Contra Costa County

Public Works Department

Ordinance No. 2013-19

PIPELINE FRANCHISES

And

Fee Resolution 2013/305
Contra Costa County

Public Works Department

August 6, 2013

Board Order for Hearing for Pipeline Franchise Ordinance and Fee Resolution
To: Board of Supervisors  
From: Julia R. Bueren, Public Works Director/Chief Engineer  
Date: August 6, 2013  
Subject: Hearing for the Pipeline Franchise Fee Ordinance and Fee Resolution

**RECOMMENDATION(S):**  
1) OPEN the public hearing on Ordinance No. 2013-19 (establishing regulations for granting pipeline franchises in County rights of way) and Resolution No. 2013/305 (establishing pipeline franchise fee amounts), RECEIVE testimony, and CLOSE the public hearing.


**FISCAL IMPACT:**  
Revenue from pipeline franchises is deposited into the County General Fund.

**BACKGROUND:**  
On July 16, 2013, the Board of Supervisors fixed August 6, 2013 at 9:30 a.m. in the Board of Supervisors chambers, as the date, time and place for a public hearing on Ordinance No. 2013-19 (establishing regulations for granting pipeline franchises in County rights of way) and Resolution No.

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☐ APPROVE  ☐ OTHER

☐ RECOMMENDATION OF CNTY ADMINISTRATOR  ☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: 08/06/2013 ✔ APPROVED AS RECOMMENDED  ☐ OTHER

Clerks Notes:  
**VOTE OF SUPERVISORS**

AYES 5  NOES ___

ABSENT ___  ABSTAIN ___

RECUSE ___

Contact: Carrie Ricci, 925-313-2235  
By: June McHuen, Deputy  

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: August 6, 2013  
David J. Twa, County Administrator and Clerk of the Board of Supervisors  

cc:
BACKGROUND: (CONT'D)

2013/305 (establishing pipeline franchise fee amounts), as recommended by the Transportation, Water and Infrastructure Committee. If adopted, Ordinance No. 2013-19 will establish regulations for granting pipeline franchises in County rights of way, and Resolution No. 2013/305 will establish pipeline franchise fee amounts. The County’s pipeline franchise ordinance was originally adopted in 1964, and was last amended in 1992. The County currently has 22 active franchises governed by one of four franchise-granting options. Existing franchises were granted under the existing County pipeline franchise ordinance (Ordinance No. 92-64, which is uncodified) and, for those franchises granted prior to 1964, pursuant to a separate ordinance granted for a specific franchisee. The two other methods used by the County to grant a franchise are pursuant to the California Public Utilities Code. Eleven franchises have expired or require that the Board of Supervisors approve a transfer to the new owner of the pipelines. The franchise owners of the expired franchises have been notified by the County that their franchises will continue under the same terms and conditions as their original franchises, until the County adopts a new franchise ordinance.

For the last several years, County staff has looked into the possibility of updating the County’s existing pipeline franchise ordinance. Public Works staff and the County’s franchise consultant, Francisco & Associates, have surveyed several other cities and counties that issue pipeline franchises to determine their current rate structures and franchise requirements. Based on that survey, a draft ordinance was prepared. Below is a summary of some of the key provisions of the County’s proposed pipeline franchise ordinance and franchise fee resolution:

1. Reduce the length of franchise agreements from 20 to 10 years. This will provide the County with more flexibility to ensure that pipeline companies are under the most current franchise ordinance and fees.
2. Require a $5,000 administrative costs deposit that will be used to pay for costs incurred by the County in administering the pipeline franchise, including administrative costs, staff time, legal and consulting fees incurred in connection with processing the franchise application, and to provide non-routine services such as transferring a franchise, replacing surety bonds and insurance, etc.
3. Increase the minimum amount for surety bonds from $15,000 to 100% of the initial annual franchise fee, rounded up to the nearest $1,000 with a minimum surety bond of $25,000. Surety bonds are required to ensure that the franchisee observes and performs each term and condition in the franchise. County staff will request the Board of Supervisors to approve a form of Franchise Performance Bond at the same time the Board considers adopting Ordinance No. 2013-19 and Resolution No. 2013/305.
4. Require pipeline companies to inspect and test its pipelines as required by the State Fire Marshal, or other state or federal agency with jurisdiction over the pipeline or by any applicable law, and to make the results available for inspection by the Public Works Department.
5. Require pipeline companies to provide the County with a pipeline emergency plan as required by applicable laws, to be updated whenever it acquires, constructs, lays, removes or abandons any facilities under a franchise.
6. Require single limit liability insurance in the amount of $10,000,000.
7. The annual franchise fees are based on the following categories: (a) Public Utility Not Transmitting Oil or Oil Products. If a grantee is a public utility and is not transmitting oil or oil products, the grantee shall pay to the County two percent of the grantee’s gross annual receipts that arise from the use, operation or possession of the franchise. This payment shall in no event be less than one percent of the grantee’s gross annual receipts derived from sales within the County, in accordance with California Public Utilities Code Section 6231. (b) Public Utility Transmitting Oil or Oil Products. If a grantee is determined by the Public Utilities Commission to be a public utility transmitting oil or oil products, the grantee will be charged an annual fee, based on the internal diameter of the pipeline, in an amount calculated pursuant to California Public Utilities Code Section 6231.5. (c) Non-Public Utility Franchises Transmitting Industrial Gas, Oil or Oil Products. If a grantee is a non-public utility operating a pipeline system transmitting industrial gas, oil or oil products, the County will establish an individual basis in the resolution granting the franchise the annual franchise payment for the pipeline franchise, including the extension, renewal, or continuation of a previously granted franchise. The annual franchise payment will be: (1) an amount equal to a specified percentage agreed to by the applicant and the County of the gross annual receipts of the applicant arising from the use, operation, or possession of the franchise; or (2) an amount agreed to by the applicant and the County; or (3) an amount computed by multiplying the sum of one-half of the nominal internal diameter of the pipe, expressed in inches, by the number of linear feet of the pipe within the public streets, ways, alleys, or other public places within the unincorporated portion of the County. (d) Other Pipeline Franchises. If a grantee is awarded a pipeline franchise for any pipeline other than those specified in subsections (a), (b), or (c), or for the extension, renewal, or continuation of a previously granted franchise, the grantee shall pay to the County two percent of the grantee’s gross annual receipts.
that arise from the use, operation or possession of the franchise. This payment shall in no event be less than one percent of the grantee’s gross annual receipts derived from sales within the County, in accordance with California Public Utilities Code Section 6231. PG&E franchises that are calculated based on 2% of gross annual receipts will remain the same because they are franchises granted under the Broughton Act (now Public Utilities Code sections 6001-6017), which continue until surrendered or forfeited for violation of their terms. The County General Fund received fees totaling $4,018,985 for fiscal year 2011-2012 from all franchisees. The amount varies from year to year because the PG&E franchise fees are based on gross annual receipts and gas and electric surcharges. The annual franchise fees will increase by approximately $60,000 annually as a result of the proposed new ordinance. Approximately $40,000 in franchise fees are used each year to pay for administrative costs, which include staff costs for Public Works, County Counsel, and franchise consultant fees.

8. In addition to the administrative deposit and the annual franchise payment, a grantee shall also pay an abandonment fee in order to abandon in place all or part of its facilities upon approval by the Board of Supervisors.

9. The proposed ordinance includes modified provisions for franchisees that use their facilities to transport only potable water, including (i) instead of filing a pipeline emergency plan with the Public Works Department, the franchisee may file a certification annually declaring that it has prepared and filed the required pipeline emergency plan with the Public Utilities Commission, (ii) a liability insurance minimum of $5,000,000 instead of $10,000,000, (iii) a reduced bond amount requirement, and (iv) not requiring the franchisee to pay a pipeline abandonment fee. These exceptions are based on the lower risk presented by the product being transported in the pipes compared to products transported by pipeline franchisees, and the potential for rate increases to the franchisees end customers.

On September 4, 2012, and January 2, 2013, Public Works staff sent drafts of the proposed ordinance to all companies that have a current franchise agreement and/or pay the County an annual franchise fee. The companies have had an opportunity to provide comments in writing or meet with Public Works staff to discuss their comments and concerns. The Public Works Department received comments from Chevron, Calpine, Phillips66, Praxair, Kinder Morgan, and Golden State Water. Staff has had conference calls and/or meetings with Calpine, Chevron, Kinder Morgan, and Golden State Water. Based on the comments, meetings and conference calls, some revisions were made to the proposed ordinance to address their concerns. The draft pipeline franchise ordinance and fee resolution were presented to the Transportation, Water and Infrastructure Committee (TWIC) on May 2, 2013 and June 12, 2013. At the June 12, 2013 TWIC meeting, the committee recommended moving this item to a public hearing at a Board of Supervisors meeting. Attached hereto as Exhibit A are calculations showing that the administrative deposit required under the ordinance and fee resolution, and the abandonment fees are necessary to recover County staff costs to administer franchises and remove abandoned pipes. When a franchise grantee’s administrative deposit is depleted, the franchise grantee will make an additional administrative deposit. County staff will provide an itemized accounting of County’s costs upon request. The fee charged for the administration of a pipeline franchise and removal of abandoned pipelines will not exceed the amount required to administer a franchise or remove abandoned pipelines. The fees set forth in attached Ordinance 2013-19 and Resolution 2013/305 will become effective 30 days after adoption of Ordinance 2013-19 and Resolution 2013/305. The notice of the public hearing as required by Government Code Section 6062(a) was published twice during the ten-day period prior to the hearing, with at least two publications separated by five days.

CONSEQUENCE OF NEGATIVE ACTION:
County staff will continue to use an outdated pipeline ordinance that lacks appropriate provisions to protect the County from risks, and miss an opportunity to increase revenue by increasing franchise fees.

CHILDREN'S IMPACT STATEMENT:
Not applicable.
August 13, 2013

Board Order for Adoption of Pipeline Franchise Ordinance and Fee Resolution
RECOMMENDATION(S):
1) ADOPT Ordinance No. 2013-19, establishing regulations for granting pipeline franchises in County rights of way.

2) ADOPT Resolution No. 2013/305, establishing pipeline franchise fee amounts.

3) APPROVE form of pipeline franchise performance bond.

FISCAL IMPACT:
Revenue from pipeline franchises is deposited into the County General Fund.

