

## ORDINANCE NO. 18-2015

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE GRANTING TO SFPP, L.P., A DELAWARE LIMITED PARTNERSHIP, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE PIPELINES AND OTHER FACILITIES FOR THE TRANSPORTATION OF REFINED PETROLEUM PRODUCTS FOR ANY AND ALL PURPOSES IN, ALONG, ACROSS, UPON AND UNDER THE PUBLIC STREETS, WAYS, ALLEYS AND PLACES WITHIN THE CITY OF ELK GROVE

**WHEREAS**, prior to City incorporation, Sacramento County Ordinance No. 561 granted Southern Pacific Pipe Lines (currently SFPP, LP) a franchise to operate a pipeline within the County; and

**WHEREAS**, the County Ordinance expired on April 8th, 2007; however, the pipeline remains within City limits, County continues to collect fees associated with the Ordinance, and the County continues to transfer the fees to the City for the pipeline within the City limits; and

**WHEREAS**, consideration of the new ordinance is exempt from the California Environmental Quality Act (CEQA) because general policy and procedure making of this nature does not constitute the approval of a "project" that is subject to environmental review (CEQA Guidelines Sections 15060(c)(2), (3), 15378(b)(2)); and

**WHEREAS**, a new City Ordinance will require payment to the City directly and establish legal obligations directly with the City.

**NOW, THEREFORE**, the City Council of the City of Elk Grove does hereby ordain as follows:

**SECTION 1. DEFINITIONS:** For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number.

a. "Applicable Law" shall mean all present or future federal, state, municipal, or local laws, rules, regulations, ordinances, codes, orders, permit requirements, judgments, injunctions, or decrees, or any judgment or order or decree by a court applicable to the Franchisee or any of Franchisee's Facilities or activities.

b. "City" shall mean the City of Elk Grove, California.

c. "City Clerk" shall mean the City Clerk of the City of Elk Grove, California.

d. "City Property" shall mean the property or facilities owned by the City of Elk Grove or property owned by any of the City's affiliated agencies.

e. "Code" shall mean the Municipal Code of the City of Elk Grove, California.

f. "Council" shall mean the City Council of the City of Elk Grove, California.

g. "Day" shall mean calendar day unless otherwise provided.

h. "Facility" or "Facilities" shall mean all property owned or used by the Franchisee in connection with the franchise, including, but not limited to, traps, manholes, conduits, valves, appliances, attachment, pipelines pump stations, and service connections with the Franchisee's Facilities, whether installed by the Franchisee or not, erected, constructed, laid, operated or maintained in, upon, over, under, along or across any Street pursuant to any right or privilege granted by the franchise.

i. "Franchisee" shall mean the entity to which the franchise contemplated in this ordinance is granted and its lawful successors or assigns.

j. "Ordinance" shall mean this Ordinance granting a franchise to SFPP, L.P. unless some other ordinance is mentioned.

k. "Person" shall mean any individual, person, firm, partnership or corporation.

l. "City Engineer" shall mean the City Engineer of the City of Elk Grove, California.

m. "Street" shall mean any public street, road, highway, alley, lane, court, right-of-way, place or other public easement, which now exists or may hereafter exist in the City of Elk Grove and in which the City has the authority to grant a franchise.

**SECTION 2. GRANT OF FRANCHISE:** By this Ordinance, the City Council hereby grants a franchise to SFPP, L.P., a Delaware limited partnership, to construct, use, maintain, operate, repair and replace pipelines for the transportation of refined petroleum products, and other liquid and gaseous substances which are not more hazardous than petroleum, together with Facilities necessary or convenient for the operation of said pipes or pipelines including conduits, cathodic protection devices, wires, cables and other appurtenances necessary or convenient for SFPP, L.P. in, along, across, upon and under the Streets within the City of Elk Grove, California.

**SECTION 3. ACCEPTANCE OF FRANCHISE:** The Franchisee shall, within thirty (30) days after the passage of this Ordinance, file with the City Clerk of the City of Elk Grove a written acceptance of the terms and conditions of said Ordinance. The franchise shall be null and void if the written acceptance is not filed within the prescribed time. The person or persons filing written acceptance of this agreement on behalf of the Franchisee warrant and represent that they have the authority to execute this agreement on behalf of their company and further warrant and represent that they have the authority to bind Franchisee to the performance of its obligations hereunder.

