

ORDINANCE NO. 2004-02-1326

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SIGNAL HILL, CALIFORNIA, GRANTING TO PACIFIC TERMINALS LLC THE RIGHT, PRIVILEGE, AND FRANCHISE TO LAY AND USE PIPES AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING OIL AND PETROLEUM PRODUCTS FOR ANY AND ALL LAWFUL PURPOSES UNDER AND ALONG THE PUBLIC STREETS, WAYS, ALLEYS, AND PLACES AS THE SAME NOW OR MAY HEREAFTER EXIST, WITHIN SAID CITY

WHEREAS, Pacific Terminals LLC, a Delaware Limited Liability Corporation, has filed an application with the City of Signal Hill, California, for a franchise to lay and use pipes and appurtenances for the transmission and distribution of oil and petroleum products; and

WHEREAS, pursuant to Resolution No. 2004-01-5356, the City Council of the City of Signal Hill, at its regular meeting held on January 13, 2004, declared and published notice of its intent to grant said franchise on the terms contained herein; and

WHEREAS, Pacific Terminals LLC, has provided the City with information concerning its internal organization and its experience and resources, financial, managerial, and otherwise, to perform its obligations under a franchise; and

WHEREAS, at its regular meeting held on February 24, 2004, after holding a duly noticed public hearing and hearing and passing upon all protests, the City Council determined that the public interest and necessity justify the granting of the franchise.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SIGNAL HILL, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. DEFINITIONS

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

- (a) The word "Grantee" shall mean Pacific Terminals LLC, a Delaware Limited Partnership;
- (b) The word "City" shall mean and include the City of Signal Hill, a municipal corporation, in its present incorporated form or in any later reorganized, consolidated, or reincorporated form;
- (c) The word "streets" shall mean the public streets, highways, medians, parkways, and other public ways and alleys, or any other public places or property of the City as the same may now or hereafter exist within said City;
- (d) The word "Engineer" shall mean the City Engineer of the City, or the Engineer's written designee;
- (e) The word "oil" shall mean natural or manufactured oil, gas, or other petroleum products, or a mixture of such natural and manufactured substances;
- (f) The phrase "pipes and appurtenances" shall mean pipe, pipeline, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, appurtenance, and any other property located or to be located on, in, or under the streets of the City, and used or useful in the transmission and distribution of oil;
- (g) The phrase "lay and use" shall mean to lay, construct, erect, install, operate, maintain, use, repair, replace, or remove;
- (h) The word "Agency" shall mean and include the Redevelopment Agency of the City, a public body, corporate and politic, in its present form or in any later form;
- (i) The phrase "working day" shall mean every day except Saturday and Sunday and any holiday on which the City's offices are closed.
- (j) The phrase "hazardous liquid pipeline" shall mean a pipeline which carries those substances subject to and as defined in Part 195 of Title 49 of the Code of Federal Regulations (Transportation of Hazardous Liquids by Pipeline) and as said Part 195 may be amended from time to time.

SECTION 2. GRANT OF FRANCHISE

Subject to each and all of the terms and conditions contained in this ordinance, and pursuant to applicable provisions of Chapter 2 of Division 3 of the Public Utilities Code of the State of California (Sections 6201 et seq.), or proper governmental authority, there is hereby granted to Grantee the right, privilege and franchise to lay and use pipes and appurtenances for communications cable and the transmission and distribution of oil for any and all lawful purposes, under and in the street included in the "Description of Pipeline Routes, Dimensions and, when available, Depths" attached hereto as Exhibit A and incorporated herein by this reference. This grant of franchise shall also include such other routes as may be approved upon application to the City Council.

SECTION 3. TERM OF FRANCHISE

The term or period of this franchise shall be for fifteen (15) years from and after the effective date hereof.

SECTION 4. PAYMENTS TO THE CITY

(a) Franchise Fee. For the right, privilege and franchise granted hereunder, Grantee shall pay to the City an annual fee, payable in the amounts and times provided in this Section.

(b) Computation of Fee. The fee shall be computed based upon the "Schedule of Charges" attached hereto as Exhibit B and incorporated herein by this reference. Commencing as of January 1, 2005, or the effective date of this ordinance, whichever is sooner, such annual payments shall be made continuous from the date of installation to and including the date of either (i) actual removal of the pipelines, (ii) the effective date of a properly approved abandonment "in place" authorized by the City pursuant to Section 7(c) which shall not be effective until Grantee shall have fully complied with all of the provisions of this part and of all other applicable provisions of law or ordinance relative to such abandonments, or (iii) until any line installed and/or maintained pursuant to the provisions of this part shall have been transferred or assigned pursuant to the provisions of Section 11 of this ordinance. After completion of such assignment, and upon City approval thereof, all obligations of Grantee for such line under this part shall cease.

