall be done with the least possible hindrance to the use of the Streets for the purposes of travel. As soon as such Work is completed, all portions of the Streets that have been excavated or damaged thereby, shall be placed in as good condition as the same were before the commencement of such Work to the satisfaction of the Director. In the event that Franchisee fails or neglects to make such Street repair, replacement or restoration work, then thirty (30) days after written notice therefore has been given by the Director to the Franchisee, County may perform such Work at Franchisee's cost. Franchisee shall reimburse the County for all such costs within thirty (30) days of written invoice, plus the current rate of overhead charged by the County for all reimbursable work.

Franchisee shall pay to the County, on demand, the cost of all repairs to public property made necessary by any operations of the Franchisee under this Franchise.
- (c) Tunneling and Boring. Where it is necessary to lay any underground pipes through, under or across any portion of a paved or macadamized street, the same, shall be done by a tunnel or bore, so as not to disturb the foundation of such paved or macadamized street.
- (d) Street Coverings. All street coverings or openings of traps, vaults, and manholes shall be constructed flush with the surface of the streets; provided, however, that vents for underground traps, vaults and manholes may extend above the surface of the streets if such vents are located in parkways, between the curb and the property line, and are not, in the reasonable opinion of the Director, hazardous to the public.
- (e) Permits. Franchisee shall not perform any work under this Franchise without first obtaining a permit from the Director; provided that in cases of emergencies affecting the public health and safety or the preservation of life and property, Franchisee shall apply for such permits no later than the next business day.
- (f) Plans and Specifications. The Director shall have the right to give the Franchisee such directions for the location of any Pipes and Appurtenances as may be reasonably necessary to avoid sewers, natural gas pipes, conduits or other structures lawfully in or under the streets; and prior to any work commenced by Franchisee, the Franchisee shall file with the Director plans and

specifications showing the location and work thereof. In addition, Pipes and Appurtenances shall be designed and constructed in accordance with all flow standards for fire protection purposes prescribed by the Orange County Fire Authority and fire hydrants shall be attached to the distribution system at the locations designated by the Orange County Fire Authority.

The Director shall have the right to review Franchisee's plans and specifications for the construction of any Pipes and Appurtenances for proper purposes, and, if, and to the extent permitted by the California Constitution and the rules, regulations, orders and decisions of the CPUC, approve such plans and specifications.

- (g) Bonds. Franchisee shall make such deposits of money or file such bonds at request of the County, with the County as may be required to ensure satisfaction and completion of any work under this Franchise.
- (h) Hazardous Waste. In the event of a release of hazardous waste, as that term is defined in Section 1004(3) of the Resource Conservation and Recovery Act (RCRA) (42 USC § 6903(5)), by Franchisee or from any Pipes and Appurtenances, Franchisee shall immediately notify County, begin remedial work and pay for all related remedial costs incurred by Franchisee and County.

~~VIII~~.IX. RELOCATION, ABANDONMENT & REMOVAL

- (a) Relocation. Franchisee shall, at the request of the County and Franchisee's sole cost and expense, remove or relocate any Pipes and Appurtenances installed, used or maintained under this Franchise if and when made necessary by the lawful change in grade, alignment or width of any street, including the construction of any subway or viaduct by the County, or any other street improvement of any kind required by the County, the Orange County Development Agency, the Orange County Flood Control District or other legal entity of the County. Franchisee shall remove or relocate its Pipes and Appurtenances to the nearest alternative location as reasonably established by the Director, and within such time as the Director establishes. If Franchisee fails to relocate its Pipes and Appurtenances within the required time, the County may cause the work to be done and shall keep an itemized account of the entire cost thereof, and Franchisee shall reimburse the County other public entity for its costs within ninety (90) days of Franchisee's receipt of the itemized account of costs. The County may consider Franchisee in default of this Franchise should Franchisee fail to comply with the notice, timing or direction to relocate its Pipes and Appurtenances.
- (b) Abandonment & Removal. Franchisee shall notify the County within thirty (30) days prior to any determination made by Franchisee to abandon the use of any Pipes and Appurtenances of its intent either to abandon the Pipes and Appurtenances in place, or remove all or a portion of the Pipes and Appurtenances. The Franchisee may thereafter abandon or remove the Pipes and Appurtenances in accordance with such terms and conditions consistent with the standards imposed by the California State Fire Marshal under the California Pipeline Safety Act, or those that are applicable under Federal law as they relate to the abandonment of interstate pipelines.