**SECTION 4. TERM:** The term of the franchise shall be twenty-five (25) years from the effective date of this Ordinance.

SECTION 5. CHANGE IN STATUS: If the Franchisee no longer qualifies before the Public Utilities Commission of the State of California as a common carrier, the Franchisee shall then have no right to continue to operate hereunder after the date of such disqualification, except with the consent of the Council granted upon such additional terms and conditions as the Council may deem proper. Such additional terms and conditions shall be expressed by ordinance.

SECTION 6. FORFEITURE: The franchise is granted and shall be held and enjoyed upon each and every condition contained in this Ordinance and shall be strictly construed against the Franchisee. The franchise shall grant only those rights that are stated in plain and unambiguous terms. Failure or refusal to comply with any of the conditions of the franchise, including the failure to comply with all Applicable Law, shall constitute grounds for the suspension or forfeiture of the franchise. The Council, prior to any suspension or forfeiture of the franchise shall give to the Franchisee not less than thirty (30) days' notice in writing of any default thereunder. If the Franchisee does not, within the noticed period, begin the work of compliance or after such beginning does not prosecute the work with due diligence to completion, the Council may hold a hearing, at which the Franchisee shall have the right to appear and be heard, and thereupon the Council may determine, in its reasonable discretion, whether such conditions are material and essential to the franchise and whether the Franchisee is in default with respect thereto and may declare the franchise suspended or forfeited. Notice of said hearing shall be given to the Franchisee by certified mail not less than ten (10) days before said hearing. If necessary the City may sue in its own name for the forfeiture of this franchise, in the event of noncompliance or breach of this franchise by the Franchisee, its successors or assigns, with any of the conditions thereof. The right of the City to revoke or terminate this franchise pursuant to the terms of this Section shall be in addition to all other rights and remedies which may otherwise accrue to the City by reason of any failure or refusal of the Franchisee to perform any obligation imposed by the terms of this franchise. Nothing in this section shall constitute, or be construed as a waiver of any defense Franchisee may have to an action by City to enforce and/seek forfeiture of this franchise.

SECTION 7. STATE HIGHWAYS: If any Street or portion thereof becomes a state highway, except for such rights as by law remain with the City, the state shall succeed to all rights reserved to the City by the franchise. This Section does not apply to any change of location in a state highway for a temporary purpose.

SECTION 8. EMINENT DOMAIN: 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 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 abridge, either for a term or in perpetuity, the City's or the Franchisee' rights of eminent domain before any court or other public authority in any proceeding of any character.

SECTION 9. ASSIGNMENT: Franchisee may not sell, lease, or transfer its pipelines or appurtenances located within the City without prior written notice to the City. Franchisee may not transfer or assign this franchise except by consent in writing of the City Council and unless the transferee or assignees thereof shall covenant and agree to perform and be bound by each and all of the terms and conditions imposed in the grant or by procedural ordinance and by the City of Elk Grove Municipal Code requirements.

SECTION 10. ABANDONMENT: In the event of the permanent discontinuance of the use of any pipeline, or portion thereof, maintained or operated pursuant to this franchise, Franchisee shall, within thirty (30) days thereafter, make written application to the City Engineer for instructions as to the abandonment or disposal to be made of the franchise property. Such application shall describe said property and shall be accompanied by a map designating its location with respect to street lines and pavements. City Engineer shall, within sixty (60) days of the receipt of such application, order the properties to be removed, or, upon request of the Franchisee, permit the properties to be abandoned in place; provided, however, that if City Engineer shall determine that such removal will materially injure or shorten the life of the remaining portion of the pavement, said properties shall be required to be abandoned in place.

When the abandonment of franchise properties shall be permitted or required pursuant to the provisions of the franchise, the pipelines, or portions thereof affected, shall be capped, plugged, removed or otherwise abandoned in such manner as may be prescribed by the City Engineer, consistent with state law. In the event of such abandonment, and after the completion of the required work, the City shall have the option, upon request of the City Engineer to Franchisee, upon terms and conditions mutually agreed upon between City and Franchisee, to have the ownership transferred to the City of all franchise facilities so abandoned in place as may be permitted or required by law.

