

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIALTO, CALIFORNIA, GRANTING TO **CALNEV PIPE LINE COMPANY** THE RIGHT, PRIVILEGE, AND FRANCHISE TO LAY AND USE PIPELINES AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING OIL AND PETROLEUM PRODUCTS FOR ANY AND ALL LAWFUL PURPOSES UNDER AND ALONG CERTAIN PUBLIC STREETS, WAYS, ALLEYS, AND PLACES, AS THE SAME NOW OR MAY HEREAFTER EXIST, WITHIN THE CITY

WHEREAS, **CalNev Pipe Line Company** (“**Grantee**”) has filed an application with the City of Rialto, California, (“**Grantor**”) for a franchise to lay and use public utility pipelines and appurtenances for the transmission of oil, water, and petroleum products; and

WHEREAS, a public utility franchise agreement for the pipelines listed in Exhibit “A” was originally granted by the City Council of the City pursuant to Ordinance No. 577 (“**Original Franchise**”); and

WHEREAS, the term of the Original Franchise will expire on April 18, 2018, and therefore, a new franchise agreement is necessary; and

WHEREAS, pursuant to Resolution No. _____, the City Council of the City of Rialto, at its regular meeting held on _____, declared and published notice of its intent to grant this new franchise agreement (“**Franchise Agreement**”) on the terms contained herein; and

WHEREAS, at its regular meeting held on _____, after holding a duly noticed public hearing and hearing and passing upon all protests, the City Council determined that the public interest, necessity and applicable law justify the granting of the Franchise Agreement.

NOW, THEREFORE, the City Council of the City of Rialto does ordain as follows:

Section 1. 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 definitions (unless, in the given instance, the context wherein said words or phrases are used shall clearly import a different meaning):

“**City**” shall mean and include the City of Rialto, a municipal corporation, in its present incorporated form or in any later reorganized, consolidated, or reincorporated form;

“**Engineer**” shall mean the City Engineer of the City, or the Engineer's written designee;

“Environmental Claim” shall mean any claim for personal injury, death, and/or property damage made, asserted, or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to Grantees’ operations on site and arising or alleged to arise under any Environmental Law;

“Environmental Cleanup Liability” shall mean any cost or expense of any nature whatsoever incurred to contain, remove, remedy, cleanup, or abate any contamination or any Hazardous Materials caused by Grantees’ operations on or under all or any part of the site, including the groundwater thereunder, including, without limitation, (A) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (B) any cost, expense, loss, or damage incurred with respect to the site or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup, or abatement;

“Environmental Compliance Cost” shall mean any cost or expense of any nature whatsoever necessary to enable the site to comply with all applicable Environmental Laws in effect. “Environmental Compliance Cost” shall include all costs necessary to demonstrate that the site is capable of such compliance;

“Environmental Law” shall mean any federal, state, or local statute, ordinance, rule, regulation, order, consent decree, judgment, or common-law doctrine, and provisions, and conditions of permits, licenses, and other operating authorizations relating to (A) pollution or protection of the environment, including natural resources, (B) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals, or other substances, (C) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities, or (D) regulation of the manufacture, use, or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage, and disposal;

“Hazardous Liquid Pipeline” shall mean a pipeline which carries those substances subject to and defined as “Hazardous Liquid” in Part 195.2 of Title 49 of the Code of Federal Regulations (Transportation of Hazardous Liquids by Pipeline), and as said Part 195 may be amended from time to time;

“Hazardous Material” shall mean and is defined to include any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States. The term “Hazardous Material” includes, without limitation, any material or substance which is: (A) petroleum or Oil or gas or any direct or derivate product or byproduct thereof; (B) defined as a “hazardous waste,” “acutely hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Sections 25110.02, 25115, 25117 or 25122.7, or wastes listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control); (C) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (D) defined as a “hazardous material” under Section 25501(n) of the California Health and Safety Code,

Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (E) defined as a “hazardous substance” under Section 25281(h) of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (H) “used Oil” as defined under Section 25250.1 of the California Health and Safety Code; (I) asbestos; (J) defined as a “hazardous waste,” “acutely hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Title 22 Section 66260.10 of the California Code of Regulations, Division 4.5, Chapter 10, or a hazardous waste listed pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11; (F) defined as a “hazardous substance” under Section 13050(p) of the California Water Code, Division 7, Chapter 2 (Porter-Cologne Water Quality Act); (G) a hazardous substances listed pursuant to Section 6380 of the California Labor Code, Division 5, Chapter 2.5 (Hazardous Substances Information and Training Act); (K) listed as a “toxic pollutant” pursuant to the Clean Water Act, 33 U.S.C. § 1317(a); (L) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6903(5); (M) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601(14); (N) designated as a “hazardous material” pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5103(a); (O) listed as an “extremely hazardous substance” pursuant to the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11002; or (P) defined as such or regulated by any “Superfund” or “Super Lien” law, or any other federal, state, or local law, statute, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or Oil wells and/or underground storage tanks and/or pipelines, as now, or at any time hereafter, in effect. Hazardous Materials shall not include those materials routinely used in the development or operation of multi-family housing in accordance with all environmental and workplace safety laws.

“Inactive” shall mean all Pipelines and Appurtenances reported to the California State Fire Marshal as out-of-service;

“Lay and Use” shall mean to lay, construct, erect, install, operate, maintain, use, renew, repair, replace, change the size of, or remove;

“Oil” shall mean natural or manufactured oil, gas, or other petroleum products, or a mixture of such natural and manufactured substances;

“Pipelines and Appurtenances” shall mean pipe, pipeline, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, appurtenance, and any other property located or to be located on, in, or under the Streets of the City, and used or useful in the transmission and distribution of Oil;

“Streets” shall mean the public streets, highways, medians, parkways and other public ways, and alleys, or any other public places or property of the City as the same may now or hereafter exist within said City;

“Working Day” shall mean every day except Saturday and Sunday and any holiday on which the City's offices are closed;

Section 2. Grant of Franchise

Subject to each and all of the terms and conditions contained in this ordinance, and pursuant to applicable provisions of Chapter 2 of Division 3 of the Public Utilities Code of the State of California (Sections 6201 *et seq.*), or by proper governmental authority, there is hereby granted to Grantee the right, privilege, and franchise to Lay and Use Pipelines and Appurtenances for the transmission and distribution of Oil as defined herein, water, or other hydrocarbon or like substances for any and all lawful purposes, under and in the public Streets, ways, alleys, and places within the City included in the “Description of Pipeline Routes, Dimensions and Depths” attached hereto as Exhibit “A” and incorporated herein by this reference. This grant of franchise shall also include such other routes as may be approved upon application to the City Council.