BACKGROUND:
On August 6, 2013, the Board of Supervisors took the following actions: 1) Opened the public hearing on Ordinance No. 2013-19 (establishing regulations for granting pipeline franchises in County rights of way) and Resolution No. 2013/305 (establishing pipeline franchise fee amounts), received testimony, and closed the public hearing; and 2) Introduced Ordinance No. 2013-19, establishing regulations for granting pipeline franchises in County rights of way, waived the reading, and fixed

Action of Board On: 08/13/2013 ☑ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:
VOTE OF SUPERVISORS

AYES 5 NOES ____
ABSENT ____ ABSTAIN ____
RECUSE ____

Contact: Carrie Ricci, 925-313-2235

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: August 13, 2013
David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy
BACKGROUND: (CONT'D)

August 13, 2013 for adoption of Ordinance 2013-19 and Resolution No. 2013/305. The notice of the public hearing as required by Government Code Section 6062a was published twice during the ten-day period prior to the hearing, with at least two publications separated by five days. Ordinance No. 2013-19 will establish regulations for granting pipeline franchises in County rights of way, and Resolution No. 2013/305 will establish pipeline franchise fee amounts. The County’s pipeline franchise ordinance was originally adopted in 1964, and was last amended in 1992. The County currently has 22 active franchises governed by one of four franchise-granting options. Existing franchises were granted under the existing County pipeline franchise ordinance (Ordinance No. 92-64, which is uncodified) and, for those franchises granted prior to 1964, pursuant to a separate ordinance granted for a specific franchisee. The two other methods used by the County to grant a franchise are pursuant to the California Public Utilities Code. Eleven franchises have expired or require that the Board of Supervisors approve a transfer to the new owner of the pipelines. The franchise owners of the expired franchises have been notified by the County that their franchises will continue under the same terms and conditions as their original franchises, until the County adopts a new franchise ordinance. For the last several years, County staff has looked into the possibility of updating the County’s existing pipeline franchise ordinance. Public Works staff and the County’s franchise consultant, Francisco & Associates, have surveyed several other cities and counties that issue pipeline franchises to determine their current rate structures and franchise requirements. Based on that survey, a draft ordinance was prepared. Below is a summary of some of the key provisions of the County’s proposed pipeline franchise ordinance and franchise fee resolution: 1. Reduce the length of franchise agreements from 20 to 10 years. This will provide the County with more flexibility to ensure that pipeline companies are under the most current franchise ordinance and fees. 2. Require a $5,000 administrative costs deposit that will be used to pay for costs incurred by the County in administering the pipeline franchise, including administrative costs, staff time, legal and consulting fees incurred in connection with processing the franchise application, and to provide non-routine services such as transferring a franchise, replacing surety bonds and insurance, etc. 3. Increase the minimum amount for surety bonds from $15,000 to 100% of the initial annual franchise fee, rounded up to the nearest $1,000 with a minimum surety bond of $25,000. Surety bonds are required to ensure that the franchisee observes and performs each term and condition in the franchise. The Board of Supervisors is to approve a form of pipeline franchise performance bond that franchise grantees will be required to conform to in posting bonds ensuring their performance under their franchises. 4. Require pipeline companies to inspect and test its pipelines as required by the State Fire Marshal, or other state or federal agency with jurisdiction over the pipeline or by any applicable law, and to make the results available for inspection by the Public Works Department. 5. Require pipeline companies to provide the County with a pipeline emergency plan as required by applicable laws, to be updated whenever it acquires, constructs, lays, removes or abandons any facilities under a franchise. 6. Require single limit liability insurance in the amount of $10,000,000. 7. The annual franchise fees are based on the following categories: (a) Public Utility Not Transmitting Oil or Oil Products. If a grantee is a public utility and is not transmitting oil or oil products, the grantee shall pay to the County two percent of the grantee’s gross annual receipts that arise from the use, operation or possession of the franchise. This payment shall in no event be less than one percent of the grantee’s gross annual receipts derived from sales within the County, in accordance with California Public Utilities Code Section 6231. (b) Public Utility Transmitting Oil or Oil Products. If a grantee is determined by the Public Utilities Commission to be a public utility transmitting oil or oil products, the grantee will be charged an annual fee, based on the internal diameter of the pipeline, in an amount calculated pursuant to California Public Utilities Code Section 6231.5. (c) Non-Public Utility Franchises Transmitting Industrial Gas, Oil or Oil Products. If a grantee is a non-public utility operating a pipeline system transmitting industrial gas, oil or oil products, the County will establish on an individual basis in the resolution granting the franchise the annual franchise payment for the pipeline franchise, including the extension, renewal, or continuation of a previously granted franchise. The annual franchise payment will be: (1) an amount equal to a specified percentage agreed to by the applicant and the County of the gross annual receipts of the applicant arising from the use, operation, or possession of the franchise; or (2) an amount agreed to by the applicant and the County; or (3) an amount computed by multiplying the sum of one-half of the nominal internal diameter of the pipe, expressed in inches, by the number of lineal feet of the pipe within the public streets, ways, alleys, or other public places within the unincorporated portion of the County. (d) Other Pipeline Franchises. If a grantee is awarded a pipeline franchise for any pipeline other than those specified in subsections (a), (b), or (c), or for the extension, renewal, or continuation of a previously granted franchise, the grantee shall pay to the County two percent of the grantee’s gross annual receipts that arise from the use, operation or possession of the franchise. This payment shall in no event be less than one percent of the grantee’s gross annual receipts derived from sales within the County, in accordance with California Public Utilities Code Section 6231. PG&E franchises that are
calculated based on 2% of gross annual receipts will remain the same because they are franchises granted under the Broughton Act (now Public Utilities Code sections 6001-6017), which continue until surrendered or forfeited for violation of their terms. The County General Fund received fees totaling $4,018,985 for fiscal year 2011-2012 from all franchisees. The amount varies from year to year because the PG&E franchise fees are based on gross annual receipts and gas and electric surcharges. The annual franchise fees will increase by approximately $60,000 annually as a result of the proposed new ordinance. Approximately $40,000 in franchise fees are used each year to pay for administrative costs, which include staff costs for Public Works, County Counsel, and franchise consultant fees. 8. In addition to the administrative deposit and the annual franchise payment, a grantee shall also pay an abandonment fee in order to abandon in place all or part of its facilities upon approval by the Board of Supervisors. 9. The proposed ordinance includes modified provisions for franchisees that use their facilities to transport only potable water, including (i) instead of filing a pipeline emergency plan with the Public Works Department, the franchisee may file a certification annually declaring that it has prepared and filed the required pipeline emergency plan with the Public Utilities Commission, (ii) a liability insurance minimum of $5,000,000 instead of $10,000,000, (iii) a reduced bond amount requirement, and (iv) not requiring the franchisee to pay a pipeline abandonment fee. These exceptions are based on the lower risk presented by the product being transported in the pipes compared to products transported by pipeline franchisees, and the potential for rate increases to the franchisees end customers. On September 4, 2012, and January 2, 2013, Public Works staff sent drafts of the proposed ordinance to all companies that have a current franchise agreement and/or pay the County an annual franchise fee. The companies have had an opportunity to provide comments in writing or meet with Public Works staff to discuss their comments and concerns. The Public Works Department received comments from Chevron, Calpine, Phillips66, Praxair, Kinder Morgan, and Golden State Water. Staff has had conference calls and/or meetings with Calpine, Chevron, Kinder Morgan, and Golden State Water. Based on the comments, meetings and conference calls, some revisions were made to the proposed ordinance to address their concerns. The draft pipeline franchise ordinance and fee resolution were presented to the Transportation, Water and Infrastructure Committee (TWIC) on May 2, 2013 and June 12, 2013. At the June 12, 2013 TWIC meeting, the committee recommended moving this item to a public hearing at a Board of Supervisors meeting. Attached hereto as Exhibit A are calculations showing that the administrative deposit required under the ordinance and fee resolution, and the abandonment fees are necessary to recover County staff costs to administer franchises and remove abandoned pipes. When a franchise grantee’s administrative deposit is depleted, the franchise grantee will make an additional administrative deposit. County staff will provide an itemized accounting of County’s costs upon request. The fee charged for the administration of a pipeline franchise and removal of abandoned pipelines will not exceed the amount required to administer a franchise or remove abandoned pipelines. The fees set forth in attached Ordinance 2013-19 and Resolution 2013/305 will become effective 30 days after adoption of Ordinance 2013-19 and Resolution 2013/305.

CONSEQUENCE OF NEGATIVE ACTION:
County staff will continue to use an outdated pipeline ordinance that lacks appropriate provisions to protect the County from risks, and miss an opportunity to increase revenue by increasing franchise fees.

CHILDREN'S IMPACT STATEMENT:
Not applicable.
ORDINANCE NO. 2013-19

PIPELINE FRANCHISES

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

SECTION I. SUMMARY. This ordinance establishes procedures, terms, conditions, and requirements for establishing, renewing, and transferring pipeline franchises within Contra Costa County.

SECTION II. Chapter 1004-2 is added to the County Ordinance Code, to read:

Chapter 1004-2

PIPELINE FRANCHISES

Article 1004-2.2

General Provisions

1004-2.202 Title. This chapter is known as the Pipeline Franchise Ordinance of Contra Costa County. (Ord. 2013-19 § 2.)

1004-2.204 Purpose. The purpose of this chapter is to establish procedures and requirements for granting pipeline franchises in, under, along, and across County rights of way, so that the County may enter into franchise agreements with public utilities, electricity generation businesses, oil or gas distributors, or other entities wishing to install pipelines within County rights of way. The provisions of this chapter codify and amend Ordinance No. 1827 (enacted July 28, 1964), as subsequently amended by Ordinance No. 79-50 (enacted April 10, 1979) and Ordinance No. 92-64 (enacted September 15, 1992). (Ord. 2013-19 § 2.)

1004-2.206 Application. This chapter applies to all new applications for pipeline franchises, as well as to all applications for renewal, extension and transfer of franchises that were originally created before the enactment of this chapter, except where specifically stated otherwise. (Ord. 2013-19 § 2.)

1004-2.208 Definitions. For purposes of this chapter, the following words and phrases have the following meanings:

(a) “Applicant” means any person applying for a pipeline franchise under this chapter, including any person seeking to renew a franchise granted prior to the effective date of this chapter.
(b) "Contaminant" means any substance, material, chemical or waste occurring in any state in nature that: (1) is listed, defined, or is or becomes regulated by any governmental agency as hazardous, toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or dangerous, or as having toxic characteristics; or (2) is a liquid hydrocarbon or gaseous hydrocarbon substance or petroleum product; or (3) is or contains asbestos or polychlorinated biphenyl; or (4) is considered a hazardous waste, material or substance, or solid waste, pollutant or contaminant, as those terms are defined in their broadest sense by any applicable law, including but not limited to 42 U.S.C. Sections 6901 et seq.; 33 U.S.C. Sections 1317 and 1321; 49 C.F.R. Sections 195.2 and 172.101; 40 C.F.R. Part 302; Section 763(f)(3) of the California Code of Civil Procedure; and Section 25401.1 of the California Health and Safety Code. The term "Contaminant" does not include potable water delivered in compliance with applicable law.

(c) "County highway" means the area within the right of way for all County highways and roads accepted into the County road system by board resolution or maintained by the County as a highway or road, and in which the County has the authority to grant a franchise.

(d) "Environmental condition" means the presence or release, or threatened presence or release, of any contaminant on, above, under, or from franchise property into any of the following: surface water, ground water, drinking water supply, soil, land surface, or ambient air.

(e) "Environmental damage claims" mean all claims (including strict liability claims), judgments, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs and expenses of investigation, analysis, remediation and defense of any claim, whether a claim is ultimately defeated, and any good faith settlement of whatever kind or nature, contingent or otherwise, complete or undeveloped, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements, expert or consultant fees, any of which are incurred at any time as a result of any environmental condition or the presence or suspected presence of any contaminant, upon, about, or beneath any facility or the release or threatened release to or from any facility, or the existence of a violation of any applicable law, including without limitation:

(1) All damages for personal injury, injury to property, or natural resources occurring upon or off any facility, whether foreseeable or unforeseeable, including without limitation, lost profits and consequential damages, the cost of demolition, rebuilding of any improvements on real property, remediation, interest and penalties, and including, but not limited to, claims brought by or on behalf of employees of grantee;

(2) Fees or expenses incurred by the County or third parties for the services of attorneys, experts, consultants, contractors, laboratories and any and all other remediation costs and other costs reasonably incurred in connection with the

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investigation or remediation of contaminants or violations of applicable law, including, but not limited to preparation of studies or reports or the performance of cleanup, remedial work, removal, response, abatement, containment, closure, restoration or monitoring work required by any governmental agency, or reasonably necessary to make economic use of any property, or which are otherwise expended in connection with the existence or release of contaminants on or from any facility, and including attorneys' fees, costs and expenses incurred in enforcing the provisions of the franchise or in collecting any sums due hereunder;

(3) Liability to any third person, or to any governmental agency, to defend or indemnify the person or agency for costs expended in connection with the items referenced in subparagraphs (1) and (2) above; and

(4) The diminution in the value of any public place or property in the vicinity of a facility, and any damages for the loss of business and restriction on the use of or adverse impact on the marketing or rentable or useable space of any aspect of any property affected by contaminants or violation of any of applicable law.