All excavation work done pursuant to the provisions of this Section shall be to the City Engineer's reasonable satisfaction.

SECTION 11. INDEMNIFICATION: Franchisee shall indemnify and hold harmless the City, its officers, employees, consultants, and agents from any and all liability, loss, damage, cost, expense, and claim of any kind, including reasonable attorneys' and experts' fees incurred by the City in defense thereof, arising out of or related to, directly or indirectly, the installation, construction, operation, use, location, testing, repair, maintenance, or removal of Franchisee's pipeline(s) or appurtenant facilities (including actions by its agents, employees, subcontractors, or by anyone Franchisee directly or indirectly employs) or from the existence of Franchisee's pipeline and appurtenant facilities, including each and every applicable provision of Division 3, Chapter 2 of the Public Utilities Code of the State of California, unless such indemnification is specifically released by the City in writing in conjunction with an abandonment of the pipeline or appurtenant facility. Any legal counsel selected by Franchisee in defense or prosecution of legal matters identified in this agreement shall be mutually acceptable to Franchisee and to City and approved by the City Attorney in writing. The City's approval of such counsel will not be unreasonably withheld.

**SECTION 12. ENVIRONMENTAL INDEMNIFICATION:** Franchisee shall indemnify, defend and save the City harmless from and against any and all liability, loss, damage, expense, actions and claims, either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by the City in defense thereof, arising directly or indirectly from (1) Franchisee's breach of any environmental laws applicable to the pipeline, or (2) from any release of any hazardous substances attributable to the pipeline. This indemnity includes, but is not limited to, (i) liability for a governmental agency's cost of removal or remedial action for hazardous substances; (ii) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (iii) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws; and (iv) liability for personal injury or property damage arising under any statutory or common-law theory.

Franchisee's failure to comply with this section's provisions, after a thirty (30) day notice from Grantor to Franchisee to cure such failure, shall constitute a material breach upon which City may immediately terminate or suspend this franchise and seek damages.

Except as otherwise agreed to in writing by City and Franchisee, Franchisee's obligation to indemnify, defend and hold harmless as set forth in this section shall remain in effect and shall be binding upon Franchisee to the extent that such injury or damage accrues during the term of this franchise, but is discovered after termination of this franchise.

**SECTION 13. INSURANCE:** As part of the consideration of this agreement, Franchisee agrees to purchase and maintain or self-insure at its sole cost and expense during the life of this agreement insurance coverage as specified in A and B described below. All insurance coverage shall be placed with insurers that have a Best rating of no less than A-/ VII; and are admitted insurance companies in the State of California. All other insurers require prior approval of the City. Franchisee shall furnish the City certified copies and original endorsements effecting coverage for all policies required by this agreement by sending to the City's certificate processor at the address listed below. The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. The endorsements are to be on forms provided or approved by the City. The City may require the Franchisee to furnish complete certified copies of all insurance policies affecting the coverage required by this agreement.

**BY MAIL:**

Certificate Holder: The City of Elk Grove, California  
c/o EBIX BPO  
PO Box 257, Ref#(Zxxxxxxx)  
Portland, MI 48875-0257

**BY FAX:**

(517) 647-7900

**BY EMAIL:**

[certonly@periculum.com](mailto:certonly@periculum.com)

The insurance coverage limits identified below are the minimum requirements established at the beginning of the franchise term. The City retains the right to revise the minimum insurance coverage limits as reasonably determined by the City during the term of this agreement, provided however, that the City shall not revise the coverage limit more than once every five (5) years during the term of this agreement.