Section 3. Term of Franchise

The term or period of the Franchise Agreement shall be for twenty (20) years from and after the Effective Date hereof, as defined in Section 14(b).

Section 4. Payments to the City

(a) Base Granting Fee.

Grantee shall pay to the City a one-time base fee of Fifty Thousand Dollars (\$50,000.00), payable within thirty (30) days of the granting of this Franchise Agreement, to reimburse the City for estimated costs incurred in processing the Franchise application.

(b) Annual Franchise Fee.

For the right, privilege, and franchise granted hereunder, and pursuant to Public Utilities Code Section 6231.5, Grantee shall pay to the City an annual fee, payable in the amounts and times provided in this Section. The fee shall be computed based upon the “Schedule of Charges” attached hereto as Exhibit “B” and incorporated herein by this reference. Commencing on the Effective Date of this ordinance, such annual payments shall be made continuous to and including the date of either (i) actual removal of the pipelines, (ii) the effective date of a properly approved abandonment “in place” authorized by the City pursuant to Section 7(c) which shall not be effective until Grantee shall have fully complied with all of the provisions of this part and of all other applicable provisions of law or ordinances relative to such abandonments, or (iii) until any pipeline installed and/or maintained pursuant to the provisions of this part shall have been transferred or assigned pursuant to the provisions of Section 11 of this ordinance. After completion of such assignment, and upon City approval thereof, all obligations of Grantee for such pipeline under this part shall cease.

The amount of the fee shall be determined based upon the lineal feet of pipeline within the City and shall vary depending upon the diameter of the pipe. At such time use of a pipeline shall be discontinued, and if Grantee intends such discontinuance to continue for more than two years, Grantee shall notify City in writing of such use discontinuance. Grantee shall not be entitled to any fee reduction unless said notice is provided, and then only in accordance with Sections 4(f) and 7(c).

(c) Consumer Price Index Adjustment.

The annual payment for each lineal foot of pipeline shall be computed and revised each calendar year as follows:

(1) For 2018, the applicable base rate shall be multiplied by the Consumer Price Index (CPI) for All Urban Consumers in the Los Angeles-Riverside-Orange County Area, published by the United States Department of Labor, Office of Information for the month of September immediately preceding the month in which payment shall be due and payable, and divided by the CPI for All Urban Consumers for June 30, 1989, which is declared to be 100.0. For all subsequent years, the applicable base rate shall be multiplied by the CPI for All Urban Consumers in the Riverside-San-Bernardino-Ontario Area, published by the United States Department of Labor, Office of Information for the month of September immediately preceding the month in which payment shall be due and payable, and divided by the Consumer Price Index for All Urban Consumers for December 31, 2017, which is declared to be 100.0. Under no circumstances shall the multiplying factor be less than one (1) or the computed fees be greater than what is allowed under applicable California law.

(2) If the United States Department of Labor, Office of Information discontinues the preparation and publication of a Consumer Price Index for All Urban Consumers in the Riverside-San-Bernardino-Ontario Area, and if no transposition table prepared by the Department of Labor is available so as to make those statistics which are then available applicable to the Index of September 30, 2018, then the City Council shall prescribe a rate of payment which shall, in its judgment, vary from the rates specified in this subsection in approximate proportion as commodity consumer prices then current vary from commodity consumer prices current in December, 2017. Upon this point, the determination by the City Council shall be final and conclusive.

(3) The Engineer shall determine the adjustment in CPI in accordance with this subsection (c) and provide Grantee with the corrected schedule prior to December 1 preceding the month of January in which payment shall be due and payable.

(d) Time for Payment.

The annual franchise fee shall be computed based upon the Schedule of Charges in Exhibit "B" as adjusted pursuant to subsection (c) of this Section, and the initial annual payment shall be due and payable upon Grantee's filing of written acceptance with the City Clerk pursuant to Section 14(b). The initial franchise fee shall be prorated for the remainder of the calendar year based upon a 365-day year and reduced by an amount equal to any payments previously paid to the City for the Pipelines and Appurtenances for the same period. The next annual payment shall be due and payable on March 31st of the following calendar year, and on March 31st of each calendar year thereafter for the remainder of the Franchise Agreement, whether or not an invoice therefore is received. Payment shall be accompanied by the inventory of facilities described in Section 9(b) and also showing Grantee's computation of franchise fee for each pipeline segment.

(e) Late Charges.

Any fees charged or expenses charged to Grantee by City pursuant to this Section or any other provision of this ordinance shall be paid when due, or shall be deemed delinquent. Any delinquent amounts shall accrue interest commencing ten (10) days after the due date, at the rate of one and one-half percent (1.5%) per month (based upon a 30-day calendar month) or any lesser amount if required by law. Any neglect, omission or refusal by said Grantee to pay the franchise fee with any late charges, within thirty (30) days after receipt of written notice of such delinquency, at the times or in the manner herein provided, shall be grounds for a declaration of a forfeiture of the Franchise Agreement and of all rights hereunder.

(f) Refunds.

Upon the written request of Grantee, fees previously paid on pipelines which are Inactive, assigned, or transferred in accordance with the provisions hereof shall be refunded to Grantee for the unearned portion thereof based upon the fee schedule under which the fees were paid, provided said written request is made within ninety (90) days from the date of said inactivity, assignment, or transfer. Said refund shall be credited toward the fees payable in the succeeding calendar year or, at Grantee's written request, as a cash refund for that portion in excess of the fees of said succeeding year, if any. It shall be the obligation of Grantee to duly inform City of the effective date of any inactivity, assignment, or transfer.