The amount of the fee shall be determined based upon the lineal feet of pipeline and shall vary depending upon the diameter of the pipe and whether the pipeline is active or inactive. The fee for an inactive pipeline shall be fifty (50%) percent of that for an active line of the same dimension. At such time as use of a pipeline shall be discontinued, and if Grantee intends such discontinuance to continue for more than two years, Grantee shall notify City in writing of such use discontinuance. Grantee shall not be entitled to any fee reduction unless said notice is provided, and then only in accordance with Section 4(f) and 7(c).

(c) Consumer Price Index Adjustment. The annual payment for each lineal foot of pipeline shall be computed and revised each calendar year as follows:

(1) The applicable base rate shall be multiplied by the Consumer Price Index (CPI) for Homeowners' Costs in the Los Angeles Metropolitan Area, published by the United States Department of Labor, Office of Information for the month of September immediately preceding the month of January in which payment shall be due and payable, and divided by the Consumer Price Index for Homeowners' Costs for December 1989 which is 100.0. Under no circumstances shall the multiplying factor be less than one or the computed fees be greater than what is allowed under applicable California law.

(2) If the United States Department of Labor, Office of Information discontinues the preparation and publication of a Consumer Price Index for Homeowners' Costs in the Los Angeles Metropolitan Area, and if no transposition table prepared by the Department of Labor is available so as to make those statistics which are then available applicable to the Index of December 1989, then the City Council shall prescribe a rate of payment which shall, in its judgment, vary from the rates specified in this subsection in approximate proportion as commodity consumer prices then current vary from commodity consumer prices current in December 1989. Upon this point the determination by the City Council shall be final and conclusive.

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

(d) Time for Payment. The annual franchise fee shall be computed based upon the Schedule of Charges in Exhibit B, as adjusted pursuant to subsection (c) of this Section, and the initial annual payment shall be due and payable upon Grantee's filing of written acceptance with the City Clerk pursuant to Section 14(b). The franchise fee shall be prorated for the remainder of the calendar year based upon a 360-day year. The next annual payment shall be due and payable on the first working day of the following calendar year, and on the first working day of each calendar year thereafter for the remainder of the franchise, whether or not an invoice therefore is received. Payment shall be accompanied by the inventory of facilities described in Section 9(b) and also showing Grantee's computation of franchise fee for each pipeline segment.

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

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

(g) Past Due Fees For Unauthorized Pipelines. Fees shall continue to accrue during each year or portion thereof that pipelines and appurtenances occupy City streets. In the event Grantee has any pipelines or appurtenances occupying City streets without right, Grantee shall pay all fees computed based on the schedules set forth herein, as annually adjusted, with interest and penalties thereon, as provided herein, for each year or portion thereof in which City streets were so occupied.

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

SECTION 5. GRANT OF FRANCHISE SUPERSEDES ALL OTHER RIGHTS.

This franchise is granted in lieu of all other franchises owned by Grantee, or the aforementioned entities, or by any successor or assign of Grantee to any rights under this franchise, for transmission and distribution of oil within the limits of the City, as said limits now or may hereafter exist, and the acceptance of the franchise hereby granted shall operate as an abandonment of all other such franchises within the limits of the City, as such limits now or may hereafter exist, in lieu of which this franchise is granted.

SECTION 6. GRANTEE'S GENERAL OBLIGATIONS.

(a) Compliance with Law. The Grantee shall construct, install and maintain all pipes and appurtenances in a good and workmanlike manner and of good materials and in conformity with all the applicable ordinances, rules and regulations heretofore or hereafter adopted by the City Council in the exercise of its police power. The Grantee shall operate and maintain all pipes and appurtenances included under this franchise in accordance with all applicable requirements of Part 195 of Title 49 of the United States Code of Federal Regulations and local ordinance subject to the changes, amendments and modifications as hereafter may be adopted in accordance with local, state, or federal law, including but not limited to those requirements concerning pipeline design, construction, testing, maintenance, surveillance, and operation of utility gas gathering, transmission and distribution piping systems. Any vibration from pipes and appurtenances shall be kept to a level such that it is undetectable to any residents or businesses in the City and in such cases as it is deemed necessary by the engineer, vibration-dampening equipment of the

best available technology shall be installed within ninety (90) days of such an order to reduce any vibrations to levels deemed acceptable by the American National Standards Institute.