A. GENERAL LIABILITY: Coverage at least as broad as Insurance Services Office Form

CG 0001 including products and completed operations with limits of no less than Twenty-Five Million Dollars (\$25,000,000) per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit applies, either the aggregate limit shall apply separately to this franchise agreement or the general aggregate limit shall be twice the required occurrence limit. Such insurance shall include the following items:

1. A provision or endorsement extending coverage to the City of Elk Grove, its officers, employees, agents, and volunteers, as additional insureds, with respect to Franchisee's liabilities hereunder in insurance coverage identified in Item "A" above, but only as respects to the operations of the named insured.
2. A provision or endorsement that waives any rights of subrogation against the City of Elk Grove, its officers, employees, agents, and volunteers.
3. A provision that coverage will not be cancelled until at least twenty (20) days' prior written notice, and ten (10) days' notice for non-payment of premium has been given to the City Clerk, addressed to 8401 Laguna Palms Way, Elk Grove, California 95758.
4. A provision that Franchisee's insurance shall apply as primary, and not excess of, or contributing with the City.
5. A provision or endorsement stating that any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officers, employees, agents, and volunteers.
6. The insurance shall include Broad Form Property Damage, Personal Injury, Contractual Liability, and Completed Operations coverages, and elimination of any exclusion regarding loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to by insurers as the "XCU" hazards.

7. A Cross Liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each.

8. Policy shall apply on an "occurrence" basis.

B. AUTOMOBILE LIABILITY: Coverage at least as broad as Insurance Services Office Form CA 001, symbol 1 (if auto) providing protection against claims of bodily injury and property damage arising out of the ownership, operation, maintenance, or use of all automobiles with limits of no less than Five Million Dollars (\$5,000,000) combined single limit. Split limits are not acceptable. Such insurance shall include the following items:

1. A provision or endorsement extending coverage to the City of Elk Grove, its officers, employees, agents, and volunteers, as additional insureds, with respect to Franchisee's liabilities hereunder in insurance coverage identified in Item "A" above, but only as respects to the operations of the named insured.

2. A provision or endorsement that waives any rights of subrogation against the City of Elk Grove, its officers, employees, agents, and volunteers.

3. A provision that coverage will not be cancelled until at least twenty (20) days' prior written notice, and ten (10) days' notice for non-payment of premium has been given to the City Clerk, addressed to 8401 Laguna Palms Way, Elk Grove, California 95758.

4. A provision that Franchisee's insurance shall apply as primary, and not excess of, or contributing with the City.

5. A provision or endorsement stating that any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officers, agents, and volunteers.

C. WORKERS' COMPENSATION: In accordance with the provisions of the California Labor Code, Franchisee is required to be insured against liability for Workers' Compensation and Employer's Liability or to undertake self-insurance. Statutory Workers' Compensation and Employers' Liability of at least \$1,000,000 shall cover all Franchisee's staff while performing any work incidental to the performance of this agreement. Such insurance shall include the following items:

1. A provision or endorsement that waives any rights of subrogation against the City of Elk Grove, its officers, employees, agents and volunteers.
2. A provision that coverage will not be cancelled until at least twenty (20) days' prior written notice, and ten (10) days' notice for non-payment of premium has been given to the City Clerk, addressed to 8401 Laguna Palms Way, Elk Grove, California 95758.

Franchisee hereby agrees to waive rights of subrogation which any insurer of Franchisee may acquire from Franchisee by virtue of the payment of any loss. Franchisee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Entity for all work performed by the Franchisee, its employees, agents and subcontractors.

Approval of the insurance by City or acceptance of the certificate of insurance by City shall not relieve or decrease the extent to which the Franchisee may be held responsible for payment of damages resulting from Franchisee's services or operations pursuant to this agreement, nor shall it be deemed a waiver of City's rights to insurance coverage hereunder.

Franchisee must provide evidence that it has secured all the required insurance coverage before execution of this agreement and annually thereafter. A Certificate of Insurance or Letter of Self-Insurance supplied to the City evidencing the above shall be completed by Franchisee's insurer or its agent and submitted to the City prior to execution of this agreement by the City. Franchisee shall exercise due diligence to require all subcontractors and all tiers of such subcontractors to provide General and Automobile Liability, Workers' Compensation, and, if applicable, Contractor's Pollution Legal Liability Insurance with limits no less than One Million Dollars (\$1,000,000) per occurrence or claim, and Two Million Dollars (\$2,000,000) policy aggregate.