(g) Past Due Fees For Unauthorized Pipelines.

Fees shall continue to accrue during each year or portion thereof that Pipelines and Appurtenances occupy City Streets. In the event Grantee has any Pipelines and Appurtenances occupying City Streets without right, Grantee shall pay all fees computed based on the schedules set forth herein, as annually adjusted, with interest and penalties thereon, as provided herein, for each year or portion thereof in which City Streets were so occupied commencing on the Effective Date of the Franchise Agreement.

(h) Changes in Law. After five (5) years from the commencement of the Franchise Agreement, and every five (5) years thereafter, the franchise fees provided hereunder may be increased to the maximum permitted by state law, should state law permit the imposition of greater franchise fees.

Section 5. Grant of Franchise Supersedes All Other Rights

This Franchise Agreement is granted in lieu of all other franchises owned by Grantee, or the aforementioned entities, or by any successor or assign of Grantee to any rights under this Franchise Agreement, for transmission and distribution of Oil within the limits of the City, as said limits now or may hereafter exist.

By accepting this Franchise Agreement, Grantee agrees that upon subsequent addition of areas to the City, either by annexation, consolidation or otherwise, (i) all pipelines of Grantee in those areas shall be included as part of this Franchise Agreement, and (ii) all pipeline franchises of Grantee in those areas shall be surrendered as of the date of annexation, consolidation, or otherwise.

Section 6. Grantee's General Obligations**(a) Compliance with Law.**

The Grantee shall construct, install, maintain, remove, and/or abandon all Pipelines and Appurtenances in a good and workmanlike manner and of good materials and in conformity with all the valid and applicable ordinances, rules, and regulations in force at the time of such work as heretofore or hereafter adopted by the City Council in the exercise of its police power. The Grantee shall operate and maintain all Pipelines and Appurtenances included under the Franchise Agreement in accordance with all applicable requirements of Part 195 of Title 49 of the United States Code of Federal Regulations and local ordinances subject to the changes, amendments, and modifications as hereafter may be adopted in accordance with valid and applicable local, state, or federal law, including but not limited to those requirements concerning pipeline design, construction, testing, maintenance, surveillance, and operation of utility gas gathering, transmission, and distribution piping systems. Any vibration from Pipelines and Appurtenances shall be kept to a level such that it is undetectable to any residents or businesses in the City and in such cases as it is deemed necessary by the Engineer, vibration-dampening equipment of the best available technology shall be installed within ninety (90) days of such an order to reduce any vibrations to levels deemed acceptable by the American National Standards Institute.

(b) Emergency Response Plan.

The Grantee shall, for all active pipelines, develop and maintain an emergency response plan considered satisfactory by the Engineer, which covers franchise operations within the City. In general, an emergency response plan meeting the requirements of Federal and State law and containing the information contained in this section shall be acceptable. The emergency response plan shall include proof of arrangements capable of providing emergency cleanup services, including but not limited to traffic control, sand, vacuuming, and other supplies and services as necessary, within four (4) hours of notification of any problem, and such other information as the Engineer shall reasonably require. The Engineer shall be notified within ten (10) days of any proposed change in such arrangements. A copy of the most up-to-date emergency response plan shall be submitted to the Engineer, and shall be resubmitted to the Engineer following any change or update.

(c) Excavation or Encroachment Permit Required.

The Grantee shall obtain and pay any required fees for an excavation or encroachment permit before commencing any construction, alteration, installation, removal, and/or maintenance of pipelines, appurtenances, and cathodic protection under the Franchise Agreement, provided such work requires excavation or surface use of the Streets. The Grantee may obtain a permit by filing a set of plans, along with any required application, with the Engineer, which shall be subject to his or her review and approval. The plans shall show the location of the proposed excavation or surface use as well as the location and existence of all pipelines, sewers, conduits, improvements, and other facilities including but not limited to gas, oil, and gas product gathering, distribution, and transmission pipelines that may be impacted by the proposed work. The plans shall also contain an adequate description of the proposed work, including an estimate of the duration of interference with any street traffic. The Engineer may

impose conditions upon the issuance of an excavation or encroachment permit, including the posting of a faithful performance bond in such principal amount as the Engineer may deem adequate. In addition, the Engineer may give the Grantee directions for the location of any Pipelines and Appurtenances as may be reasonably necessary in the opinion of the Engineer to avoid structures in or under the street.

(d) Cathodic Protection.

If cathodic protection is proposed to be used for Pipelines and Appurtenances and electrical attachments or components thereto, which have been or are hereafter installed or maintained beneath the surface of City Streets, it shall meet the standards set forth by Part 195 of Title 49 of the United States Code of Federal Regulations and Chapter 5.5 of Title 5, Division 1, Part 1, of the California Government Code ("Elder California Pipeline Safety Act of 1981" or the "Elder Act").

The Grantee shall be fully responsible for the repair and/or replacement of City Pipelines and Appurtenances and electrical attachments or components thereto, as required by the Engineer, damaged by cathodic protection installed or maintained by the Grantee, provided said cathodic protection was installed after construction of the effected City facilities. All repair and replacement work pursuant to this Section 6(d) shall be completed at the Grantee's sole expense and the Grantee must also pay all additional requisite permit fees.

(e) Performance of Work.

Any construction, alteration, installation or removal shall be done in compliance with all City rules, regulations, ordinances, standards, and specifications in force at the time of such work, and such other reasonable conditions as the Engineer may direct. All work shall be subject to inspection by the Engineer. All street coverings or openings, traps, vaults, and manholes shall at all times be kept 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 when said vents are located in parkways, between the curb and the property line, subject to the prior approval of the Engineer. The Grantee shall provide adequate traffic safety barriers, signs, devices, and traffic safety warning equipment in accordance with City ordinances, rules, or regulations or such additional safety measures as the Engineer may direct.

(f) Emergencies.