(b) Emergency Response Plan. The Grantee shall develop and maintain an emergency response plan satisfactory to the Engineer that covers franchise operations within the City. In general, an emergency response plan meeting the requirements of Federal and State law and containing the information contained in this section shall be acceptable. The emergency response plan shall include proof of arrangements capable of providing emergency clean-up services, including but not limited to traffic control, sand, vacuuming, and other supplies and services as necessary, within four (4) hours of notification of any problem, and such other information as the Engineer shall reasonably require. The Engineer shall be notified ten (10) days in advance of any proposed change in such arrangements. The current emergency response plan shall be resubmitted annually to the Engineer on the first working day of the calendar year.

(c) Excavation Permit Required. The Grantee shall obtain and pay any required fees for an excavation permit before commencing any construction, alteration, installation, removal and/or maintenance of pipes, appurtenances, and cathodic protection under this franchise. The Grantee may obtain an excavation permit by filing a set of excavation plans with the Engineer that shall be subject to his or her review and approval. The excavation plans shall show the location of the proposed excavation as well as the location and existence of all pipes, sewers, conduits, improvements, and other facilities including but not limited to gas, oil and gas product gathering, distribution and transmission pipes that may be impacted by the proposed excavation activity. The excavation plans shall also contain an adequate description of the proposed work including an estimate of the duration of interference with any street traffic. The Engineer may impose conditions upon the issuance of an excavation permit, including the posting of a faithful performance bond in such principal amount as the Engineer may deem adequate. In addition, the Engineer may also give the Grantee directions for the location of any pipes and appurtenances as may be reasonably necessary in the opinion of the Engineer to avoid structures in or under the street.

(d) Cathodic Protection. If cathodic protection is proposed to be used for pipes and appurtenances and electrical attachments or components thereto which have been or are hereafter installed or maintained beneath the surface of City streets, it shall meet the standards set forth by Part 195 of Title 49 of the United States Code of Federal Regulations and Chapter 5.5 of the California Government Code. The Grantee shall conduct annual testing on City water lines located near the Grantee's pipeline at sufficient stationing to show that no damage is occurring to the City's water lines as a result of Grantee's cathodic protection measures.

The Grantee shall be fully responsible for the repair and/or replacement of City pipes and appurtenances and electrical attachments or components thereto, as required by the Engineer, damaged by cathodic protection installed or maintained by the Grantee. All repair and replacement work shall be completed at the Grantee's sole expense.

(e) Performance of Work. The work shall be done in compliance with all City rules, regulations, ordinances, standards and specifications, and such other conditions as the Engineer may direct. All work shall be subject to the inspection of the Engineer. All street coverings or openings, or traps, vaults, and manholes shall at all times be kept flush with the surface of the streets; provided however, that vents for underground traps, vaults and manholes may extend above the surface of the streets when said vents are located in parkways, between the curb and the property line, subject to the prior approval of the Engineer. The Grantee shall provide adequate traffic safety barriers, signs, devices and traffic safety warning equipment in accordance with City ordinances, rules or regulations or such additional safety measures as the Engineer may direct.

(f) Emergencies. Whenever any of Grantee's pipelines or appurtenances permits the escape of liquids, vapors, or gases, it shall be the duty of Grantee and any person using or controlling the pipeline or appurtenance to immediately notify the City Fire and Public Works Departments and make sure the situation is safe. This includes but is not limited to containment, pump shutdown, valve closures, and evacuation of lines. In the event of an emergency threatening life, health, safety, or property, where it is not possible to obtain an excavation permit prior to commencement of the work, the Grantee may commence such work provided that within seventy-two (72) hours thereafter the Grantee shall make application to the Engineer for an excavation permit in accordance with the foregoing procedures. The Engineer may impose reasonable conditions upon the issuance of such a permit and all work shall be subject to inspection. Adequate traffic safety barriers shall be maintained at all times and any damaged portion of the street shall be restored to the same condition as existed prior to the excavation. If the Engineer determines that no emergency occurred or that an excavation permit could have been obtained in advance, the Engineer shall assess the Grantee an amount equal to the cost of the work, which shall be paid by the Grantee within thirty (30) days after invoice therefore.