Franchisee shall retain the right to self-insure any of the insurance requirements above. Franchisee retains the sole obligation to pay for such deductibles or self-insured retentions. The City is not obligated under any circumstances to pay for such deductibles or self-insured retentions Franchisee maintains. Any deductibles or self-insured retentions shall be set forth on the insurance certificate. Franchisee shall deliver to the City the required certificate(s) of insurance and endorsement(s) (unless additional insured is provided within the terms and conditions of the insurance policy) as a condition of granting this Franchise. Should any deductibles or self-insured retentions not be acceptable to the City, Franchisee shall be considered non-compliant with this Franchise and shall be given written Notice according to Section 6 of this Ordinance.



If, for any reason, Franchisee fails to maintain insurance coverage which is required pursuant to this agreement, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this agreement and obtain damages from the Franchisee resulting from said breach.

SECTION 14. FAITHFUL PERFORMANCE BOND: On or before the effective date of this Ordinance, Franchisee shall file and thereafter at all times during the life of the franchise keep on file with the City Clerk a corporate surety bond approved by the Risk Manager running to the City in the penal sum of One Hundred Thousand Dollars (\$100,000.00) with a surety licensed to do business in California and approved by the Risk Manager. The bond shall provide that Franchisee shall 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 damages arising from such breach shall be recoverable from the principal and sureties of the bond.

SECTION 15. LIABILITY: The Franchisee shall be liable to the City for damage to City property, including but not limited to any Street, or any other cost incurred by the City caused by Franchisee, any of Franchisee's Facilities or by any person acting on Franchisee's behalf. The Franchisee's liability shall extend to any costs, including remediation costs, incurred by the City for control or abatement of any environmental condition, release of contaminants, or any remedial work resulting from any activity conducted by or on behalf of Franchisee pursuant to the franchise.

SECTION 16. DAMAGE TO CITY PROPERTY: Any damage done to property of City of Elk Grove by Franchisee in exercising any right, power, or privilege under this franchise, or in performing any duty under or pursuant to the provisions of this Ordinance, shall be promptly repaired by Franchisee at its sole cost and expense as it was before such damage was incurred, to the reasonable satisfaction of the City Engineer. If the Franchisee, within ten (10) days after receipt of written notice from the City instructing it to repair such damage, shall fail to commence to comply with such instructions, or, thereafter, shall fail diligently to prosecute such work to completion, then the City immediately may do work necessary to carry out said instructions at the cost and expense of the Franchisee, which reasonable cost and expense, by the acceptance of the franchise, the Franchisee agrees to pay upon demand. If such damage constitutes an immediate danger to the public health or safety requiring the immediate repair thereof, the City without notice may repair such damage and the Franchisee agrees to pay all costs incurred.

SECTION 17. COMPENSATION RATES: As consideration for the franchise granted, the Franchisee shall pay to the City in lawful money of the United States the following:

BASE ANNUAL FEE: The Franchisee, as consideration for the franchise, shall, within sixty (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, annually pay to the City in lawful money of the United States, a fee in the following amounts as set forth in

California Public Utilities Code Section 6231.5, by multiplying the pipe length expressed in feet by the applicable base rate as follows:

<u>PIPELINES SIZE (INTERNAL DIAMETER IN INCHES)</u> <u>LINEAL FOOT</u>	<u>BASE RATE PER</u>
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 12-inch diameter pipe as the diameter of the unlisted pipe is to 12 inches.

The amount of the fee or charge provided in this subsection shall be increased every January following the effective date of this franchise to the extent of any percentage change which occurred in the Consumer Price Index, (All Items, Base 1982-84=100) for the calendar year just ended, as published by the United States Department of Labor, Bureau of Labor Statistics for All Urban Consumers for the San Francisco-Oakland-San Jose, CA area (hereinafter "CPI) to the extent of any percentage change which occurred in the CPI since the preceding January adjustment. Notwithstanding the foregoing, in no event shall the annual fee be less than the annual fee calculated for the previous year.

The annual payment for the franchise shall be submitted by Franchisee prior to December 31<sup>st</sup> of each year without the City submitting an invoice and shall be accompanied by a schedule of lineal feet of pipeline by internal diameter and price per foot paid. In no event shall the amount per lineal foot be less than the amount per lineal foot calculated for the previous year.

In the event Franchisee fails to make the payments required by this franchise on or before the dates due as hereinabove provided, Franchisee shall pay as additional consideration a sum of money equal to one percent (1%) of the amount not timely paid, per month of each delinquent month or portion thereof as interest and for loss of use of the money due.