(f) “Facility”, “Facilities”, “Franchise property” or “Appurtenances” means all property of a grantee, including, but not limited to, pipes, pipelines, pump stations, structures, installations, equipment, storage containers, service connections and appurtenances, such as valves and corrosion control devices, whether installed by the grantee or not, erected, constructed, laid, operated or maintained in, upon, over, under, along or across any public place in the unincorporated portion of the County, or on property owned by the County, pursuant to any right or privilege granted by a franchise.

(g) “Franchise” means a grant of the rights and privileges by the County pursuant to and as described in this chapter.

(h) “Grantee” means the entity to which a franchise is granted and its lawful successors and assigns.

(i) “Initial Term” is defined in Section 1004-2.402(a).

(j) “Pipeline franchise” means a franchise to construct, maintain, operate, repair, renew and remove or abandon in place, one or more pipelines, for the transportation of petroleum, liquid hydrocarbon substances, gas, including hydrogen, natural gas, mud, steam and other liquid and gaseous substances, including water connected with the primary business of the franchise holder, together with all manholes, service connections and other appurtenances necessary or convenient for the operation of the pipelines, in, under, along, and across County highways in the unincorporated portion of the County, or on property owned by the County.

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(k) “Public Works Department” means the Public Works Department of the County.

(l) “Road Commissioner” means the road commissioner of Contra Costa County, who is the Director of the Public Works Department.

(m) “Service connection” means the wire, pipes, or conduits connecting the building or place where the service or commodity supplied by the grantee is used or delivered, with the supply line or supply main. (Ord. 2013-19 § 2.)

1004-2.210 Administration. The road commissioner or his or her designee is responsible for administering all franchises granted under this chapter. These administrative duties include processing franchise applications, verifying franchise acceptances, issuing required encroachment and drainage permits, collecting and verifying franchise fee payments, maintaining accurate maps and records that document the type and location of franchise property, and any other administrative actions associated with the franchises granted under this chapter.

Article 1004-2.4
Terms and Conditions

1004-2.402 Term.

(a) Initial Term. The initial term of a franchise is ten (10) years from the effective date of the resolution granting the franchise, unless the resolution granting the franchise provides otherwise (the “Initial Term”), subject to renewal and termination as provided under this section. The franchise terminates at the end of its term unless earlier terminated.

(b) Renewal Terms. At the conclusion of the Initial Term and upon application by the grantee, the term of the franchise may be renewed by the board of supervisors for an additional ten (10) year period, and thereafter for a second, additional ten (10) year period as long as the grantee has fully complied with all of the terms of the franchise, including but not limited to payment of all franchise fees and all applicable laws. An application for renewal shall be filed with the board of supervisors at least six (6) months before the expiration date of the current term. A renewal application is subject to the approval of the board of supervisors. In approving the application, the board of supervisors may modify the franchise based upon, but not limited to, compliance with a new franchise ordinance and all amendments to this ordinance, the experience of the County and other cities and governing agencies in administering the franchise during the preceding term, changes in the Consumer Price Index, changes in relevant technology, changes in applicable law, including but not limited to amendments or modifications of the Public Utilities Code, changes in relevant environmental practices and requirements, utility industry regulatory developments and business practices, and other factors the board of supervisors considers relevant at the time the board of supervisors considers the
application for renewal. In order for a renewal to be effective, the grantee shall accept the renewal pursuant to Section 1004-2.414(a). Nothing in this ordinance, however, shall obligate the County to renew a franchise.

(c) **Termination.** During the term of the franchise, the franchise shall remain in full force and effect unless the grantee provides six months advance notice to the road commissioner that: (1) the grantee voluntarily surrenders or abandons the franchise, in compliance with the removal and abandonment provision in Section 1004-2.804; (2) the State of California or a municipal or public corporation purchases by voluntary agreement or condemns and takes under the power of eminent domain, all property actually used and useful in the exercise of the franchise and situated within the territorial limits of the State, municipal or public corporation purchasing or condemning the property, or (3) the franchise is forfeited for noncompliance with its terms by the grantee. After any termination, the following provisions of this chapter will continue to apply to the grantee: 1004-2.412 (damage to property); 1004-2.416 (insurance requirements); 1004-2.418 (liability, indemnity); 1004-2.420 (release of contaminants); 1004-2.802 (relocating); and 1004-2.804 (removal or abandonment of facilities).

(d) **Public Utilities.** If a franchise has been granted to a grantee that is not a public utility, and that grantee subsequently qualifies before the Public Utilities Commission of the State of California as a common carrier, the grantee shall then have no right after the qualification date to continue to operate under its franchise, except with the consent of the board of supervisors, granted upon additional terms and conditions as the board of supervisors may deem proper. Any additional terms and conditions shall be expressed by resolution. (Ord. 2013-19 § 2.)

1004-2.404 **Conditions.**

(a) **Conditions for Grant.** Every pipeline franchise granted by the County is granted subject to all provisions prescribed by this chapter and the resolution granting the franchise, and to all applicable laws and regulations.

(b) **Construction; Permits and Locations.** All franchise property: (1) must be constructed, installed and maintained in a good and workmanlike manner and of good material, in accordance with all applicable safety laws and requirements; (2) may not interfere with the use of County highways by the traveling public or for other public purposes; and (3) must conform to all applicable laws, including Divisions 1002 and 1010 of the code. A grantee shall obtain all required permits and approvals, including without limitation, all permits and approvals required by the applicable fire protection district or the State Fire Marshal, as the case may be. A grantee may not commence any construction or work on franchise property until the road commissioner has approved all franchise property locations and work plans. A grantee shall comply with the County's terms and conditions concerning the location within the public places in the unincorporated portion of the County or on property owned by the County, of proposed facilities, except to the
extent State or federal law or regulation preempts any terms and conditions, and then the location of any proposed facilities will be subject to the State or federal terms and conditions to the extent they preempt the County’s terms and conditions. Notwithstanding the foregoing, a grantee may conduct emergency repairs to franchise property without obtaining the required permits and approvals if the emergency situation renders it dangerous to delay the repairs until after obtaining the required permits and approvals. Any grantee that makes emergency repairs without a permit shall submit plans to the road commissioner as soon as possible to obtain a permit for the work performed, and shall make any changes to the repairs as required by the road commissioner.

(c) Restoration. Upon constructing, maintaining or using any pipes and appurtenances or other facilities, or any part thereof, the grantee shall expeditiously at its own cost and expense restore to the County’s standards all public places disturbed or altered as a result of grantee’s actions.

(d) Limitations of pipeline franchises. No pipeline franchise granted under this chapter shall be construed or interpreted to permit a grantee to use any franchise property for any purpose other than the transmission of liquid or gaseous substances, or ensuring the integrity and safety of the pipeline, unless approved in advance in writing by the Public Works Department. Nothing in this chapter shall be construed to permit a grantee to construct new poles or other new franchise property above or below ground, except as permitted in writing by the Public Works Department. Fiber optic or telecommunications facilities may be used only for pipeline operations, maintenance and safety, and for no other purpose, unless the franchise agreement expressly provides for this type of use. A grantee may not allow third parties to use franchise property without the prior written consent of the road commissioner.

(e) Non-Exclusivity. A franchise granted under this chapter is non-exclusive. A franchise does not convey to a grantee an easement or any other right, title, or interest, but conveys the limited, specific rights and privileges to enter upon and use the pipelines in the manner set forth in, and subject to the conditions, limitations, and obligations of, this chapter.

(f) Contaminants. A grantee may not allow any contaminant to be generated, used, stored for any period of time, released on, under, or from any franchise property, except in full compliance with all applicable laws. If any potential or known release, threatened release, generation, storage, disposal or placement of any contaminant occurs on, in, near, or from any franchise property, the grantee shall immediately notify appropriate emergency personnel, public agencies, and the Public Works Department. (Ord. 2013-19 § 2.)
1004-2.406 Application and Grant of Franchise; County Costs.

(a) Application. Each application for an initial grant of franchise, or for an extension, renewal, transfer or continuance of a previously granted franchise, must be submitted in writing, in a format determined by the road commissioner. At a minimum, each application must specify: (1) the number, diameter, length and type of the pipeline(s) to be installed; (2) the substance(s) to be transported through the pipeline(s); (3) a map describing the location(s) of the franchise property in accordance with Section 1004-2.410 of this code; (4) the amount(s) the applicant proposes to pay to the County annually during the life of the franchise if granted; and (5) any other information required by the Public Works Department.

(b) Additional Information. In addition to the above requirements, unless exempted from disclosure to the County by a provision of the federal Homeland Security Act (6 U.S.C. Sections 101 et seq.) or other applicable law that is specifically identified by the applicant, an application for a pipeline franchise shall also provide the following information for existing and new pipelines to the Public Works Department including, but not limited to: the volume; pressure and type of substances being transported by the pipeline; the size, date of construction and material specifications of the pipeline; maximum pipeline pressure ratings; the date of the most recent inspection required by law; a copy of the most recent certifications from all applicable regulatory agencies; a detailed description of materials transported, maximum daily volumes, and certifications from all agencies responsible for permitting and operation of the pipeline facilities, as applicable; evidence of public utility status, if any; and the pipeline emergency plan specified in Section 1004-2.410, and any other information as may be requested by the road commissioner and the applicable fire protection district. Any information provided to the County pursuant to this chapter is potentially subject to the disclosure requirements of the California Public Records Act (Government Code §§ 6250, et seq.) and the County Better Government Ordinance (County Ordinance Code, Division 25), subject to any valid exceptions. (Ord. 2013-19 § 2.)

(c) County Costs. An applicant for a pipeline franchise shall reimburse the County for all of the County’s administrative costs, staff time, administrative, legal and consulting fees incurred by the County, in connection with processing the application or an application for the extension or transfer of a franchise, including but not limited to the preparation of any reports, statements or studies pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000, et seq.) and any similar federal statute, and for any advertising and publishing costs, including the cost of publishing the ordinance, if necessary, incurred in connection with the granting of the franchise and any legal and consulting fees incurred by the County, in connection with oversight, supervision and administration of the pipeline franchise. Upon request of a grantee, County will provide an itemized accounting of County’s costs.
(d) **Payment of Costs.** The grant of a pipeline franchise and its continued effectiveness shall be conditioned upon the applicant’s full payment of the County’s costs relating to the granting and administration of the franchise.

(e) **Renewal.** An application for the renewal of an existing franchise pursuant to Section 1004-2.402(b) will be denied if the grantee is not in full compliance with all of the terms and conditions of its existing franchise, this chapter and the code, including but not limited to payment of any unpaid franchise fees, interest and late fees. No application for the renewal of an existing franchise will be processed by the County or will be considered by the board of supervisors, nor will any renewal franchise be granted, unless the grantee pays the County in full any and all unpaid franchise fees, interest and late fees that have accrued through the date of the application, and thereafter, through the date of the Grant of the renewed franchise, as determined by the County.

(f) **Deposit.** Upon its application for an initial franchise or a renewal or extension, transfer, sale, lease, or assignment of an existing franchise, the applicant shall deposit with the Public Works Department an amount established by resolution of the Board of Supervisors.

(g) **Use of Deposit.** The County will deduct from an applicant’s deposit any and all of its administrative costs, staff time, administrative, legal and consulting fees incurred by the County, in connection with processing the application and administering the pipeline franchise, including but not limited to the preparation of any documents pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.). The amounts deducted will be calculated in accordance with the Public Works Department fee schedule.

(h) **Deposit Renewal.** When a grantee’s initial administrative deposit (or any subsequent administrative deposit) is depleted, the grantee shall, within 30 days after receiving notice and a written statement from the County of all costs and fees deducted from the initial administrative deposit, make an additional administrative deposit in the amount requested by the Public Works Department, not to exceed the amount established by resolution.