Whenever any of Grantee's Pipelines and Appurtenances permits the escape of liquids, vapors, or gases, it shall be the duty of Grantee and any person using or controlling the Pipelines and Appurtenances to immediately notify the California State Fire Marshal, City Fire Department, City Public Works Department, and all other Agencies as required by Environmental Law and make sure the situation is safe. This includes but is not limited to containment, pump shutdown, valve closures, and evacuation of lines. In the event of an emergency threatening life, health, safety, or property, where it is not possible to obtain an excavation permit prior to commencement of the work, the Grantee may commence such work provided that within seventy-two (72) hours thereafter the Grantee shall make application to the Engineer for an excavation permit in accordance with the foregoing procedures. The Engineer

may impose reasonable conditions upon the issuance of such a permit and all work shall be subject to inspection. Adequate traffic safety barriers shall be maintained at all times and any damaged portion of the street shall be restored to the same condition as existed prior to the excavation. If the Engineer determines that no emergency occurred or that an excavation permit could have been obtained in advance, the Engineer shall assess the Grantee an amount equal to the cost of the work, which shall be paid by the Grantee within thirty (30) days after invoice therefore.

(g) Annual Certification – Hazardous Liquid Pipelines.

Prior to the first Working Day in January of each year, the Grantee shall certify to the Engineer the total footage of its Hazardous Liquid Pipelines within the City. The certification shall include a breakdown of the footage under the control of:

- (1) United States Department of Transportation
- (2) California State Fire Marshal
- (3) City of Rialto
- (4) Any other relevant agency

Grantee shall also file with the Engineer, in a form and manner prescribed by the Engineer, a certificate under penalty of perjury that Grantee has complied with all of the requirements of Part 195 of Title 49 of the United States Code of Federal Regulations (Transportation of Hazardous Liquids by Pipeline) concerning Annual, Accident and Safety-Related Condition Reporting (Subpart B), Design Requirements (Subpart C), Construction (Subpart D), Pressure Testing (Subpart E), Operation and Maintenance (Subpart F), and compliance with all other applicable federal, state, and local regulations.

(h) Disclaimer.

It is explicitly understood that the City's records are not complete and Pipelines and Appurtenances previously unknown to City are frequently discovered. Therefore, by granting the Franchise Agreement or approving any such excavation permit the City does not warrant the accuracy of information regarding the location or existence of other facilities supplied by the City to the Grantee. Nothing herein shall be deemed to make the City, Engineer, or any officer or employee of the City responsible or liable to the Grantee or any other person by virtue of approval of excavation permit plans by the City regardless of whether any information or other material is supplied to the Grantee by the City pertaining to the location of existing pipelines, facilities, or other improvements on, in, or under any street or other public property.

Section 7. Repair of Streets; Relocation, and Removal of Facilities

(a) Repair of Streets.

The Grantee shall make and backfill all excavations so as to leave the surface of the public street, alley, highway, or place in a similar condition as it was prior to said excavation and in compliance with City standards. If any portion of any street shall be damaged by reason of defects in any of the Pipelines and Appurtenances maintained or constructed under the Franchise Agreement, or by reason of any other cause arising from the construction, operation,

maintenance, or existence of any Pipelines and Appurtenances constructed or maintained under the Franchise Agreement, the Grantee shall, at its own cost and expense, immediately repair any such damage and restore such street or portion of street to as good a condition as existed before such defect or other cause of damage occurred. Such work is to be done under the direction of the Engineer and in accordance with all rules, regulations, ordinances, standards, and specifications of the City. Grantee shall repair any such damage and restore such street within five (5) Working Days of receipt of written demand therefore by the Engineer, or such other period as the Engineer may prescribe when required by the public health and safety.

(b) Relocation and/or Removal of Facilities.

The Grantee shall, from time to time protect, support, dislocate, remove, or relocate, temporarily or permanently as may be required and without expense to the City or any other governmental entity, any facilities installed, used, and maintained under the Franchise Agreement, when made necessary by any lawful change of grade, alignment, or width of any public street, including the construction of any subway, viaduct, water, sewer, or storm drain lines by the City or any other governmental entity and including when any underground utility district is formed, or made necessary by any other public improvement or alteration in, under, on, upon, or about any public street or other public property, whether such public improvements or alteration be at the insistence of the City or any other governmental entity, and whether such improvement or alteration is for a government or proprietary function or made necessary by traffic conditions, public safety, street vacation, or any other public project or purpose of the City or any other governmental entity. Grantee shall work with the Engineer to establish a suitable alternative right of way, at Grantee's cost, as needed for future operation of the pipelines, which shall be provided by the City and covered under the Franchise Agreement. Grantee shall diligently seek and obtain all permits, licenses, or approvals required by governmental agencies of competent jurisdiction. All work shall be performed as directed by the Engineer and the decision of the Engineer shall be final and binding upon Grantee. Such work shall be completed within ninety (90) days after Grantee has obtained all necessary permits and received written notice from the Engineer to proceed, or such period greater or lesser as the Engineer may reasonably direct.

(c) Change in Use of Facilities.

Upon the nonrenewal, revocation, or termination of the Franchise Agreement, Grantee shall, within twenty (20) days thereafter, make written application to the Engineer for authority to (i) classify the Pipelines and Appurtenances as Inactive and continue the Franchise solely for such purposes, (ii) remove all such Inactive Pipelines and Appurtenances, or (iii) abandon the Pipelines and Appurtenances in place. It is expressly understood that as long as the Grantee is timely performing, no holding over by Grantee shall be deemed a violation hereof if delay results from action of City in making any determinations hereunder. Thereupon the Engineer shall determine whether such Pipelines and Appurtenances are Inactive, whether such Pipelines and Appurtenances can be removed without detriment to the public interest, and under what conditions removal of the Pipelines and Appurtenances may be safely effected, or, alternatively, whether some or all of such Pipelines and Appurtenances may be abandoned in place, and shall then notify the Grantee regarding such requirements and conditions as shall be specified in the Engineer's order. It is expressly understood that in light of environmental liability arising from

conditions associated with abandoned pipelines and due to the fact that abandonment in place will not conclusively resolve contamination associated with pipelines, such abandonment is disfavored and would be approved by the City only in unique circumstances where the public health, safety, and welfare is protected and promoted. Abandoned pipelines would be characterized as idle or Inactive lines and would therefore be subject to the Inactive fee schedule of charges.