Any neglect, omission or refusal by said Franchisee to pay said percentage at the times or in the manner hereinbefore provided shall be grounds for the declaration of a forfeiture of this franchise and all rights hereunder.

SECTION 18. ADJUSTMENTS: The indices specified 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 San Francisco-Oakland-San Jose, CA area (1982-84=100) and no transposition table is available to convert to another index, then the amount of each annual adjustment of all fees shall be computed by using a comparable governmental index.

SECTION 19. PUBLICATION AND ADMINISTRATIVE ISSUANCE COSTS: Franchisee shall pay to the City within thirty (30) days after receiving a statement therefor, all reasonable administrative, legal and other costs incurred by the City in processing the application for a franchise, and for all reasonable advertising and publishing costs, including the cost of publishing the ordinance, if necessary, incurred in connection with the granting of the franchise.

SECTION 20. PRORATION OF PAYMENTS: In the event of abandonment of or in the event of removal of such Facilities by the Franchisee, or in the event of the grant of a franchise with an initial franchise payment period of less than one year, the annual franchisee fee required 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.

SECTION 21. RECORDS: The Franchisee 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 franchisee fee.

SECTION 22. CONSTRUCTION REQUIREMENTS: Pipelines and all other Facilities shall be constructed and maintained in conformity with Applicable Law.

SECTION 23. NEW INSTALLATION OR REPLACEMENT: New installation or replacement of pipelines and all other facilities necessary for the installation, operation, maintenance, and safety of pipelines and conduits shall be laid and maintained pursuant to Applicable Law. All such installations or replacements shall be reviewed by the City Engineer as to the most desirable location in the Streets of the City and his or her decision shall be final and binding on the Franchisee subject to appeal to the City Council.

SECTION 24. PERMITS: Where the provisions of any Applicable Law, which shall be in force at the time, require the issuance of an excavation, encroachment or other type of permit, the Franchisee shall not commence any excavation or encroachment work under the franchise until it shall have obtained such permits, except in cases of emergency affecting public health, safety or welfare or the preservation of life or property, in which case the Franchisee shall apply for such permits not later than the next business day. The Franchisee's application for a permit under Applicable Law

shall show the length and proposed location of the pipeline and/or other Facility intended to be installed, and such other facts as the Department may require. The Franchisee shall pay any and all permit inspection fees to the Department.

SECTION 25. WORK ON AND RESTORATION OF STREETS: The work of constructing, laying, replacing, maintaining, repairing or removing all pipelines and other facilities authorized under the provisions of this ordinance in, over, under, along or across any Street shall be conducted to minimize hindrance to the use of the Street for purposes of travel, and as soon as such work is completed, all portions of the Street which have been excavated or otherwise damaged thereby shall promptly be repaired, replaced or restored and placed in as good condition as the same was before the commencement of such work. All restoration, repair, or replacement work shall be done to the satisfaction of the City Engineer at the expense of the Franchisee in accordance with all Applicable Law.

In the event that the Franchisee shall fail or neglect to make such Street repair, replacement, or restoration work, within ten (10) days after notice therefore has been given Franchisee by the City Engineer, the City may repair, replace or restore said Street at the expense of Franchisee. The Franchisee agrees to pay to the City the cost of performing such work.

SECTION 26. MAPS: Within ninety (90) days following the date in which any Facilities have been laid, removed or abandoned under the franchise, the Franchisee shall ensure that maps showing the location, depth, and size of the Facilities so laid, removed or abandoned shall be made available to the City through the National Pipeline Mapping System, unless otherwise exempted from disclosure by a provision of the Homeland Security Act (6 U.S.C., Section 101 et seq).

SECTION 27. FACILITIES: The Franchisee shall have the right to construct, maintain, repair and replace such Facilities as may be necessary or convenient for the proper maintenance and operation of the pipelines under said franchise, and said Facilities shall be kept flush with the surface of the Street and so located as to conform to any ordinance, rule or regulation of the City, or of any permit issued by the City Engineer in regard thereto and shall not interfere with the use of the Street for travel. The Franchisee 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, repair or replacement of said Facilities, provided, however, that the Franchisee shall first obtain an encroachment permit from the City Engineer for doing any such work.