(i) **Excess Deposit.** The Public Works Department will return to a grantee any remaining funds on deposit after the Public Works Department determines that all administrative tasks have been completed following termination of a franchise.

(j) **Payment Requirement.** The grant and continuation of a franchise is conditioned upon the full payment of the County’s administrative costs. (Ord. 2013-19 § 2.)

**1004-2.408 Resolution.** The board of supervisors grants, renews, extends, transfers, or continues pipeline franchises by resolution. (Ord. 2013-19 § 2.)

(a) Maps and Drawings.

(1) A grantee shall file a map or maps with the road commissioner showing the accurate location, depth, and size of the constructed facilities or appurtenances, both upon filing an application for a new pipeline franchise or an extension of an existing franchise, and within 60 days following the date on which any facilities or appurtenances have been constructed, laid, removed or abandoned under a franchise.

(2) Each map must:

(A) Be in both hard copy format and an electronic format acceptable to the road commissioner and be drawn to a scale of not less than 600 feet to one inch;

(B) Show in detail the exact location, size, description and date of installation, if known, of all existing or proposed pipelines, mains, transmission lines, laterals, and service pipes that are equal to or greater than three inches in diameter, and all valves, pressure regulators, drips, and transformer chambers installed beneath the surface of all County highways that belong to, are used by, or are under the control of the grantee or the grantee’s successors or assigns;

(C) Be accompanied by an affidavit, endorsed by the grantee, verifying its correctness;

(D) Refer to any and all permits that authorized the work; and

(E) Disclose any and all substances that are transmitted through the pipelines.

(3) Within 30 days after the date on which any facilities or appurtenances have been acquired, constructed, laid, removed or abandoned under a franchise, the grantee shall submit to the Public Works Department as-built drawings of the acquired, constructed, laid, removed or abandoned franchise property.

(4) In lieu of filing a map or maps with the road commissioner as required by subsection (a)(1) above, a grantee may satisfy the requirements of this Section 2.410 by filing its maps with the Pipeline and Hazardous Materials Safety Administration National Pipeline Mapping System. If a grantee’s maps are so filed, the grantee shall allow Public Works Department staff to inspect the maps at grantee’s facilities.

(b) Pipeline Inspections and Test Results. A grantee shall test all pipelines as required by the State Fire Marshal or other state or federal agency with jurisdiction over the pipeline or by any applicable law, and must make available for inspection by the Public Works Department.
Department the results of all pipeline inspections and pipeline tests that are required by the State Fire Marshal and by all applicable laws within sixty (60) days of the grantee’s receipt of those results.

(c) Pipeline Emergency Plan. At the time of application for a franchise, an applicant shall file, and thereafter annually during the life of the franchise keep on file, with the Public Works Department a pipeline emergency plan as may be required by 49 C.F.R. section 195.402, 49 C.F.R. section 192.615, the California Pipeline Safety Act of 1981 (Government Code sections 51010 et seq.), and all other applicable laws. Each grantee shall update its pipeline emergency plan whenever it acquires, constructs, lays, removes or abandons any facilities under a franchise, and shall file the plan with the Public Works Department within thirty (30) days after any update. In lieu of filing a pipeline emergency plan with the Public Works Department, a grantee that uses its facilities to transport only potable water may file a certification annually declaring that it has prepared and filed the required pipeline emergency plan with the Public Utilities Commission.

(d) Emergency Equipment. At all times during the term of its franchise, a grantee shall locate and maintain, or arrange for the location and maintenance of, adequate emergency equipment and a trained emergency crew as required by 49 C.F.R. section 195.402, 49 C.F.R. section 192.615, the California Pipeline Safety Act of 1981 (Government Code sections 51010 et seq.), and all other applicable laws for the purpose of shutting off the pressure and flow of the contents of the franchise property in the event of an emergency. The emergency equipment and crew must be available to respond on a twenty-four (24) hour-a-day basis. At all times during the term of its franchise, a grantee shall provide up-to-date twenty-four (24) hour-a-day emergency contact information to the Public Works Department and all applicable fire protection districts. (Ord. 2013-19 § 2.)

1004-2.412 Damage to Property.

(a) Indemnity. To the extent permitted by law, the grantee of a pipeline franchise shall indemnify the County for any costs, including attorney’s fees, associated with the investigation and/or defense of any third party property damage claims brought as a result of the construction, operation, or maintenance of its facilities.

(b) Damage, Breaks, Leaks and Defective Facilities. Any damage to any property within the County caused directly or indirectly by any breaks, leaks or defective facilities within the unincorporated portion of the County or on property owned by the County shall be promptly repaired by the grantee of the franchise at the grantee’s sole cost and expense. The grantee shall restore the property to the same condition it was in before the damage or leak and shall conduct all necessary remedial work, all to the satisfaction of the road commissioner. The grantee shall obtain and pay for any necessary permits from the County for the performance of all work and shall reimburse the County for all expenses and remediation costs that may be incurred by the County. Nothing in this section shall
be construed as waiving a grantee’s rights to seek recovery from a third party for the grantee’s payment of the County’s expenses and remediation costs.

(c) **Performance of Repair Work by the County.** If a grantee fails to fully perform or fulfill its obligations under Section 1004-2.412(b) within a reasonable time, as determined by the road commissioner, then the County will have the right, but not the duty, and without limitation upon any other rights of the County pursuant to the franchise, to perform the same. The grantee shall indemnify and reimburse the County for all costs and all liabilities arising from the County’s performance, as provided in this chapter.

(d) **Emergency Response.** If any emergency response costs are incurred by the County in connection with any damage referenced in this Section, the grantee shall reimburse the County for costs, as well as any attorneys’ fees associated therewith, within 30 days after being presented with a bill. Upon request of a grantee, County will provide an itemized accounting of County’s costs. (Ord. 2013-19 § 2.)

1004-2.414 Acceptance and Bond.

(a) **Acceptance.** Within thirty (30) days after being granted a franchise, a grantee shall file with the road commissioner a written acceptance of the terms and conditions of the franchise, together with a bond (or cash or letter of credit), pursuant to subsection (b) of this section. The date of this filing is the effective date of the franchise.

(b) **Bond.**

(1) A grantee shall file with the road commissioner at the time it files acceptance of a franchise granted under this chapter, and shall maintain and keep on file with the road commissioner, a surety bond in favor of the County, issued by a surety company authorized to transact a surety business in the State of California, approved by the road commissioner, and in the form of surety bond approved by the board of supervisors. The bond must be in the sum of one hundred percent (100%) of the amount of the first full annual fee paid to the County by the grantee, rounded up to the nearest $1,000 for the initial granting of the franchise, and increased each ten years based upon the revised franchise fee amount pursuant to section 1004-2.602, provided that the minimum amount of any bond $25,000. The amount of the surety bond posted by a grantee that uses its facilities to transport only potable water shall be $25,000. Each bond must be on the condition that the grantee well and truly observe, fulfill, and perform each term and condition of the franchise, and that in case of a breach of any condition of the bond, the penal sum therein shall be recoverable. Each bond must be on the condition that if the principal or sureties fail to pay that amount upon demand from the County, they shall be liable, in addition to the penal sum of the bond, for all additional expenses, including reasonable attorneys’ fees and any interest accrued on amounts due, incurred by the County in obtaining payment under the bond.
A grantee shall maintain the bond in full force and effect throughout the term of a franchise at the grantee’s sole expense. The bond shall be issued by a surety insurer and comply with the requirements of the Bond and Undertaking Law, codified in Code of Civil Procedure Sections 995.010 et seq. A franchise shall be considered a “license or permit” within the meaning of the Bond and Undertaking Law, solely for purposes of applying the Bond and Undertaking Law to the bonding requirements of this section.

If a bond is not filed at the time a grantee files acceptance of the franchise, the award of the franchise may be set aside and the resolution granting the franchise repealed at any time prior to the filing of the bond, and any money paid in consideration for the grant of franchise shall be forfeited. If the road commissioner determines that a bond on file has become insufficient, the grantee shall renew the bond, with sureties as approved by the Public Works Department, within 10 days after receiving written notice from the road commissioner.

As an alternative to filing a surety bond, the County may, but is not obligated to, permit a grantee to deposit cash, in the same amount as required on the bond. The County will hold the cash deposit in a non-interest bearing account. If the County draws upon the cash fund for compensation for any loss or damage relating to the franchise, the grantee shall replenish the cash fund to the original amount within 30 days after receiving written notice from the County.

Grantee may, at its sole election, provide an irrevocable standby letter of credit, in a form acceptable to the County, securing all or a portion of the amount otherwise required to be secured by the performance bond. The letter of credit shall be issued by an issuing bank with offices in California, or shall authorize an advising bank with offices in California to pay the beneficiary thereunder. The County shall have the right to validate the creditworthiness of the bank being used for a letter of credit. The letter of credit shall authorize County to draw upon its proceeds in the event that grantee fails to well and truly observe, fulfill and perform each term and condition of the franchise, and that in case of any breach of the franchise, County may draw against the letter of credit up to the total amount set forth therein. If grantee determines to file a letter of credit, grantee shall file such letter of credit within ten (10) days after the adoption of the resolution granting the franchise.

Nothing in this chapter waives a grantee from liability that exceeds the amount of the bond or cash deposited. Nothing in this chapter shall be construed as a waiver by the County of any legal remedy against the grantee for any breach of the terms and conditions of the franchise, or for any damage, loss or injury suffered by the County relating to the grantee’s exercise of the franchise.

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Upon termination of a franchise, the surety bond will be released or the deposit returned to the grantee, less the amount sufficient to compensate the County for any losses arising out of the grantee’s exercise of the franchise. (Ord. 2013-19 § 2.)

1004-2.416 Insurance Requirements.

(a) Insurance. Before beginning any franchise operations, a grantee shall obtain, and provide satisfactory evidence of having obtained, policies of liability and workers' compensation insurance and pollution liability insurance from companies that are authorized to transact business in the state of California by the Insurance Commissioner of California and have a minimum rating of or equivalent to A-:VIII in Best's Key Rating Guide, Comprehensive Liability Insurance, provided, however, that a grantee that uses its facilities to transport only potable water is not required to provide evidence of pollution liability insurance.

(b) Liability Coverage. Each liability insurance policy obtained by a grantee must:

(1) Be issued to the grantee and name the County and the County’s officers, agents, and employees, as additional insureds;

(2) Provide coverage for the grantee’s liabilities assumed under this ordinance, including without limitation, the grantee’s obligation to indemnify the County and the County’s officers, agents, and employees for all liability for personal and bodily injury, death and damage to property arising from activities conducted pursuant to the franchise, and the acts or omissions of the grantee, and its agents, servants and employees, committed in the conduct of franchise operations. The coverage must provide a combined single limit liability insurance in the amount of $10,000,000, subject to self-insured retention in an amount and form that is appropriate and prudent for operations substantially similar to those of grantee, and subject to approval by County in its sole discretion, and may not be cancelled unless at least thirty (30) days prior written notice is provided to the road commissioner by grantee or its insurance provider, provided, however, that the amount of liability coverage required of a grantee that uses its facilities to transport only potable water shall be $5,000,000.

(c) Workers’ Compensation. Each workers’ compensation insurance policy obtained by the grantee must:

(1) Cover all of the grantee’s employees who in the course and scope of their employment conduct or perform work pursuant to the franchise operations;
(2) Provide for every benefit and payment presently or after conferred by Division 4 of the California Labor Code upon an injured employee, including vocational rehabilitation and death benefits;

(3) Provide for every benefit and payment under any option of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. sections 901 et seq.); and

(4) Be noncancellable without forty-five (45) days prior written notice to the road commissioner.