(d) Removal of Facilities.

Within ninety (90) days, or such time as the Parties may agree, after the determination of the Engineer approving Grantee's application for removal of the Pipelines and Appurtenances and pursuant to such order of the Engineer, Grantee shall remove all such facilities. The City may disconnect or sever any facilities not timely removed at the point at which they enter City Streets so they cannot be used for the purposes for which they were intended without reconnection after proper authorization.

(e) City to Perform Work.

In the event that Grantee fails to perform the repair, removal, and/or relocation as specified in this Section within the time periods set forth above, then the Engineer may have such failure cured by having such work performed by City or its agents and charge Grantee the actual cost therefore. All work shall be performed in accordance with the Elder Act, as it may be amended. City shall keep an itemized account of the cost thereof, including actual administrative costs associated with such work to the sum no greater than twenty-five percent (25%) of the work. Grantee shall pay such costs within thirty (30) days of written invoice therefore by City. In addition, in the event a bond has been posted in accordance with Section 6(c) the City may cure the breach and recover from the bond principal and surety the expenses incurred thereby, including attorney's fees.

(f) Liability of Grantee.

Any repair, removal, or relocation as required by this Section of any street or facility installed, used, or maintained under the Franchise Agreement shall be the sole responsibility of Grantee, and Grantee, pursuant to Section 8 herein, shall indemnify the City from any liability, excepting any liability caused by the sole negligence, gross negligence, or willful misconduct of the City, its Council members, employees, contractors, agents, attorneys, or representatives, arising from such repair, relocation, or removal. Grantee shall be solely responsible for complying with all laws, regulations, and other orders as may be applicable to such repair, relocation, removal, or abandonment, whether federal, state, local, or administrative. The City's approval of such repair, relocation, removal, or abandonment of the Pipelines and Appurtenances shall not be deemed to relieve Grantee of any liability Grantee may have for contaminated soils or other environmental liability arising from said Pipelines and Appurtenances. Grantee acknowledges that the City is in no way responsible for conducting or accomplishing any such repair, relocation, or removal, or for compliance with any laws, regulations, or orders applicable thereto, and acknowledges and agrees that it shall not hold City liable or responsible in any manner for any loss, claim, or damage, including environmental

damage or compliance with future repair, relocation, or removal requirements, in connection with any such repair, relocation, or removal.

Section 8. Insurance and Indemnification

(a) **Insurance.**

Prior to the Effective Date of the Franchise Agreement, Grantee shall provide certificates of insurance evidencing the maintenance of (i) general liability insurance, for injury and/or death of one or more persons resulting from the same incident, accident, or occurrence and for damage to or destruction of property in a combined limit or aggregate amount of Ten Million Dollars (\$10,000,000.00); (ii) workers' compensation and employer's liability insurance in compliance with applicable law; (iii) automobile liability insurance of One Million Dollars (\$1,000,000.00); and (iv) pollution liability insurance of Twenty-Five Million Dollars (\$25,000,000.00). Such insurance (except workers' compensation and employer's liability insurance) shall name the City as additional insured with respect to liabilities assumed under this Franchise Agreement and protect the City, its officers and employees, and Grantee against loss, directly or indirectly, from liability imposed by law on account of bodily injury, death, and/or damage to or destruction of property resulting from the activities of the Grantee under the rights granted by the Franchise Agreement. The insurance shall, with respect to liabilities assumed under this Franchise Agreement, provide that the coverage shall be primary for losses arising from Grantee's operations, and neither the City nor their insurers shall be required to contribute to any loss. Such insurance shall be maintained in full force and effect during the entire term of the Franchise Agreement, and shall provide for thirty (30) days written notice to the City prior to any cancellation. The insurance policy shall be issued by an insurance company authorized to do business in the State of California with a Best's minimum policyholder rating of "A-" status or better and a Best's financial category minimum rating of Class VIII or better, as rated in the most recent edition of Best's Key Rating Guide, or as otherwise approved by the City in the event such rating system is modified. The insurance limits required hereunder may be reasonably increased by the City during the term of the Franchise Agreement to reflect increased risk of losses in the industry and other market factors.

(b) **Self-Insurance.**

Notwithstanding the foregoing requirements for insurance, no such insurance policy shall be required if the Grantee customarily self-insures the risks covered by the required insurance and has presented to the City:

(1) A certification evidencing such facts, which certification has been approved by the Engineer as to sufficiency and by the City Attorney as to form, containing an indemnification clause in substantially the same form and content, as provided in subsection 8(d) below.

(2) A financial statement showing the financial condition of the Grantee or parent company shown on Exhibit "C", the Parental Guaranty, as of a date not more than one (1) year prior to Grantee's application for the Franchise Agreement, which statement has been certified by Grantee's proper officials to be true and correct, and which reflects a net

worth of the Grantee or parent company in excess of five (5) times the amount of limits of liability as established herein. The statement shall have been approved by the Engineer as to sufficiency and by the City Attorney as to form.

(c) Parental Guaranty.

In the event Grantee elects to fulfill its contractual obligations hereunder using self-insurance programs maintained by its corporate parent, Grantee shall, on or before the Effective Date of the Franchise Agreement, file and thereafter at all times during the life of the Franchise Agreement keep on file with the City Clerk of the City a parental guaranty from Grantee's parent company, if any. A copy of the form parental guaranty is attached hereto as Exhibit "C".

(d) Indemnification.