SECTION 28. ORDINARY REPAIR: The Franchisee shall obtain an encroachment permit from the City Engineer to perform repair work. In the event of a condition that could cause a threat to public health or safety and requires emergency repair work, the Franchisee shall proceed with the repairs and notify the Public Works Director as soon as possible, not later than the next business day.

SECTION 29. RELOCATION: The City Engineer, subject to appeal to the City Council, shall have the right to require relocation of the Franchisee's Facilities due to the construction, repair, relocation or new installation of any City facility, utility, storm drain, sewer, waterline or roadway improvement. The Franchisee shall relocate its Facilities, or portion thereof, to the reasonably nearest alternative location provided by the City that is mutually agreeable to the City and the Franchisee, either permanently or temporarily, as is determined by the City Engineer and within the time required by the City Engineer. Said relocation shall be accomplished at the Franchisee's sole cost and expense; provided however, Franchisee shall not be required to bear the cost or expense of any relocation made at the request of the City on behalf of or for the benefit of any private developer or governmental third party.

SECTION 30. NOTICES: Any notice required to be given under the terms of this franchise, the manner of which is not specifically provided for, may be served as follows:

a. Upon the City by serving the City Manager personally, or by addressing a written notice to the City of Elk Grove, Attn: City Clerk, 8401 Laguna Palms Way, Elk Grove, CA 95758 and depositing such notice in the United States mail, postage prepaid.

b. Upon the Franchisee by addressing a written notice to the Manager of Lands & Right of Way, SFPP, L.P., 1100 Town & Country Road, Orange, CA 92868 and depositing such notice in the United States mail, postage prepaid.

SECTION 31. EFFECTIVE DATE AND PUBLICATION: This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

SECTION 32. SEVERABILITY: If any part of this Ordinance or the application thereof to any Person or circumstances is for any reason held invalid by a court of competent jurisdiction, the validity of the remainder of the Ordinance or the application of such provision to other Persons or circumstances shall not be affected.

SECTION 33. MISCELLANEOUS PROVISIONS:

A. NON-EXCLUSIVE FRANCHISE: The granting of this franchise or any of the terms or conditions contained herein shall not be construed to prevent the City from granting any identical or similar franchise to any person, firm or corporation other than the Franchisee, providing said grant does not interfere with, or prevent the ability of Franchisee to conduct its operations as provided herein, including but not limited to any construction, repairs and/or maintenance of its facilities. Franchisee understands and acknowledges that construction, repairs, and or maintenance of facilities, depending on the scope of such activities, may require additional permits from the City. This granting of a franchise in no way negates those requirements. Such requirements may be found in the Elk Grove Municipal Code and or State Law.

B. TRANSFER OF RIGHTS AND POWERS: Any right or power conferred, or duly imposed upon any officer, employee, department or Council of the City, shall be subject to transfer by operation of law to any other officer, employee, department, or Council of the City.

C. VENUE: This agreement shall be deemed to be made in, and the rights and liabilities of the parties, and the interpretation and construction of the agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this agreement shall be filed in and adjudicated by a court of competent jurisdiction in the County of Sacramento, State of California.

D. ENFORCEABILITY: If any term or provision of this agreement is found to be void, voidable, invalid or unenforceable by a court of competent jurisdiction under the laws of the State of California, any and all of the remaining terms and provisions of this agreement shall remain binding.

E. TIME: Time is declared to be of the essence of this franchise. By accepting or permitting performance of any obligation due from the Franchisee under this franchise after the due date thereof, the City shall not waive or bar its right to require prompt performance, when due, of all other obligations of the Franchisee arising under this franchise.

F. BINDING: This agreement shall bind and inure to the heirs, devisees, assignees and successors in interest of Franchisee and to the successors in interest of City in the same manner as if such parties had been expressly named herein.

G. SURVIVORSHIP: Any responsibility of Franchisee for warranties, insurance, indemnity, record-keeping or compliance with laws with respect to this agreement shall not be invalidated due to the expiration, termination or cancellation of this agreement.