(5) In lieu of the policy of workers' compensation insurance required by this section, a grantee may substitute and provide a certificate of consent to self-insure, issued by the Board of Industrial Relations of the State of California.

(d) Pollution Coverage. Each pollution liability insurance policy obtained by the grantee must:

(1) Provide limits of coverage of $5,000,000 per occurrence and $10,000,000 aggregate, or other equivalent insurance as determined acceptable by the County; and

(2) Be issued to the grantee and name the County, the County's officers, agents, and employees, as additional insureds by endorsement form acceptable to the County.

(e) Evidence of Coverage. Before beginning any franchise operations, and for five (5) years after the termination or expiration of a franchise, a grantee shall file with the road commissioner either certified copies of the required liability, workers' compensation, and pollution liability policies, or a certificate of insurance for each of the required policies executed by the company issuing the policy, certifying that the policy is in force, with any necessary endorsements, including without limitation, cancellation notification endorsements. The grantee shall provide the road commissioner with renewal certificates throughout the term of the franchise. The grantee shall provide all of the following information with respect to the policy:

(1) The policy number;
(2) The date upon which the policy will become effective and the date upon which it will expire;
(3) The names of the named insured and any additional insureds;
(4) The additional insured endorsement form(s);
(5) The self-insured retention endorsement (if applicable);
(6) The subject of the insurance;
(7) The type of coverage provided by the insurance;
(8) The amount of limit of coverage provided by the insurance; and
(9) Copies of all endorsements that form a part of the policy and are applicable to the grantee’s operations under this ordinance.

(f) Compliance. No franchise operation may commence until the grantee has complied with the provisions of this section. All franchise operations must be suspended during any period that the grantee fails to maintain these policies in full force and effect. In no event shall the County’s self-insurance program be used to respond to or cover any grantee liability. (Ord. 2013-__ § 2.)

(g) Self Insurance Program. In lieu of any insurance required by this Section 2.416, County may, upon application by a grantee, permit a grantee to substitute a self administered claims program (self-insurance) covering the risks assumed under a franchise. A grantee permitted to substitute a program of self-insurance shall provide County with a letter evidencing and describing the self administered claims program, duly executed by an authorized officer of the grantee, and shall notify County in writing 30 days prior to the termination of the self administered claims program.

1004-2.418 Indemnity; Liability.

(a) Indemnity. To the fullest extent permitted by law, a grantee shall indemnify, defend and hold harmless the County, and the County’s boards, commissions, officers, agents and employees, contractors, agents, attorneys and representatives from and against any and all:

(1) claims, losses, damages (including injury or death), liabilities, suits, costs, and expenses, including reasonable attorneys’ fees, in any way connected to or arising from any operations under the franchise granted or the existence, reconstruction, design, construction, use, operation, or maintenance of the grantee’s franchise property;

(2) Environmental damage claims;

(3) Claims arising from any damage or injury suffered by any person by reason of any excavation or obstruction being improperly guarded or secured during any work authorized pursuant to the franchise or the failure or neglect of the grantee to properly perform, maintain, or protect any phase of the work;

(4) Claims, actions, or proceedings against the County or the County’s agents, officers, or employees to attack, set aside, void, or annul any approval of a pipeline franchise or other discretionary actions in furtherance of the goals of this chapter, or to impose personal liability against the County’s agents, officers, or employees, on the ground that the County failed to comply with California Environmental Quality Act (Public Resources Code §§ 21000, et seq.);
Any claims arising from the acts or omissions of subcontractors of the grantee without regard to the subcontractor’s insurance or lack thereof; and

All other claims, losses, liabilities, causes of action, demands, damages, suits, judgments, debts, costs, claims for payment, contribution or indemnity and expenses (including but not limited to attorney’s fees and costs) and liens of every kind and nature, resulting from or attributable to (A) grantee’s use or occupation of any facility, or (B) any failure to comply with any applicable law or governmental regulation, directive or order; or (C) arising from the release of any contaminant on or from any facility, whether the release is caused by grantee or any third party; or (D) grantee’s failure to fully remediate or respond to any environmental condition on, under or emanating from any facility in accordance with applicable law or as directed by the County; or (E) the performance of any remedial work, including all remediation costs.

Notwithstanding the foregoing, the County is not entitled to indemnity under this Section 2.418(a) to the extent any losses, claims, damages, or liabilities are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of the County. Nothing in this section shall be construed as waiving a grantee’s right to seek recovery from a third party other than the County or an agency of the County for indemnified claims.

(b) Liability. A grantee shall be fully and strictly liable to the County for any damage or injury incurred by the County in connection with the use of the franchise property. Any damage to any public street, road, or other public improvement in a County highway that is directly or indirectly caused by a grantee’s acts or omissions shall be promptly repaired by the grantee, at its sole cost and expense, to the complete satisfaction of the County. If a grantee fails to comply with any repairs ordered by the County within the time specified, then the road commissioner may undertake and complete all repairs at the grantee’s sole cost and expense. Nothing in this section shall be construed as waiving a grantee’s right to seek recovery from a third party other than the County or an agency of the County for these liabilities.

(c) Counsel. The County and the other parties entitled to be indemnified by a grantee hereunder shall have the right to select attorneys of its own choice to represent it at the grantee’s expense.

(d) Documents. In satisfying the obligations under this section, a grantee shall provide the County with copies of all communications, filings, writings, photographs and materials given to or received from any person, entity or agency (to the extent not protected by attorney-client privilege), in connection with any claim, order, request or demand described in this section, or of any cleanup or remedial work conducted on any facility, on or in the vicinity of any facility, and shall notify the County of and permit a County
representative to attend any meetings or oral communications relating to any claim, order, request or demand, or of any cleanup or remedial work.

(e) **County Costs.** Without limiting the generality of any of the foregoing, a grantee’s indemnification obligations include all costs incurred by the County, including all remediation costs and all other costs for any investigation and remedial work required by applicable law or otherwise necessary to responding to any claims, as well as all attorney’s fees and consultant fees incurred by the County in responding to any claims and the County’s consequential damages. If the County seeks to enforce its rights to be indemnified by a grantee as provided in this ordinance, the grantee shall pay for all costs and expenses, including without limitation attorneys’ fees, incurred by the County in enforcing, protecting, maintaining, and preserving its rights to be indemnified under this ordinance.

(f) **Performance of Remedial Work.** Without waiving any rights, at its option, the County may, upon failure of the grantee to promptly perform all necessary remedial work, commence the work itself and require the grantee to pay, pursuant to the foregoing indemnity, all remediation costs and other costs incurred by the County.

(g) **No County Obligation.** The grant of rights to the County in subsection (f) of this section: (1) is not intended to and shall not be construed to impose any obligation on the County to exercise the rights granted to a grantee or otherwise investigate, monitor or clean up any environmental condition at any facility; and (2) does not authorize the County to operate grantee’s facilities.

(h) **Reimbursement.** If any emergency response costs are incurred by the County in connection with any damages caused in whole or in part by a grantee or its franchise property, the grantee shall reimburse those costs within 30 days after being invoiced. (Ord. 2013-19 § 2.)

**1004-2.420 Release of Contaminants.** If any release or any uncontrolled loss of a contaminant, or the discovery of an unremediated environmental condition, occurs on, under or from any franchise property, the grantee shall immediately conduct remedial work, at its sole expense, as is necessary to fully mitigate, remediate, and monitor the contamination in accordance with all applicable laws, and as directed by the County. Nothing in this section waives the grantee’s rights to seek recovery from a third party for remedial work. At the County’s request, and at no cost to the County, the grantee shall provide all information and documents concerning the release of contaminants or the unremediated environmental condition occurring on, under or from the franchise property, including documents and information relating to remediation of the contamination. If a grantee fails to perform any of its obligations under this section, then the County may perform the remediation and the grantee shall indemnify and reimburse the County for all remediation and related costs incurred by the County. (Ord. 2013-19 § 2.)
1004-2.422 Transferability of Franchise.

(a) Transfer.

(i) Documentation. A grantee may not sell, transfer, assign or lease a franchise or any part of a franchise, except with the consent of the board of supervisors, which the board shall not arbitrarily withhold. No sale, transfer, assignment or lease of a franchise may be made unless the grantee files with the board of supervisors no later than sixty (60) days after execution of an agreement for any sale, transfer, assignment, or lease of the franchise, or any part thereof, or any of the rights or privileges granted under a franchise: (1) a certified copy of the executed instrument of the sale, transfer, assignment or lease of the franchise; and (2) a written request, by all parties to the agreement, for the consent of the board of supervisors to the sale, transfer, assignment or lease. If the instrument and request are not filed with the board of supervisors within 60 days after the effective date of the sale, transfer, assignment or lease, then the franchise is subject to forfeiture.

(ii) Deposit; Applicability; Pledge of Franchise. At the time a grantee seeking to transfer a franchise files the documents required by subsection (a)(i) of this section, the grantee shall deposit $5,000 with the Public Works Department to cover the County’s administrative costs, staff time, administrative, legal and consulting fees incurred by the County in connection with processing the application for the transfer of a franchise. If the initial deposit is depleted, the grantee shall, within 30 days after receiving written notice, make an additional deposit with the Public Works Department in an amount specified by the Public Works Department.

(iii) Additional Terms; Security Grant. In granting consent to the sale, transfer, assignment or lease, the board of supervisors may impose additional terms upon the franchise that the board deems to be in the public interest. This section applies to any sale, transfer, assignment, or lease of a franchise, whether by operation of law, by voluntary act of the grantee, or otherwise. Any attempt to sell, transfer, assign, or lease of a franchise without board of supervisors consent is invalid. Notwithstanding the foregoing, the County’s approval is not required for the granting of a security interest in any of grantee’s assets, or any mortgage or other hypothecation, or by assignment as collateral of any rights, title or interest of grantee in the franchise in order to secure indebtedness.

(iv) Merger or Reorganization. The County’s approval is required to sell, transfer, assign or lease any franchise resulting from a consolidation or merger of grantee with or into any other person, entity or corporation, or any other business reorganization, including any transaction or series of related transactions by grantee where more than twenty-five percent (25%) of the ownership is transferred, unless the ownership is transferred to any person or entity that was, immediately prior to the transaction or transactions, the direct or indirect owner of, or under common ownership with, the grantee.
(b) **Transfer Request.** To obtain the County's consent, a grantee shall provide the County with a written request setting forth the specific interests to be transferred, along with other information as the County may request, to the extent the information is not proprietary or otherwise privileged. A transfer application is subject to the approval of the board of supervisors.

(c) **Conditions.** The County's approval or disapproval of the proposed transfer shall be based on the proposed transferee's legal, financial and technical qualifications, the transferee's acceptance of the terms and conditions of the franchise and agreement to be bound by the terms of the franchise, and on whether grantee is in compliance with the terms of the franchise and this chapter, and the approval shall not be arbitrarily withheld. If the proposed transfer is approved by the board of supervisors, the transferor and the transferee will, within 30 days of the resolution approving the transfer, execute and deliver an assumption and consent agreement, in a form acceptable to the County. As a condition to consenting to the sale, transfer, assignment, lease or agreement, the County may impose any additional terms and conditions upon the franchise and upon the grantee or assignee, which the County may deem to be in the public interest and which will be expressed by resolution.

(d) **No Presumption of Approval.** Nothing in this ordinance shall be construed to grant to a grantee the right to sell, transfer, assign or lease the franchise, or any part thereof, except in the manner set forth in this section. No transfer shall be effective unless and until the transfer is approved by the board of supervisors, as provided in this section.