Grantee agrees to indemnify the City, its officers, employees, and agents, and shall hold and save them and each of them harmless from and against, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the use by Grantee of the Streets or the making of excavations in said Streets, or the work, operations, or activities of Grantee, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the acts or omissions of Grantee hereunder, or arising from Grantee's performance of or failure to perform any terms, provision, covenant, or condition of the Franchise Agreement, whether or not there is concurrent passive or active negligence on the part of City, its officers, agents, or employees but excluding such claims or liabilities to the extent arising from the sole negligence, gross negligence, or willful misconduct of the City, its officers, agents, or employees, who are directly responsible to the City, and in connection therewith:

(1) Grantee shall defend any action or actions filed in connection with any of said claims or liabilities and shall pay all costs and expenses legally incurred, including legal costs and attorneys' fees, in connection therewith;

(2) Grantee shall promptly pay any judgment rendered against the City, its officers, agents, or employees for any such claims or liabilities arising out of or in connection with such work, operations, or activities of Grantee hereunder; and Grantee agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(3) In the event the City, its officers, agents, or employees is made a party to any action or proceeding filed or prosecuted against Grantee for such damages or other claims arising out of or in connection with the work operation or activities of Grantee hereunder, Grantee agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents, or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

(4) The indemnity, defense, and hold harmless provisions of this Section shall include any claim of damage resulting from or relating to environmental contamination including any and all Environmental Claims, Environmental Cleanup Liability, Environmental Compliance Costs, and any other claims which arise under Environmental Law

from the leakage or spillage of the contents of the pipeline, whether by slow seeping or breakage whether or not such leakage or break results from actual negligence on the part of Grantee.

(e) Faithful Performance Bond.

Grantee shall, upon the Effective Date of this Franchise, file with the City Clerk, and at all times thereafter maintain in full force and effect, an acceptable corporate surety bond, in duplicate, running to the City in the penal sum equal to three (3) times the value of the annual franchise fee in the year this Franchise Agreement is adopted.

(1) Each year the City may adjust the amount to be consistent with the increase in franchise fees and notify Grantee accordingly.

(2) The performance bond shall be conditioned that Grantee shall well and truly observe, fulfill, and perform each and every term and condition of this Franchise. In the event Grantee shall fail to comply with any one or more of the provisions of this Franchise, then there shall be recoverable jointly and severally from the principal and surety of the bond, any damages suffered by the City as a result of Grantee's failure to comply, including, but not limited to, the full amount of compensation due the City, indemnification or cost of removal or abandonment of facilities as prescribed in this Franchise Agreement. Grantee is obligated to maintain, in full force and effect, the performance bond for the duration of this Franchise Agreement and thereafter until Grantee has liquidated off of its obligations with the City that may have arisen from the acceptance of this Franchise by Grantee or from its exercise of any privilege granted in this Franchise.

(3) The City may accept cash, a Certificate of Deposit, or an Irrevocable Letter of Credit in lieu of a surety bond, provided it is conditioned and submitted in accordance with an agreement containing all the requirements of the bond as required in this subsection and any other requirements deemed necessary by the City Attorney, in a format acceptable to the City, including banking or funding institution approval.

(4) If at any time during the term of this Franchise Agreement the condition of the corporate surety or any other type of bond allowed shall change in a manner as to render the bond unsatisfactory to the City, Grantee shall replace the bond with a bond of like amount and similarly conditioned, issued by a corporate surety or other method as deemed satisfactory by the City. The bond shall be cancelable only by the City, and Grantee shall give a minimum of 90 days' written notice to the City prior to replacement or request for cancellation of the bond.

(5) Neither the provisions of this Section, any bond accepted by the City pursuant to this Franchise Agreement, nor any damages recovered by the City under the bond shall be construed to excuse faithful performance by Grantee or limit the liability of Grantee under this Franchise for damages, either to the full amount or the bond or otherwise.

Section 9. Identification and Inventory of Facilities

(a) Identification of Facilities.

All valves and gates, whether boxed or exposed, poles and pipelines which are exposed on structures installed or maintained in City property shall bear a distinguishing mark, either by stenciling in the case of pipelines, or by means of a metal tag attached to poles, and with wire to gates and valves, with the name and telephone number of the owner and name of the material carried therein stated thereon. Should the City prescribe a code system for designating the material carried, then the code may be used therefore.

(b) Inventory and Description Required.

All persons owning, using, or controlling any facilities installed or maintained beneath the surface of any street shall annually, on no later than the first Working Day in April, submit to the Engineer, in the form and manner prescribed by the Engineer, a complete inventory of the facilities, showing the size (internal diameter) and lineal footage of each pipeline segment located in the City. If there have been any construction or modifications to facilities during the previous calendar year, the complete inventory shall also include legal descriptions and maps showing pipeline location and depth (when available) and the date of each pipeline addition or deletion. The term “facilities”, as used in this Section, shall include all Pipelines and Appurtenances of the Grantee, which are in place in the street as of the first day of the calendar year, plus all pipelines installed thereafter during said year. All pipelines in place shall be deemed to be Active or Inactive until the Grantee files an application with the Engineer for permission to remove or abandon the same and approval is granted by the City pursuant to Section 7(c).

(c) Pipelines Installed During Year.

As to pipelines installed during any year, within forty five (45) days after completion of such installation, Grantee shall file a supplement to its inventory including the additional facilities. Such facilities shall then be deemed to be covered by the Franchise Agreement unless within twenty (20) days after receipt of such notice the Engineer shall inform Grantee in writing that such facilities are not accepted and the reasons therefore. In the event such facilities are not accepted, the determinations of the Engineer may be appealed to the City Council.

Section 10. Condemnation

The Franchise Agreement granted herein shall not in any way or to any extent impair or affect the right of the City to acquire the property of the Grantee hereof, either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away, to modify, or to abridge, either for a term or in perpetuity, the City's right of eminent domain in respect to the Grantee or any public utility, nor shall the Franchise Agreement ever be given any value before any court or other public authority in any proceeding of any character in excess of the cost to the Grantee of the necessary publication and any other sum paid by it to the City therefore at the time of the acquisition thereof. Notwithstanding the foregoing, the Franchise Agreement granted herein also does not in any way or extent impair or affect the right of Grantee to acquire property by right of eminent domain.

Section 11. Transfer

(a) Prohibition on Transfer without City Approval.

Except as otherwise provided herein, the Grantee shall not sell, transfer, or assign this Franchise Agreement, or any part thereof, without the prior written consent of the City Council expressed by resolution, and then only under such conditions as may be prescribed therein.