(g) Annual Certification - Hazardous Liquid Pipelines. Prior to the first working day in January of each year, the Grantee shall certify to the Engineer the total footage of its hazardous liquid pipelines within the City. The certification shall include a breakdown of the footage under the control of:

- (1) United States Department of Transportation
- (2) California State Fire Marshall
- (3) City of Signal Hill

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

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

SECTION 7. REPAIR OF STREETS; RELOCATION AND REMOVAL OF FACILITIES

(a) Repair of Streets. The Grantee shall make and backfill all excavations so as to leave the surface of the public street, alley, highway, or public place in as good a condition as it was prior to said excavation. If any portion of any street shall be damaged by reason of defects in any of the pipes and appurtenances maintained or constructed under this franchise, or by reason of any other cause arising from the construction, operation, maintenance or existence of any pipes and appurtenances constructed or maintained under this franchise, the Grantee shall, at its own cost and expense, immediately repair any such damage and restore such street, or portion of street, to as good a condition as existed before such defect or other cause of damage occurred, such work to be done under the direction of the Engineer, and in accordance with all rules, regulations, ordinances, standards and specifications of the City. Grantee shall repair any such damage and restore such street within three (3) working days of receipt of written demand therefore by the Engineer, or such other period as the Engineer may prescribe when required by the public health and safety.

(b) Relocation of Facilities. The Grantee shall, from time to time protect, support, dislocate, temporarily or permanently as may be required, remove or relocate, without expense to the City or any other governmental entity, any facilities installed, used, and maintained under the franchise, when made necessary by any lawful change of grade, alignment, or width of any public street, including the construction of any subway or viaduct, water, sewer, or storm drain lines by the City or any other governmental entity and including when any underground utility district is formed, or made necessary by any other public improvement or alteration in, under, on, upon, or about any public street or other public property, whether such public improvements or alteration be at the insistence of the City or any other governmental entity, and whether such improvement or alteration is for a government or proprietary function, or made necessary by traffic conditions, public safety, street vacation, or any other public project or purpose of City or any other governmental entity. Grantee shall diligently seek and obtain all permits, licenses, or approvals required by governmental agencies of competent jurisdiction. All work shall be performed as directed by the Engineer, and the decision of the Engineer shall be final and binding upon Grantee. Such work shall be completed within ninety (90) days after Grantee has

obtained all necessary permits and received written notice from the Engineer to proceed, or such greater or lesser period as the Engineer may reasonably direct.

(c) **Change in Use of Facilities.** Upon the expiration, revocation, or termination of this franchise, or the discontinuance of use of the pipes and appurtenances or any portion thereof, as determined in Section 4, Grantee shall, within twenty (20) days thereafter, make written application to the Engineer for authority to (i) classify the pipelines and appurtenances as inactive, (ii) remove all such idle pipes and appurtenances, or (iii) abandon them in place. Thereupon the Engineer shall determine whether such pipelines and appurtenances are inactive, whether such pipelines or appurtenances can be removed without detriment to the public interest, and under what conditions such removal may be safely effected, or alternatively, whether some or all of such pipes and appurtenances may be abandoned in place, and shall then notify the Grantee regarding such requirements and conditions as shall be specified in the Engineer's order. It is expressly understood that in light of environmental liability arising from conditions associated with abandoned pipelines, such abandonment is disfavored and would be approved by the City only in unique circumstances where the public health, safety, and welfare is protected and promoted.

(d) **Removal or Abandonment of Facilities.** Within ninety (90) days after the determination of the Engineer approving removal or abandonment of the pipes and appurtenances, and pursuant to such order of the Engineer, Grantee shall remove or abandon in place, as the case may be, all such facilities. The City may disconnect or sever any facilities not timely removed at the point at which they enter City streets so they cannot be used for the purposes for which they were intended without reconnection after proper authorization.

(e) **City to Perform Work.** In the event that Grantee fails to perform the repair, relocation and/or abandonment as specified in this Section within the time periods set forth above, then the Engineer may have such failure cured by having such work performed by City or its agents and charge Grantee the cost therefore. City shall keep an itemized account of the cost thereof, including an administrative charge of twenty-five percent (25%) for overhead. Grantee shall pay such costs within thirty (30) days of written invoice therefore by City. In addition, in the event a bond has been posted in accordance with Section 6(c) the City or the Agency may cure the breach and recover from the bond principal and surety the expenses incurred thereby, including attorney's fees.