(e) **Existing Franchise Requirements.** Any purchaser, transferee, assignee, or lessee of a franchise shall comply with all bond and insurance requirements of the existing franchise within 30 days after the assignment or transfer. The bond or letter of credit must be reissued in the name of transferee or assignee. After the bond or letter of credit is reissued, the original grantee's bond or letter of credit will be released, less the amount sufficient to compensate the County for any unpaid administrative costs and losses arising out of the grantee's exercise of the franchise. (Ord. 2013-19 § 2.)

**1004-2.424 Forfeiture.** A franchise may be forfeited if the grantee fails to comply with any of the terms or conditions of the franchise for more than fifteen 15 days after receiving written notice to comply from the County. If the board of supervisors determines that the franchise is forfeited, the grantee shall immediately surrender all rights under this chapter. (Ord. 2013-19 § 2.)

**Article 1004-2.6 Compensation**

**1004-2.602 Annual Payment.** During the term of a franchise, the grantee shall pay an annual franchise fee as established by resolution of the County. The annual franchise fee shall be paid each year during the term within ninety (90) days after the end of each calendar year during the
life of the franchise. Franchise fees under this section constitute payment for the privilege of using County property, and are not in derogation of any other lawful fee or exaction. The franchise and administrative fees charged and collected under authority of this chapter do not include any other permitting or other fees the County may charge. The County reserves the right to change its franchise fees upon the renewal of a franchise at ten year intervals following the effective date of the resolution granting the franchise, if such action is not in conflict with the law of the State of California. The following limitations apply to the annual franchise fees:

(a) **Public Utility Not Transmitting Oil or Oil Products.** If a grantee is a public utility and is not transmitting oil or oil products, the grantee shall pay to the County two percent of the grantee’s gross annual receipts that arise from the use, operation or possession of the franchise. This payment shall in no event be less than one percent of the grantee’s gross annual receipts derived from sales within the unincorporated portion of the County, in accordance with California Public Utilities Code Section 6231.

(b) **Public Utility Transmitting Oil or Oil Products.** If a grantee is determined by the Public Utilities Commission to be a public utility transmitting oil or oil products, the grantee will be charged an annual fee, based on the internal diameter of the pipeline, in an amount calculated pursuant to California Public Utilities Code Section 6231.5.

(c) **Non-Public Utility Franchises Transmitting Industrial Gas, Oil or Oil Products.** If a grantee is a non-public utility operating a pipeline system transmitting industrial gas, oil or oil products, the County will establish on an individual basis in the resolution granting the franchise the annual franchise payment for the pipeline franchise, including the extension, renewal, or continuation of a previously granted franchise. The annual franchise payment will be: (1) an amount equal to a specified percentage agreed to by the applicant and the County of the gross annual receipts of the applicant arising from the use, operation, or possession of the franchise; or (2) an amount agreed to by the applicant and the County; or (3) an amount computed by multiplying the sum of one-half of the nominal internal diameter of the pipe, expressed in inches, by the number of lineal feet of the pipe within the public streets, ways, alleys, or other public places within the unincorporated portion of the County, or on property owned by the County.

(d) **Other Pipeline Franchises.** If a grantee is awarded a pipeline franchise for any pipeline other than those specified in subsections (a), (b), or (c) of this section, or for the extension, renewal, or continuation of a previously granted franchise, the grantee shall pay to the County two percent of the grantee’s gross annual receipts that arise from the use, operation or possession of the franchise. This payment shall in no event be less than one percent of the grantee’s gross annual receipts derived from sales within the unincorporated portion of the County, in accordance with California Public Utilities Code Section 6231.

(e) **Extension and Renewal.** If a grantee with a previously granted franchise to build and operate a pipeline system transmitting oil or gas or their products seeks to renew or
extend a franchise that was in effect on September 1, 1989, the grantee will be charged
the fee computed pursuant to California Public Utilities Code Section 6231.5(c). (Ord.
2013-19 § 2.)

1004-2.604 Late Payments. If any portion of the annual franchise fee is not paid on or before
April 15th of the year it is due, a late fee equal to fifteen percent of the amount of the unpaid
franchise fee will attach to the unpaid portion of the franchise fee on April 16. If any annual
franchise fee is not paid on or before the last day of May of the year in which the franchise fee is
due, an additional late fee equal to fifty percent of the amount of the unpaid franchise fee will
attach to the unpaid portion of the franchise fee on June 1. (Ord. 2013-19 § 2.)

1004-2.606 Annual Payment Statement; Audit. If a franchise fee is based on a grantee’s
annual receipts, the following requirement also applies: upon its payment of the annual franchise
fee on March 31 of each calendar year, the grantee shall also file with the Public Works
Department a verified statement under penalty of perjury showing in detail the basis for the
calculation of the franchise payment of franchise fees. The statement shall be in a form
established by the Public Works Department and contain the information requested by the Public
Works Department. Upon request, the County may examine at grantee’s offices the books,
accounts, and records necessary to verify the data set forth in the annual statement described in
this section. Costs relating to this examination may be deducted from the administrative fee
established in Section 1004-2.608. (Ord. 2013-19 § 2.)

Article 1004-2.8
Relocation, Removal, and Abandonment

1004-2.802 Relocation and Costs.

(a) Street Modifications. The County reserves the right to change the grade, to change the
width or to alter or change the location of any street over which a franchise is granted. If
any of the pipelines, facilities or appurtenances constructed, installed or maintained by a
grantee pursuant to a franchise on, along, under, over, in, upon or across any street are
located in a manner that prevents or interferes with the change of grade, traffic needs,
operation, maintenance, improvements, repair, construction, reconstruction, widening,
alteration or relocation of the street, the grantee shall relocate permanently or temporarily
any franchise property at no expense to the County upon receipt of a written request from
the road commissioner to do so, and shall promptly apply for any required permits and
commence the work on or before the day specified in the written request which date shall
be not less than sixty (60) days after receipt of the written request. A request to
disconnect, remove, or relocate franchise property will: (1) specify the reasons for the
required relocation, removal, or disconnection; (2) specify the nature of the work and the
areas in which it will be done; (3) direct the grantee to take all steps necessary to protect
its franchise property during the work; (4) specify the date on which the required
relocation, removal or disconnection shall be completed, which date will be at least thirty

ORDINANCE NO. 2013-19
21
(60) days after the mailing of the notice; and (5) specify the amount of the County’s costs attributable to the grantee’s franchise property and the date by which the grantee must pay this amount to the County. The grantee shall reimburse the County for costs under this section within forty-five (45) days of receipt of this notice. The grantee shall thereafter diligently prosecute the work to completion. Nothing in this section is intended to restrict any right that the grantee may have, if any, to recover any relocation costs from the California Department of Transportation for state freeway or highway construction, or for the California Department of Transportation to pay the costs itself. Nothing in this section shall restrict any right that the grantee may have to recover any relocation costs under applicable law from a third party other than the County or an agency of the County.

(b) Public Entity Facilities.

(i) Public Entity Improvements. The County reserves the right for itself, and for all other public entities that are now or may later be established, to lay, construct, repair, alter, relocate and maintain subsurface or other improvements of any type or description in a governmental but not proprietary capacity within the streets over which the franchise is granted. If the County or any other public entity finds that the location or relocation of County improvements conflicts with the facilities laid, constructed or maintained under a franchise, whether the facilities were laid before or after the improvements of the County or other public entity were laid, the grantee of the franchise shall, at no expense to the County or public entity, on or before the date specified in a written request from the road commissioner, which date shall be not less than sixty (60) days after the receipt of a notice and request to do so, commence work to change the location either permanently or temporarily of all facilities that conflict with the improvements to a permanent or temporary location in the streets to be approved by the road commissioner and thereafter diligently prosecute the work to completion.

(ii) State Highway. If a street over which a franchise is granted is subsequently designated a state highway, while it remains a state highway, the rights of the State of California shall be as provided in Section 680 of the Streets and Highways Code of the State of California. Nothing in this section shall restrict any right that the grantee may have, if any, to recover any relocation costs under applicable law from a third party other than the County or an agency of the County.

(c) Relocation. A grantee shall remove or relocate, without expense to the County and within the time the County reasonably specifies, any facilities installed, used and maintained under the franchise, if and when made necessary by any lawful change of grade, alignment or width of any public place in the unincorporated County or on property owned by the County, including the construction of any subway or viaduct by the County. As examples only and not by way of limitation, a change by the County to public works such as sewers, water lines and storm drains, and public facilities below grade, in trenches, conduits or otherwise, shall give rise to the grantee’s obligation to
remove or relocate its facilities. The County may, in the discretion of the road commissioner and at the grantee’s sole cost, provide assistance as the road commissioner deems appropriate in locating and securing the rights to alternate locations to which to relocate the pipeline when relocation is required under this section. Nothing in this section shall obligate the County to provide any assistance.

(d) **Conflicting Improvements.** If the County or any other public entity constructs or maintains any storm drain, sewer structure, or other facility or improvement under or across any facility of the grantee maintained pursuant to this ordinance, the grantee shall provide at no expense to the County or other public entity all support as shall be reasonably required to support, maintain and protect the grantee’s facility.

(e) **Public Entity Relocation.** If a grantee after reasonable notice fails or refuses to relocate permanently or temporarily its facilities located in, on, upon, along, under, over, across or above any highway or to pave, surface, grade, repave, resurface or regrade as required, pursuant to any provision of the franchise, the County or other public entity may cause the work to be done and shall keep an itemized account of the entire cost. The grantee shall hold harmless the County, and the County’s officers, agents, and employees from any liability which may arise or be claimed to arise from the moving, cutting, or alteration of any of the grantee’s facilities, or the turning on or off of water, oil, or other liquid, gas, or electricity. (Ord. 2013-19 § 2.)

**1004-2.804 Removal or Abandonment.**

(a) **Application to Abandon.** Within sixty (60) days after a franchise expires, is revoked or is terminated, or the use of all or a portion of the franchise property has been permanently discontinued, the grantee shall submit a written application to the road commissioner for a permit to: (1) abandon all or a portion of the franchise property in place; or (2) remove all or a portion of the franchise property. The application must describe the franchise property to be abandoned or removed and its location, and must describe with reasonable accuracy the physical condition of the franchise property. The road commissioner will establish conditions for the proposed abandonment or removal and issue a permit. Within ninety (90) days after obtaining a permit, the grantee shall commence and complete the work authorized by the permit.

(b) **Determination.** The road commissioner, in his or her sole discretion, shall determine whether the abandonment in place or removal that is proposed may be effected without detriment to the public interest and under what conditions a proposed abandonment or removal may be safely effected. The road commissioner shall then notify the grantee of the determination. The grantee shall pay to the County the cost of all tests required to determine whether the franchise facilities will be abandoned in place or removed.

(c) **Permit Application.** Within forty-five (45) days after receipt of notice, the grantee shall apply for a permit from the Public Works Department to abandon in place or remove all
or a portion of the facilities and shall pay all fees and costs related to the abandonment. The permit shall contain conditions of abandonment or removal as may be prescribed by the road commissioner. The grantee shall comply with all permit conditions to the satisfaction of the road commissioner before the facilities shall be considered abandoned or removed. Until so abandoned or removed, fees applicable to the franchise and the removal or abandonment shall continue to accrue. Any abandonment in place shall be conditioned, in part, upon grantee’s compliance with the provisions of subparagraphs (a) and (b) of this section.

(d) Work. The grantee shall, within ninety (90) days after obtaining an abandonment or removal permit, commence and diligently prosecute to completion the work authorized by the permit.

(e) County Removal. If a grantee does not comply with all terms and conditions of abandonment in place or removal, then the County may remove, or cause to be removed, the facilities at the grantee’s expense. The grantee shall pay to the County the cost of work plus the current rate of overhead being charged by the County for reimbursable work.

(f) Abandonment or Removal. If a grantee fails to apply for a permit to remove or abandon franchise property within 30 days after the expiration, revocation or termination of a franchise, or within 30 days after the permanent discontinuance of the use of all or a portion of franchise property, the road commissioner will determine whether the facilities will be abandoned in place or removed and will notify the grantee of this determination.