(b) Transfer Defined.

As used herein, a “Transfer” shall include the transfer to any person or group of persons acting in concert of more than fifty percent (50%) of the present ownership and/or control of the Grantee in the aggregate, taking all transfers into account on a cumulative basis. Notwithstanding the foregoing, a “transfer” shall not include Grantee’s entering into contract(s) with any other entities to use the pipeline facilities subject to the Franchise Agreement, so long as Grantee retains the responsibility to operate and maintain the pipelines covered by the Franchise Agreement.

(c) Approval of Transfer.

Approval and consent shall be granted by the City Council upon presentation of evidence demonstrating that the person to whom any of the rights or privileges granted herein are to be sold, transferred, leased, assigned, hypothecated, encumbered, merged, or consolidated, has the experience and resources, financial, managerial, and otherwise, to perform its obligations under the Franchise Agreement. However, the City Council may make any modifications in the Franchise Agreement or establish such conditions to the transfer as may be necessary to effectuate the purposes of the Franchise Agreement and protect the health, safety, and general welfare of the public.

(d) Exceptions.

The foregoing prohibition shall not apply to any of the following:

(1) The conveyance or dedication of any portion of the property to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate the Project.

(2) A sale or Transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm, or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(3) Any transfer or series of transfers of ownership interest in the Franchise Agreement, to any Grantee Affiliate. “Grantee Affiliate” shall mean any entity which owns or controls Grantee, to any entity owned or controlled by Grantee, to any entity owned or controlled by or affiliated with any entity which owns or controls Grantee, or to any entity resulting from a consolidation, or to the surviving entity in case of a merger, to which

consolidation or merger Grantee shall be a party, or to an entity to which all or substantially all of the assets of Grantee have been sold.

(e) Obligations of Assigns or Successors.

In the event of transfer or assignment as provided for herein, the Grantee's assigns or successors shall accept the Franchise Agreement in the same manner as provided herein, and the provisions of the Franchise Agreement shall be binding upon such assigns or successors in like manner as upon the Grantee.

(f) Transfer in Violations Default.

Any purported sale, transfer, lease, assignment, encumbrance, merger, agreement, consolidation, or similar transaction affecting the Franchise Agreement, regardless of whether such transaction is voluntary or involuntary, which occurs without the prior approval and consent of the City Council, if required, shall constitute a default and be grounds for forfeiture under the Franchise Agreement, provided, however, that no forfeiture shall occur until after the City Council holds a noticed hearing on the matter pursuant to Section 12.

Section 12. Violations; Revocation

(a) Notice of Violations.

In the event of a violation of any condition, term, or provision of the Franchise Agreement, or of any excavation permit issued pursuant hereto, the Engineer shall inform the Grantee by phone, if the violation constitutes an immediate danger to health, safety, or property, and shall send written notice thereof by certified mail to the Grantee, and may immediately revoke any excavation permit. The notice shall state the nature of the violation, the corrective action to be taken, the time by which said violation shall be cured, and the consequences of Grantee's failure to cure the violation. The Engineer may demand that the Grantee, and in such case the Grantee shall, immediately cease operations pursuant to any excavation permit.

(b) Appeal.

Within fifteen (15) days following the receipt of such notice of violation the Grantee may file a written appeal with the City Council. The appeal shall state the grounds on which it is taken. The City Council shall review the appeal and determine whether to accept the appeal and set the matter for public hearing. If the matter is not set for hearing, the Engineer's action shall be final. Grantee shall be fully liable for any losses, costs, damages, or claims arising during the pendency of such appeal.

(c) Hearing.

The Grantee shall be notified in writing of the date, time, and place of the hearing at least fifteen (15) days in advance of the hearing, and notice of such hearing shall be published in a newspaper of general circulation. At the conclusion of the hearing, the City Council shall consider the evidence and affirm, modify, or reverse the decision of the Engineer. The decision of the City Council shall be final.

(d) Revocation of Franchise.

The City Council may revoke and terminate the Franchise Agreement, and declare a forfeiture thereof, where Grantee or its successors or assigns has neglected or refused to comply with any of the provisions or conditions hereof, or of any notice of violation or final order of the Council issued pursuant hereto, and has not timely taken an appeal, nor has begun the work of compliance, including seeking any necessary governmental permits, licenses, or approvals, within thirty (30) days following receipt of said notice or order, or after beginning said compliance shall not prosecute the same with due diligence to completion. A forfeiture may be declared only after the City Council has adopted a resolution of intent to revoke the Franchise Agreement and thereafter held a public hearing in the same manner as granting the Franchise Agreement or as otherwise required by law. (See Section 6232-6235 of the Public Utilities Code.)

(e) Performance of Work by City.

Notwithstanding the foregoing, if necessitated by the public health, safety, and welfare, after expiration of said thirty (30) days, and prior to declaration of forfeiture, the City may commence any work of compliance, so long as all work shall comply with all other applicable law, and hold Grantee liable for the actual cost incurred thereof and may revoke the Franchise Agreement and declare the Franchise Agreement forfeit even though the City has corrected the default.

(f) Additional Remedies.

In addition to any other remedy provided hereunder, or in lieu of revocation of this franchise, the City Council may reduce the term of the franchise by one (1) day for every day that a violation continues provided that such may only be imposed after a public hearing has been held as provided in this Section (including subsection (a) providing notice of violation and the proposed remedies therefore, and subsection (b) concerning appeals, and subsection (c) concerning remedies short of termination), including:

(1) A reduction of the term of the franchise by one (1) day for every day that the violation continues; and/or

(2) Liquidated damages in an amount not exceeding One Thousand Dollars (\$1,000) for each day that such violation continues, provided that such limitation shall be adjusted upward by five percent (5%) annually from the effective date of this franchise.

In accepting this franchise, Grantee expressly agrees that the damages that City may suffer from the violation of this franchise may be extremely difficult or impractical to determine and that the foregoing represent a reasonable method of establishing such damages.

Section 13. Reporting; Records.

(a) Report.