(f) **Liability of Grantee.** Any repair, relocation, or abandonment as required by this Section of any street or facility installed, used, or maintained under this franchise shall be the sole responsibility of Grantee, and Grantee, pursuant to Section 8, shall indemnify City from any liability arising from such repair, relocation, or abandonment. Grantee shall be solely responsible for complying with all laws, regulations, and other orders as may be applicable such repair, relocation, or abandonment, whether federal, state, local, or administrative. City's approval of such repair, relocation, or abandonment shall not be deemed to relieve Grantee of any liability Grantee may have for contaminated soils or other environmental liability arising from said pipes and appurtenances. Grantee

acknowledges that the City is in no way responsible for conducting or accomplishing any such repair, relocation, or abandonment, or for compliance with any laws, regulations, or orders applicable thereto, and acknowledges and agrees that it shall not hold City liable or responsible in any manner for any loss, claim, or damage, including environmental damage or compliance with future repair, relocation, or abandonment requirements, in connection with any such repair, relocation, or abandonment.

SECTION 8. INSURANCE AND INDEMNIFICATION

(a) Insurance. Prior to the effective date of this franchise, Grantee shall provide certificates of insurance evidencing the maintenance of public liability insurance, for injury and death of one or more persons resulting from the same incident, accident, or occurrence and for damage to or destruction of property in a combined limit or aggregate amount of Two Million Dollars (\$2,000,000.00). Such insurance shall name the City as additional insured, and protect the City, its officers and employees, and Grantee against loss, directly or indirectly, from liability imposed by law on account of bodily injury and death, and damage to or destruction of property, resulting from the activities of the Grantee under the rights granted by this franchise. The insurance shall contain a severability of interest clause providing that the coverage shall be primary for losses arising from Grantee's operations and neither the City, Agency, nor their insurers shall be required to contribute to any loss. Such insurance shall be maintained in full force and effect during the entire term of this franchise, and shall provide for thirty (30) days written notice to the City prior to any cancellation. The insurance policy shall be issued by an insurance company authorized to do business in the State of California with a Best's minimum policyholder rating of "A" status or better and a Best's financial category minimum rating of Class 9 status or better, as rated in the most recent edition of Best's Key Rating Guide, or as otherwise approved by the City in the event such rating system is modified. The insurance required hereunder may be increased by the City during the term of the franchise to reflect increased risk of losses in the industry, and other market factors.

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

(1) A certification evidencing such facts, which certification has been approved by the Engineer as to sufficiency and by the City Attorney as to form, to which is attached the following agreement:

In consideration of City allowing Grantee to self-insure the risks in lieu of a policy of liability insurance, Grantee agrees to indemnify and keep and save free and harmless and defend the City, its officers and employees from and against any and all loss, claims, or demands of any kind or nature whatsoever for death, injury, or loss to persons or damage to property, including property or facilities owned by the City, its officers or employees, or any of them which they may sustain or incur or which may be imposed upon them, or any of them, arising out of, or in any manner incident to, Grantee's

operations authorized by a permit or permit supplement issued pursuant to the provisions of the Municipal Code, or a permit or permit supplement, issued pursuant to the Ordinance, or an excavation permit issued pursuant to the provisions of the Municipal Code.

(2) A financial statement showing the financial condition of the Grantee as of a date not more than one (1) year prior to Grantee's application for the franchise, which statement has been certified by Grantee's proper officials to be true and correct, and which reflects a net worth of the Grantee in excess of five (5) times the amount of limits of liability as established herein. The statement shall have been approved by the Engineer as to sufficiency and by the City Attorney as to form.

(c) Bonds. Whenever any performance bond is required to be posted under this franchise, the bond shall be issued in a form approved by the City Attorney and issued by a corporate surety authorized to do business in the State of California with a Best's minimum policyholder rating of "A" status or better, and a Best's financial category minimum rating of Class 9 status or better, as rated by the most recent edition of Best's Key Rating Guide, or as otherwise approved by the City in the event such rating system is modified. The principal amount of any bonds specified in this franchise may be increased by the City during the term of the franchise to reflect inflation, increased risk of losses and other factors.