(g) Abandonment Fee. If a grantee applies for authority to abandon all or a portion of its facilities in place, and the board of supervisors authorizes abandonment in place of all or part of the facilities, the grantee, other than a grantee that uses its facilities to transport only potable water, shall pay to the County a fee established by resolution of the County. If the grantee has paid the abandonment fee and the County later requires removal of the abandoned facilities, the amount of any fee paid for abandonment shall be credited against grantee’s cost of removal.

(h) Cost Reimbursement. The grantee shall reimburse the County for all reasonable costs, staff time, administrative, legal, and consulting fees incurred by the County in preparing any reports, statements, studies, and other environmental review pursuant to CEQA for the abandonment or removal of any pipeline(s) and/or facilities.

(i) Additional Orders. If any facilities to be abandoned in place are not abandoned in accordance with all prescribed conditions, the road commissioner may make additional appropriate orders, including an order that the grantee remove any or all of the facilities. The grantee shall comply with all additional orders.
(j) **Failure to Make Application.** If, within sixty (60) days after the expiration, revocation or termination of a franchise, or of the permanent discontinuance of the use of all or a portion of a grantee’s facilities, the grantee fails or refuses to apply to abandon or remove the facilities, the road commissioner shall make the determination as to whether the facilities shall be abandoned in place or removed. The road commissioner shall then notify the grantee of the determination. The grantee shall thereafter comply with the provisions of Section 1004-2.802(c).

(k) **Continuing Removal Obligation.** Any franchise property that is abandoned in place is subject to the condition that if, at any time after the effective date of an abandonment, the Public Works Department determines that any portion of the abandoned property may interfere with any public project or create a hazardous environmental condition, the grantee or its successor in interest must immediately remove that portion of the property at the sole expense of the grantee or its successor in interest when directed to do so by the Public Works Department, or pay the County for the full cost of the removal. (Ord. 2013-19 § 2.)

### 1004-2.806 Hazardous Materials.

Prior to the issuance of any encroachment permit for the construction or installation of any pipelines for the transmission of flammable liquids or gases, approval shall be obtained from the road commissioner and, as applicable, from each fire protection district or the State Fire Marshal, as the case may be, in which any pipelines will be located. All approvals should be based on the determination that no undue fire hazard will be created to life or property in the areas through which the proposed pipeline will be located. To make the determination, consideration shall be given to:

- (a) Type of commodity to be transmitted;
- (b) Density of population or structural development in the area through which the pipeline will be located;
- (c) Adequacy of water supplies for fire control purposes;
- (d) Extent of available public fire protection facilities; and
- (e) Number and location of shut-off valves in line.

(Ord. 2013-19 § 2.)

### 1004-2.808 Acquisition of a Grantee’s Property.

(a) **Eminent Domain.** Any franchise granted hereunder in no way impairs or affects the right of the County to acquire the property of grantee by purchase or condemnation, and nothing in this ordinance shall be constructed to contract away, modify or abridge, either
for a term or in perpetuity, the County right of eminent domain in respect to any public utility.

(b) Valuation of Franchise. In accordance with Public Utilities Code Section 6263, no franchise granted under this ordinance shall ever be given any value before any court or other public authority in any proceeding of any character in excess of the cost to grantee of the necessary publication under this chapter at the time of grant of the franchise. (Ord. 2013-19 § 2.)

1004-2.810 - Notices. All notices, demands or statements required by a franchise or this chapter to a grantee shall be in writing and delivered by hand or certified mail or by overnight delivery addressed to the person the grantee has designated pursuant to Corporations Code Section 17060(a)(2). All notices required by a franchise or this chapter to the County shall be in writing and delivered by hand or certified mail addressed to the County clerk of the board of supervisors and the road commissioner. All notices shall be deemed given on the date of delivery by hand or, or three days after deposit in the mail, postage prepaid or to overnight delivery carrier. (Ord. 2013-19 § 2.)

SECTION III. EFFECTIVE DATE. This ordinance becomes effective thirty (30) days after passage. Within fifteen (15) days after passage, this ordinance shall be published once with the names of the supervisors voting for or against it in the Contra Costa Times, a newspaper published in the County.

PASSED on August 13, 2013, by the following vote:

AYES: Gioia, Andersen, Pechko, Mitchell, Glover
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST: DAVID J. TWA
Clerk of the Board of Supervisors and County Administrator

By: [SEAL]

ORDINANCE NO. 2013-19
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Contra Costa County
Public Works Department

Form of Franchise Performance Bond
Contra Costa County
Form of Franchise Performance Bond

Know all by these presents:

That we, [insert legal name of franchise grantee], a [corporation, limited liability company] organized and existing under the laws of the State of [insert state of formation] ("Principal"), and [insert name of surety / bonding company], a [corporation, limited liability company] organized and existing under the laws of the State of [insert state of formation] ("Surety"), and authorized to transact surety business in the State of California, are held and firmly bound unto Contra Costa County ("Obligee"), in the sum of ____________ Dollars ($___) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successor and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Board of Supervisors of Contra Costa County, California, pursuant to County Ordinance No. 2013-19, adopted August 13, 2013 (the "Ordinance"), and County Resolution No. 20__/__, adopted _____, 20__, (the "Resolution"), has granted a franchise to Principal, giving it the right from time to time to construct, maintain, operate, repair, renew, and remove or abandon in place, certain pipelines, as more particularly described in the Ordinance and the Resolution.

NOW THEREFORE, THE CONDITION of the above obligation of the Principal and the Surety is such that, if the Principal shall well and truly observe, fulfill, and perform each term and condition of the franchise required to be performed by it, at the times and in the manner specified therein, then the above obligation of the Principal and the Surety shall be null and void, otherwise it shall remain in full force and effect.

PROVIDED, that if any action is commenced on this bond by the Obligee, in addition to the sum specified above, the Principal and Surety, their heirs, executors, administrators, successors and assigns, jointly and severally, shall be obligated to pay to the Obligee all costs, attorney’s fees and other litigation expenses incurred by the Obligee in collecting moneys due under the terms of this bond.

Signed and sealed, this _______________ day of ____., 20__.

(SEAL)

By: ___________________________       By: ___________________________
   (Name of Principal)               (Name of Surety)

By: ___________________________
   By: ___________________________
   Name: _________________________
   Name: _________________________
   Title: _________________________
   Title: _________________________
Contra Costa County
Public Works Department

EXHIBIT A
PIPELINE FRANCHISE FEES
$5,000 Deposit for Security/Administration Deposit

Each franchisee’s $5,000 administrative deposit will be used to pay costs incurred by the County in connection with administering pipeline franchises, which costs include, without limitation, staff time spent processing pipeline franchise applications, fees incurred verifying acceptances, issuing required encroachment and drainage permits, collecting and verifying payments, maintaining accurate records that document the type and location of the franchise property, and providing non-routine services such as transferring a franchise, replacing surety bonds, and any other administrative tasks associated with franchises.

Several different staff positions may be involved in the administration of pipeline franchises based on the level of work. As shown below, the Public Works Customer Services Coordinator currently administers pipeline franchises, with assistance from the following classifications: Administrative Services Assistant II, Senior Real Property Technical Assistant, and Clerical - Senior. The amount of time spent on administration of pipeline franchises is dependent on the task required, such as establishment of a new franchise, transfer of a franchise, replacement of surety bonds, etc.

The current hourly costs including benefits and indirect costs for staff personnel administering pipeline franchises are set forth below.

<table>
<thead>
<tr>
<th>Position</th>
<th>Rate per hour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer Services Coordinator</td>
<td>$180.44</td>
</tr>
<tr>
<td>Administrative Services Assistant II</td>
<td>$113.57</td>
</tr>
<tr>
<td>Sr. Real Property Technical Asst.</td>
<td>$ 93.87</td>
</tr>
<tr>
<td>Clerical – Senior Level</td>
<td>$ 85.97</td>
</tr>
</tbody>
</table>

Estimated Costs Associated with Franchise Administration:

<table>
<thead>
<tr>
<th>Application of a new franchise:</th>
<th>Hourly Rate</th>
<th>Number of Hours</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer Services Coordinator</td>
<td>$180.44</td>
<td>5</td>
<td>$ 902.20</td>
</tr>
<tr>
<td>Administrative Services Asst. II</td>
<td>$113.57</td>
<td>15</td>
<td>$1,703.55</td>
</tr>
<tr>
<td>Sr. Real Property Technical Asst.</td>
<td>$ 93.87</td>
<td>4</td>
<td>$ 375.48</td>
</tr>
<tr>
<td>Clerical – Senior Level</td>
<td>$ 85.97</td>
<td>4</td>
<td>$ 343.88</td>
</tr>
<tr>
<td>Estimated Total</td>
<td></td>
<td></td>
<td>$3,325.11</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Transfer of a franchise:</th>
<th>Hourly Rate</th>
<th>Number of Hours</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer Services Coordinator</td>
<td>$180.44</td>
<td>5</td>
<td>$ 902.20</td>
</tr>
<tr>
<td>Administrative Services Asst. II</td>
<td>$113.57</td>
<td>15</td>
<td>$1,703.55</td>
</tr>
<tr>
<td>Sr. Real Property Technical Asst.</td>
<td>$ 93.87</td>
<td>4</td>
<td>$ 375.48</td>
</tr>
<tr>
<td>Clerical – Senior Level</td>
<td>$ 85.97</td>
<td>4</td>
<td>$ 343.88</td>
</tr>
<tr>
<td>Estimated Total</td>
<td></td>
<td></td>
<td>$3,325.11</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Replacement of surety bonds:</th>
<th>Hourly Rate</th>
<th>Number of Hours</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer Services Coordinator</td>
<td>$180.44</td>
<td>1</td>
<td>$ 180.44</td>
</tr>
<tr>
<td>Administrative Services Asst. II</td>
<td>$113.57</td>
<td>8</td>
<td>$ 908.56</td>
</tr>
<tr>
<td>Sr. Real Property Technical Asst.</td>
<td>$ 93.87</td>
<td>5</td>
<td>$ 469.35</td>
</tr>
<tr>
<td>Estimated Total</td>
<td></td>
<td></td>
<td>$1,558.35</td>
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</table>
Estimated Costs Associated with Franchise Administration: (cont.)

<table>
<thead>
<tr>
<th>Verification of insurance:</th>
<th>Hourly Rate</th>
<th>Number of Hours</th>
<th>Total</th>
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<tbody>
<tr>
<td>Customer Services Coordinator</td>
<td>$180.44</td>
<td>1</td>
<td>$180.44</td>
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<td>Administrative Services Asst. II</td>
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<td>$567.85</td>
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<td>Sr. Real Property Technical Asst.</td>
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<tr>
<td>Estimated Total</td>
<td></td>
<td></td>
<td>$936.03</td>
</tr>
</tbody>
</table>

Annual Franchise Fee Payments:

The majority of pipeline franchise fees are established by statute. The Board of Supervisors has discretion to set the fees for non-public utility franchises transmitting industrial gas, oil or oil products. If a grantee is a non-public utility operating a pipeline system transmitting industrial gas, oil or oil products, the County will establish, on an individual basis in the resolution granting the franchise, the annual franchise payment for the pipeline franchise, including the extension, renewal, or continuation of a previously granted franchise. The annual franchise payment will be:

1. an amount equal to a specified percentage agreed to by the applicant and the County of the gross annual receipts of the applicant arising from the use, operation, or possession of the franchise; or
2. an amount agreed to by the applicant and the County; or
3. an amount computed by multiplying the sum of one-half of the nominal internal diameter of the pipe, expressed in inches, by the number of lineal feet of the pipe within the public streets, ways, alleys, or other public places within the unincorporated portion of the County.