Upon request by the City, the Grantee shall supply copies or summaries of the following reports and information pertaining to Pipelines and Appurtenances relevant to the City: (i) pipeline hydrostatic pressure test results; (ii) accident reports; (iii) reports regarding rupture, spill, explosion, or fire; and (iv) maps or suitable diagrams indicating location of pipelines and contingency plans for emergencies.

(b) Records.

Grantee shall maintain all financial records for the purpose of computing franchise fees in accordance with generally accepted utility accounting principles. In order to facilitate the review of the franchise fee computation by the City, Grantee agrees to maintain copies of all company records, work papers, and other information used in preparing the computation for a period of seven (7) years following the termination of the Franchise Agreement. Grantee shall maintain all records as may be required under applicable law.

(c) Inspections.

At all reasonable times, Grantee shall permit any duly authorized representative of the City to examine all facilities related to the Pipelines and Appurtenances, and to examine and transcribe any and all maps, books, accounts, papers, or other records kept or maintained by Grantee or under its control, which pertain to the operations, affairs, transactions, or facilities of Grantee with respect to this Franchise Agreement. If any of the maps, books, accounts, papers or other records is not kept in the City, and if the City determines that an examination of these is necessary or appropriate to the performance of its duties, then the travel and maintenance expense necessarily incurred in making the examination shall be borne by Grantee.

Section 14. Miscellaneous

(a) Non-Liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Grantee, or any successor in interest, for any loss, cost, damage, claim, or liability or for any action, in any manner, whether negligent or willful, arising out of the Franchise Agreement or any act or omission on the part of the City or such officer or employee with respect to the Grantee.

(b) Conflict of Interest.

No officer or employee of the City shall have any personal financial interest, direct or indirect, in the Franchise Agreement nor shall any such officer or employee participate in any decision relating to the Franchise Agreement which affects his or her personal financial interest or the financial interest of any corporation, partnership, or association in which he or she is interested, either directly or indirectly, in violation of any Federal or State statute or regulation. The Grantee warrants that it has not paid or given and shall not pay or give any third party any money or other consideration for obtaining the Franchise Agreement.

(c) Covenant Against Discrimination.

Grantee covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of the Franchise Agreement. Grantee shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, sexual preference, or ancestry.

(d) Notice.

Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time it is personally delivered or within seventy-two (72) hours from the time of mailing, if mailed, as provided in this Section.

To City:
CITY OF RIALTO
Attn: City Administrator
150 S. Palm Ave.
Rialto, California 92376
Telephone No. (909) 820-2525
Fax No. (909) 820-2527

Copy: ALESHIRE & WYNDER, LLP
Attn: Fred Galante, City Attorney
18881 Von Karman Ave., Suite 1700
Irvine, CA 92612
Telephone No. (949) 223-1170
Fax No. (949) 223-1180

To Grantee: Kinder Morgan Inc.
Attn: Land & ROW Dept.
1100 Town & Country Road, Suite 700
Orange, CA 92868
Telephone No. (714) 560-4748
Email: ROW-Products-West@kindermorgan.com

(e) Waiver.

No delay or omission in the exercise of any right or remedy by the City shall impair such a right or remedy or be construed as a waiver. City's consent or approval of any act by Grantee requiring City's consent or approval shall not be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Grantee. Any waiver of any default must be in

writing and shall not be waiver of any other default concerning the same or any other provision of the Franchise Agreement.

(f) Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in the Franchise Agreement, the rights and remedies are cumulative and the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same default or any other default.

(g) Choice of Law and Venue.

In the event that any litigation arises out of the Franchise Agreement, it is specifically stipulated that the Franchise Agreement shall be interpreted and construed according to the laws of the State of California and shall be performable in San Bernardino County, California.

(h) Attorney's Fees.

If either party to the Franchise Agreement is required to initiate or defend any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal and, in addition, a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions, discovery, and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

(i) Amendment.

The Franchise Agreement may not be modified or amended except by ordinance of the City Council adopted in the same manner as required to grant the Franchise Agreement.

(j) Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in the Franchise Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of the Franchise Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder.

Section 15. Publication and Acceptance

(a) Publication.

The Grantee of the Franchise Agreement shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of the

Franchise Agreement and publication of this ordinance as the same may be required by law, such payment to be made within thirty (30) days after the City shall furnish such Grantee with a written statement of such expenses.

(b) Acceptance.

The Franchise Agreement granted herein shall not become effective until written acceptance thereof shall have been filed by the Grantee with the Director of Finance of the City (the “Effective Date”). Not later than thirty (30) days after the publication of this Ordinance, the Grantee shall file with the City Clerk of the City said acceptance of the Franchise Agreement hereby granted and its agreement to comply with the terms and conditions hereof.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Rialto, California, on this ____ day of _____.

“CITY”
CITY OF RIALTO,
a general law city & municipal corporation

DEBORAH ROBERTSON
MAYOR

ATTEST:

BARBARA A. MCGEE
CITY CLERK

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

City Attorney

“GRANTEE”
CALNEV PIPELINE COMPANY,
a _____ corporation

Name:
Title:

Name:
Title:

[END OF SIGNATURES]

Exhibit “A”

Pipelines

[on following pages]

Exhibit “B”**Fees**

The Annual Franchise Fee will be calculated as outlined in Public Utilities Code Section 6231.5 as set forth below:

For 2018	
Pipe size (internal diameter in inches)	Base rate per lineal foot
0—4 in.	\$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
CPI for All Urban Consumers in the Los Angeles-Riverside-Orange County Area	CPI Sept. 2017: 257.9 Base CPI June 1989: 128.7

For Subsequent Years	
Pipe size (internal diameter in inches)	Base rate per lineal foot
0—4 in.	\$0.176
6	0.265
8	0.353
10	0.441
12	0.529
14	0.617
16	0.705
18	0.794
20	0.882
22	0.970
24	1.058
26	1.146
28	1.234
30	1.323
CPI for All Urban Consumers in the Riverside-San-Bernardino-Ontario Area	CPI Sept. 20XX: Base CPI Dec. 2017: 100.0

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.

DRAFT

Exhibit C
Parental Guaranty