~~IX~~.X. MAPS AND PLANS

- (a) Provision of Maps and Plans. County and the Orange County Flood Control District regularly perform improvement projects whereby facility maps and plans of Franchisee's Pipes and Appurtenances are needed to properly design and construct the project. Upon written request by the County or the Orange County Flood Control District, Franchisee shall, within thirty (30) days of the receipt of said request, send a copy of the facility maps and plans for its Pipes and Appurtenances within the project area. Franchisee shall provide said information in an electronic format (or by mail if the electronic format is not available) at no charge. In lieu of filing a map or maps as set forth in this section, a grantee may satisfy the requirements of this section by filing maps with the Pipeline and Hazardous Materials Safety Administration National Pipeline Mapping System. If a grantee's maps are so filed, the grantee shall allow the County staff to inspect the maps at grantee's facilities.
- (b) Content of Maps and Plans. The Franchisee's maps and plans shall include, but not be limited to, information indicating the length of the Franchisee's main lines, the nominal external diameter of such mainlines and the points where they enter and exit the Streets; old main lines abandoned in place, including the internal diameter of such main lines laid, removed, and/or abandoned in place; the footage of new conduits laid for wires, cables, telegraph, or telephone lines, old conduits removed, old conduits abandoned in place; and the diameter of such conduits laid, removed, and/or abandoned in place.
- (c) Potholing. Upon County written notice, and in accordance with the County's schedule for a County improvement project, Franchisee shall determine horizontal and vertical location of its Pipes and Appurtenances and provide such information to County for County design purposes.
- (d) Map Supplements. Within ninety (90) days following the installation, change, removal or abandonment of any Pipes and Appurtenances in accordance with Sections VII and VIII, above, Franchisee shall file a map or maps showing the accurate location and size of the Pipes and Appurtenances installed, changed, removed or abandoned, unless such Maps are filed per Section (a), above.
- (e) Emergency Response Plans. Franchisee shall at all times during the term of this Franchise maintain emergency response plans as required by regulatory agencies having jurisdiction.

~~X~~.XI. PERFORMANCE BOND

Within thirty (30) days after the adoption of this Franchise, Franchisee shall provide to the Director a faithful performance bond in the sum of not less than \$50,000 payable to the County executed by a corporate surety licensed to transact business as a surety in the State of California. Such bond shall be condition upon the faithful performance by the Grantee of the terms and conditions of this Franchise and shall provide that, in the case of any material breach of any condition of this Franchise, the penal sum therein shall be recoverable.

~~X~~.XII. TRANSFER

This Franchise shall not be revised, sold, leased, assigned or otherwise alienated, without the mutual express written consent of the County and the Franchisee, which shall not be unreasonably withheld by either party.

~~XIII~~.XIII. INDEMNIFICATION

Franchisee agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the County of Orange Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to grantee's acts and/or omissions with respect to its operations under this Franchise. If judgment is entered against Franchisee and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Franchisee and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

~~XIII~~.XIV. EMINENT DOMAIN

- (a) The Franchise granted hereunder shall not in any way or to any extent impair or affect the right of the County to acquire the property of the Franchisee 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 to abridge the County's right of eminent domain in respect to the Franchisee.
- (b) This Franchise shall not be given any value before any court or other public authority in any proceeding of any character in excess of the cost to the Franchisee of the necessary publication and any other sum paid by it to the County therefor at the time of the acquisition thereof.

~~XIV~~.XV. REMEDIES

If the Franchisee shall fail, neglect or refuse to comply with any of the provisions or conditions of this Franchise, and shall not, within ten (10) days 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 County, may declare this Franchise forfeited as provided herein, and the County may thereafter sue in its own name for the forfeiture of this Franchise.