Abandonment Fees

In addition to the administrative costs deposit and the annual franchise payment, a grantee shall also pay an abandonment fee in order to abandon in place all or part of its facilities upon approval by the Board of Supervisors. The abandonment fees set forth in the resolution are as follows:

<table>
<thead>
<tr>
<th>Pipelines With An Internal Diameter of (in inches):</th>
<th>Amount Per Lineal Foot</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-12</td>
<td>$15.00</td>
</tr>
<tr>
<td>14-18</td>
<td>$22.00</td>
</tr>
<tr>
<td>20-30</td>
<td>$28.00</td>
</tr>
</tbody>
</table>

Upon an application by a franchisee to abandon pipes in place, the road commissioner, in his or her sole discretion, shall determine whether a pipeline company may abandon pipelines in place or whether removal of the abandoned pipe is necessary. If the road commissioner recommends permitting abandonment of pipes in place and the Board of Supervisors authorizes abandonment, the franchisee shall pay the related abandonment fee. If a pipeline company has paid the abandonment fee and the County later requires removal of the abandoned pipeline but is no longer a franchisee or available to pay for the cost of removal, the amount abandonment fee is designed to cover the County’s costs of removal. If the pipeline company is still a franchisee and is available to remove previously abandoned pipelines, the amount of its abandonment fee paid will be credited against its cost of removal.

County costs to remove abandoned pipelines vary based on the type, size and depth of pipe. The fees listed above are a reasonable estimate of costs for County staff to perform the work or contract with a company to remove abandoned pipe if the company that installed the pipe is no longer in business and able to fulfill its obligations to remove the abandoned pipelines.
Contra Costa County

Public Works Department

Resolution No. 2013/305

Establishing Pipeline Franchise Fee Amounts
THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA
and for Special Districts, Agencies and Authorities Governed by the Board

Adopted this Resolution on 08/13/2013 by the following vote:

John Gioia
Candace Andersen
Mary N. Piepho
Karen Mitchoff
Federal D. Glover

AYES: 5
NOES: 0
ABSENT: 0
ABSTAIN: 0
RECUSE: 0

Resolution No. 2013/305

IN THE MATTER OF: A RESOLUTION OF THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY
ESTABLISHING PIPELINE FRANCHISE FEE AMOUNTS

The Board of Supervisors of the County of Contra Costa finds and declares:

1. On August 13, 2013, the Board of Supervisors of the County of Contra Costa adopted Ordinance No. 2013-19, entitled “Pipeline Franchises,” adding Chapter 1004-2 to the Contra Costa County Ordinance Code, relating to the procedures and requirements for granting pipeline franchises in, under, along, and across County rights of way, so that the County may enter into franchise agreements with public utilities, electricity generation businesses, oil or gas distributors, or other entities wishing to install pipelines within County rights of way and to provide rules, regulations, restrictions and terms and conditions for granting such franchises.

2. Ordinance Code Section 1004-2.406(f) provides that an applicant for an initial franchise or a renewal or extension, transfer, sale, lease or assignment of an existing franchise, shall deposit with the Public Works Department an amount established by resolution.

3. Ordinance Code Section 1004-2.602 provides that the grantee of a franchise shall pay an annual franchise fee as established by resolution of the County.

4. Ordinance Code Section 1004-2.804(g) provides that, if the grantee of a franchise applies for authority to abandon all or a portion of its facilities in place, and the board authorizes abandonment in place of all or a part of the facilities, the grantee shall pay to the County a fee established by resolution of the County.

5. The Board of Supervisors, by this resolution, intends to establish the following franchise related payments under Ordinance Code Chapter 1004-2.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY DOES RESOLVE AS FOLLOWS:

Section 1. Application Deposit. Pursuant to Ordinance Code Section 1004-2.406, the following application deposit shall be paid by an applicant, as defined by Ordinance Code Section 1004-2.208(a), applying for a franchise under Ordinance Code Chapter 1004-2 from the County of Contra Costa (“County”):

1. Pursuant to Ordinance Code Section 1004-2.406(f), at the time an applicant submits an application for an initial franchise or a renewal or extension, transfer, sale, lease, or assignment of an existing franchise, the applicant shall deposit with the Public Works Department the amount of Five Thousand Dollars ($5,000) to reimburse the County for the estimated costs of the County in processing an application for an initial franchise or a renewal or extension, transfer, sale, lease, or assignment of an existing franchise (“Application Deposit”).

2. Pursuant to Ordinance Code Section 1004-2.406(h), when a grantee’s initial administrative deposit (or any subsequent administrative deposit) is depleted, the grantee shall, within 30 days after receiving notice, make an additional administrative deposit in the amount requested by the Public Works Department, not to exceed the amount of the initial Application Deposit.

3. Pursuant to Ordinance Code Section 1004-2.406(i), the Public Works Department will return to a grantee any remaining funds on deposit after the Public Works Department determines that all administrative tasks have been completed following termination of a franchise.

Section 2. Franchise Payments. Pursuant to Section 1004-2.602, a grantee shall pay the following annual franchise payments to the County in the manner and at the time set forth in Ordinance Code Article 1004-2.6 as the annual consideration for a pipeline franchise from the County.

A. Public Utility Not Transmitting Oil or Oil Products.
1. The grantee of any franchise awarded to a public utility not transmitting oil or oil products, as consideration for such franchise, shall annually pay to the County in lawful money of the United States, within ninety (90) 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, two percent (2%) of the gross annual receipts of the grantee arising from the use, operation or possession of the franchise; provided, however, that such payment shall in no event be less than one percent (1%) of the grantee’s gross annual receipts derived from the sale within the limits of the unincorporated portion of the County of the utility service for which the franchise is awarded; or such other amounts as are provided in Section 6231 of the Public Utilities Code of the State of California.

2. The grantee shall also collect and remit to the County, as applicable, any municipal surcharge as provided in Public Utilities Code §§ 6350-6354.1.

B. Public Utility Transmitting Oil or Oil Products.

1. The grantee of any franchise awarded to a public utility transmitting oil or oil products, as consideration for such franchise, shall annually pay to the County in lawful money of the United States, within ninety (90) 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, the following amounts:

<table>
<thead>
<tr>
<th>Internal Diameter of Pipeline (in inches):</th>
<th>Base Rate Per Lineal Foot</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-4</td>
<td>$0.088</td>
</tr>
<tr>
<td>6</td>
<td>$0.132</td>
</tr>
<tr>
<td>8</td>
<td>$0.176</td>
</tr>
<tr>
<td>10</td>
<td>$0.220</td>
</tr>
<tr>
<td>12</td>
<td>$0.264</td>
</tr>
<tr>
<td>14</td>
<td>$0.308</td>
</tr>
<tr>
<td>16</td>
<td>$0.352</td>
</tr>
<tr>
<td>18</td>
<td>$0.396</td>
</tr>
<tr>
<td>20</td>
<td>$0.440</td>
</tr>
<tr>
<td>22</td>
<td>$0.484</td>
</tr>
<tr>
<td>24</td>
<td>$0.528</td>
</tr>
<tr>
<td>26</td>
<td>$0.572</td>
</tr>
<tr>
<td>28</td>
<td>$0.616</td>
</tr>
<tr>
<td>30</td>
<td>$0.660</td>
</tr>
</tbody>
</table>

2. For pipelines with an internal diameter not listed above, the payments shall be in the same proportion to the payments of a 12-inch-diameter pipe as the diameter of the unlisted pipe is to 12 inches.

3. The amount of the payment or charge provided for in this section shall be multiplied by the Consumer Price Index, All Urban Consumers for the San Francisco-Oakland-San Jose (CMSA) Area for the month of September immediately preceding the month in which payment is due and payable, and divided by the Consumer Price Index, All Urban Consumers for the San Francisco-Oakland-San Jose (CMSA) Area for June 30, 1989, which is declared to be 100.0.

4. Provided, however, the amount of the payment shall in no event be less than the amount of the payment provided in and as calculated under Public Utilities Code § 6231.5, as that section may be amended from time to time.

C. Non-Public Utility Franchises Transmitting Industrial Gas, Oil Or Oil Products.

The County will establish on an individual basis in the resolution granting the franchise the annual franchise payment for any pipeline franchise awarded to a non-public utility transmitting industrial gas, oil or oil products, including the extension, renewal, or continuation of a previously granted franchise. The annual franchise payment will be: (1) an amount equal to a specified percentage agreed to by the applicant and the County of the gross annual receipts of the applicant arising from the use, operation, or possession of the franchise; or (2) an amount agreed to by the applicant and the County; or (3) an amount computed by multiplying the sum of one-half of the nominal internal diameter of the pipe, expressed in inches, by the number of lineal feet of the pipe within the public streets, ways, alleys, or other public places within the unincorporated portion of the County, or on property owned by the County.

D. Other Pipeline Franchises.

The grantee of any pipeline franchise awarded for any pipeline other than those specified in Sections A, B and C above, or for the extension, renewal, or continuation of a previously granted franchise, shall annually pay to the County in lawful money of the United States, within ninety (90) 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, two percent (2%) of the grantee’s gross annual receipts that arise from the use, operation or possession of the franchise. This payment shall in no event be less than one percent of the grantee’s gross annual receipts derived from sales within the unincorporated portion of the County, in accordance with California Public Utilities Code Section 6231.

E. Adjustments.

1. The amount of each base payment specified in Sections B, C(2), and D C(3) shall be adjusted at the time payment is due by the
percentage change in the Consumer Price Index, all Urban Consumers for the San Francisco-Oakland-San Jose (CMSA) Area (1982-84 = 100), for the period January 1, 2013 to the date which is sixty (60) days prior to the due date of the payment.

2. In no event shall any payment be charged which is less than the base payment amount established herein.

3. The indices specified herein 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 (CMSA) Area, and no transposition table is available to convert to another index, then the amount of each annual adjustment in base payments shall be computed by using a comparable governmental index.

Section 3. Abandonment. In addition to the application deposit and the annual franchise payment, a grantee shall also pay the following payment to the County in the manner and at the time set forth in Ordinance Code Section 1004-2.804(g) to abandon in place all or part of its facilities upon approval by the board.

A. Abandonment Payments. If a grantee applies for authority to abandon all or a portion of its facilities in place, and the board authorizes abandonment in place of all or part of the facilities, the grantee, other than a grantee that uses its facilities to transport only potable water, shall pay to the County an abandonment payment which shall be computed, as follows:

<table>
<thead>
<tr>
<th>Internal Diameter of Pipelines With An Internal Diameter of (in inches):</th>
<th>Amount Per Lineal Foot</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-12</td>
<td>$15.00</td>
</tr>
<tr>
<td>14-18</td>
<td>$22.00</td>
</tr>
<tr>
<td>20-30</td>
<td>$28.00</td>
</tr>
</tbody>
</table>

B. Adjustments. The amount of each base payment specified in Section A shall be adjusted at the time payment is due in the manner set forth in Section 2.E of this Resolution.

Section 4. Payment Amounts. The Board of Supervisors finds and determines that the payments and charges established by this resolution are in an amount that is either the reasonable value of the use of public places or reasonably necessary to recover the costs and expenses to be incurred by the County in administering pipeline franchises within the County or are otherwise expressly permitted by any applicable law.

Section 5. Effectiveness. The new fees set forth in this resolution will become effective upon the effective date of County Ordinance No. 2013-19, which ordinance adds Ordinance Code Chapter 1004-2 to Title 10 of the Code.

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown:

ATTESTED:

DAVID TWA, Clerk of the Board of Supervisors and County Administrator

Contact: Carrie Ricci, 925-313-2235

ATTESTED: August 13, 2013

David Twa, County Administrator and Clerk of the Board of Supervisors

By: [Signature] Deputy

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