H. OTHER AGREEMENTS: This is a fully integrated agreement. This franchise supersedes any and all other franchises or agreements either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other franchise, agreement, statement, or promise relating to the subject matter of this franchise which is not contained herein shall be valid or binding.

I. WAIVER: The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this contract shall not be deemed a waiver with respect to any subsequent default or other matter.

J. SEVERABILITY: The invalidity, illegality or unenforceability, of any provision of this contract shall not render the other provisions invalid, illegal or unenforceable.

K. NO THIRD PARTY BENEFICIARY: It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the City and Franchisee. Nothing contained in the agreement shall give or allow any claim or right of action whatsoever by any third party. It is the express intent of the City and the Franchisee that any such person or entity, other than the City or Franchisee, receiving benefits or services under this agreement shall be deemed as incidental beneficiary.

L. NON-DISCRIMINATION/NON-PREFERENTIAL TREATMENT STATEMENT: In performing this agreement, the parties shall not discriminate or grant preferential treatment on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination.

M. DISPUTE RESOLUTION: Prior to either party commencing any legal action under this contract, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

N. FORCE MAJEURE: Neither party shall be in default by reason of any failure in the performance of this agreement if such failure arises out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God, acts of the public enemy, acts of government in either its sovereign or contractual capacity, acts of the party whose performance is not sought to be excused, fires, flood, weather, epidemics, quarantine restrictions, strikes, freight embargoes, failure of transmission or power supply, mechanical difficulties with equipment which could not have been reasonably forecasted or provided for, or other causes beyond its sole control. The party so affected will resume performance as soon as practicable after the force majeure event terminates.

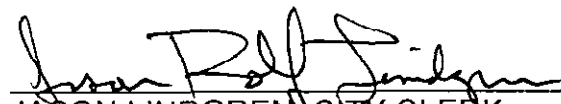
**ORDINANCE:** 18-2015  
**INTRODUCED:** August 26, 2015  
**ADOPTED:** September 9, 2015  
**EFFECTIVE:** October 9, 2015



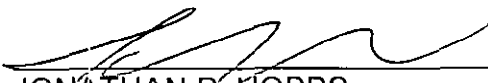
\_\_\_\_\_  
GARY DAVIS, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:



\_\_\_\_\_  
JASON LINDGREN, CITY CLERK



\_\_\_\_\_  
JONATHAN P. HOBBS,  
CITY ATTORNEY

Date signed: September 24, 2015

**CERTIFICATION  
ELK GROVE CITY COUNCIL ORDINANCE NO. 18-2015**

STATE OF CALIFORNIA       )  
COUNTY OF SACRAMENTO    )       ss  
CITY OF ELK GROVE         )

*I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on August 26, 2015 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on September 9, 2015 by the following vote:*

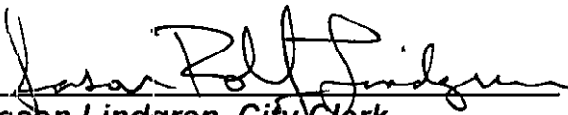
**AYES :**       **COUNCILMEMBERS:**       *Davis, Hume, Detrick, Ly, Suen*

**NOES:**       **COUNCILMEMBERS:**       None

**ABSTAIN:**   **COUNCILMEMBERS:**       None

**ABSENT:**    **COUNCILMEMBERS:**       None

*A summary of the ordinance was published pursuant to GC 36933(c) (1).*

  
\_\_\_\_\_  
**Jason Lindgren, City Clerk**  
**City of Elk Grove, California**





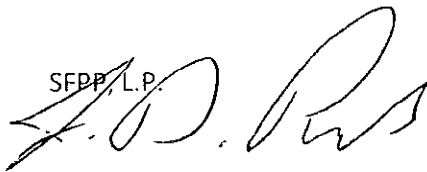
**SFPP, L.P.**  
Operating Partnership

September 25, 2015

City Clerk  
City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758

Gentlemen:

SFPP, L.P. hereby accepts the 25-year term Franchise granted by Ordinance No. 18-2015 adopted by the City Council of the City of Elk Grove on September 9, 2015, effective October 9, 2015, and hereby agrees to abide by the terms and conditions of said Franchise Ordinance.

SFPP, L.P.  


J. D. Reynolds, Manager  
Lands & Right of Way