~~XV.~~XVI. NOTICES

All notices, requests and demands hereunder must be in writing to be effective. All notices required to be given hereunder or by operation of law in connection with the performance or enforcement hereof shall be deemed given upon delivery if delivered personally (which includes notices delivered by messenger or overnight courier) or, if delivered by mail, shall be deemed given three days after being deposited by first class mail in any duly authorized United States mail depository, postage prepaid. All such notices shall be addressed as follows, or to such other address or addresses as the Parties may from time to time specify in writing:

COUNTY: County of Orange
OC Public Works
~~300 N. Flower St.~~
PO Box 4048
Santa Ana, CA 92702-4048
Attn: Larry Stansifer, Manager, Administrative Services/Business Services

SFPP, L.P.: Kinder Morgan
1100 Town and Country Road
Orange, CA 92868
Attn: Jeff Reynolds, Manager, Right of Way

~~XVI. CONDITIONS OF EFFECTIVENESS~~

~~This ordinance shall take effect thirty (30) days after its adoption, provided that Franchisee has filed written acceptance thereof as provided in Section III (a). The County Clerk shall certify to the adoption of this ordinance and shall cause the same to be published as required by law.~~

XVII. INDEPENDENT CONTRACTOR

Nothing herein contained shall be deemed to create an agency, joint venture, or partnership between the County and Franchisee.

XVIII. ENTIRE AGREEMENT

This Franchise constitutes the entire agreement between the Parties hereto and supersedes any and all prior agreements, whether oral or written, relating to the subject matter of the Franchise. Any modification of this Franchise will be effective only if it is in writing executed by County and Franchisee.

XIX. GOVERNING LAW AND VENUE

The Franchisee and County understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the Parties to this Franchise and also govern the interpretation of this Franchise. In the event of any legal action to enforce or interpret this Franchise, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the County and Franchisee agree to and to hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

XX. CONSENT TO BREACH NOT WAIVER

No term or provision of this Agreement shall be deemed waived and no breach excused, unless such a waiver or consent shall be in writing and signed by the County and Franchisee claimed to have waived or consented. Any consent by the County and Franchisee to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

XXI. CALENDAR DAYS

Any reference to the word “day” or “days” shall mean calendar day or calendar days respectively, unless otherwise expressly provided.

XXII. ATTORNEY’S FEES

In any action or proceeding to enforce or interpret any provision of this Franchise or where any provisions hereof is validly asserted as a defense, County and Franchisee shall bear their own attorney’s fees, costs and expenses.

XXIII. INTERPRETATION

This Franchise has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Franchise. In addition, County and Franchisee have been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Franchise by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law, (including California Civil Code section 1654) or legal decision that would require interpretation of any ambiguities in this Franchise against the Party that drafted it is not applicable and it deemed waived.

The provisions of this Franchise shall be interpreted in a reasonable manner to affect the purpose of the Parties to this Agreement.

XXIV. COUNTERPARTS

~~This agreement may be executed in two (2) or more counterparts, and each such counterpart shall be deemed to be an original.~~

~~XXV.~~XXIV. SEVERABILITY

If any term, condition, provision or article of this Franchise is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

~~XXVI.~~XXV. AUTHORITY TO EXECUTE THIS AGREEMENT

County and Franchisee represent and warrant that this Franchise has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

XXVI. CONDITIONS OF EFFECTIVENESS

~~This ordinance shall take effect thirty (30) days after its adoption, provided that Franchisee has filed written acceptance thereof as provided in Section III (a). The County Clerk shall certify to the adoption of this ordinance and shall cause the same to be published as required by law.~~

~~IN WITNESS WHEREOF~~, the Parties hereto have caused their duly authorized representatives to execute this AGREEMENT in counterparts as of the day first written above and each such counterpart shall be deemed original.

~~County of Orange, a political subdivision of the
State of California~~

Date: _____

By: _____

Chairman of the Board of Supervisors
County of Orange, California

~~SIGNED AND CERTIFIED THAT A COPY OF
THIS AGREEMENT HAS BEEN DELIVERED
TO THE CHAIR OF THE BOARD PER G.C.
SEC. 25103, RESO 79-1535~~

~~Attest:~~

Date: _____

Robin Stieler
Interim Clerk of the Board
County of Orange, California

Approved as to Form:
Office of the County Counsel
County of Orange, California

Date: _____

By: _____

Ryan M. F. Baron
Senior Deputy

~~IN WITNESS WHEREOF~~, the Parties hereto have caused their duly authorized representatives to execute this AGREEMENT in counterparts as of the day first written above and each such counterpart shall be deemed original.

SFPP, L.P., a Delaware limited partnership

Date: _____

By: _____
_____~~Kinder Morgan Operating L.P. "D"~~

~~Its General Partner:~~

Date: _____

By: _____
_____~~Kinder Morgan G.P., Inc.~~

~~Its General Partner:~~

Date: _____

By: _____
_____~~Kinder Morgan Management, LLC~~