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

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

(2) Grantee shall promptly pay any judgment rendered against the City, the Agency, their officers, agents or employees for any such claims or liabilities arising out of or in connection with such work, operations or activities of Grantee

hereunder; and Grantee agrees to save and hold the City, the Agency, their officers, agents, and employees harmless therefrom;

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

SECTION 9. IDENTIFICATION AND INVENTORY OF FACILITIES

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

(b) Inventory and Description Required. All persons owning, using, or controlling any facilities installed or maintained beneath the surface of any street shall annually, on the first working day in January, submit to the Engineer, in the form and manner prescribed by the Engineer, a complete inventory of the facilities, including legal descriptions and maps, showing pipeline location and depth (when available), the size (internal diameter) and lineal footage of each pipeline segment, and the date of each pipeline addition or deletion. The term "facilities", as used in this Section, shall include all pipelines and appurtenances of the Grantee that are in place in the street as of the first day of the calendar year, plus all pipelines thereafter installed during said year. All pipelines in place shall be deemed to be in use until the Grantee files an application with the Engineer for permission to remove or abandon the same and approval is granted by the City pursuant to Section 7(c).

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

SECTION 10. CONDEMNATION

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

SECTION 11. TRANSFER

(a) Prohibition on Transfer Without City Approval. Except as otherwise provided herein, neither this franchise, the interest of Grantee hereunder, nor the pipelines and appurtenances covered hereby may be sold, transferred, leased, hypothecated, encumbered, assigned, or disposed, in whole or in part, either by forced or involuntary transfer, or by voluntary transfer, merger, consolidation, or otherwise (herein collectively referred to as "transfer"), without first obtaining the approval and consent of the City Council expressed by resolution, and then only under such conditions as may therein be prescribed.

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

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

(d) Transfer in Violation Default. In the event the transfer is approved by the City Council, the Grantee's assigns or successors shall accept the franchise in the same manner as provided herein, and the provisions of this franchise shall be binding upon such assigns or successors in like manner as upon the Grantee. Any purported sale, transfer, lease, assignment, hypothecation, encumbrance, merger, agreement, consolidation or similar transaction affecting this franchise regardless of whether such transaction is

voluntary or involuntary and which occurs without the prior approval and consent of the City Council shall be void, and shall, in addition, constitute a default and be grounds for forfeiture under this franchise, provided, however, that no forfeiture shall occur until after the City Council holds a noticed hearing on the matter pursuant to Section 12.

SECTION 12. VIOLATIONS; REVOCATION

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

(b) Appeal. Within ten (10) days following the sending of such notice of violation the Grantee may file a written appeal with the City Council. The appeal shall state the grounds on which it is taken. The City Council shall review the appeal and determine whether to accept the appeal and set the matter for public hearing. If the matter is not set for hearing, the Engineer's action shall be final. Grantee shall be fully liable for any losses, costs, damages, or claims arising during the pendency of such appeal.

(c) Hearing. The Grantee shall be notified in writing of the date, time, and place of the hearing at least ten (10) days in advance of the hearing, and notice of such hearing shall be published in a newspaper of general circulation. At the conclusion of the hearing, the City Council shall consider the evidence and affirm, modify, or reverse the decision of the Engineer. The decision of the City Council shall be final.

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

(e) Performance of Work by City. Notwithstanding the foregoing, if necessitated by the public health, safety, and welfare, after expiration of said thirty (30) days, and prior to declaration of forfeiture, the City may commence any work of compliance and hold

Grantee liable for the cost thereof and may revoke the franchise and declare the franchise forfeit even though the City has corrected the default.

(f) **Bonds Required for Violations.** In the event of a violation of any condition, term, or provision of an excavation permit, the Engineer may require the Grantee to thereafter file with the City, and maintain in effect during the term of this franchise, a faithful performance bond in favor of the City. The bond shall have a corporation surety in the principal sum of Twenty-Five Thousand Dollars (\$25,000.00), or such greater amount as may be approved by the City Council, on condition that the Grantee shall well and truly observe, fulfill, and perform each term and condition of the excavation permit, and that in case of any breach of condition thereof, the City may cure the breach and may recover from the principal and sureties the expenses incurred, including attorney's fees.

(g) **Additional Remedies.** In addition to an other remedy provided hereunder, or in lieu of revocation of this franchise, the Engineer or the City Council, as the case may be, may impose the following remedies for any violation of this franchise, provided that such remedies, taken cumulatively, shall not be excessive, and if imposed by the City Council, may only be imposed after a public hearing has been held as provided in this Section:

- (1) A reduction of the term of the franchise by one (1) day for every day that the violation continues; and/or
- (2) Liquidated damages in an amount not exceeding Five Hundred Dollars (\$500.00) for each day that such violation continues, provided that such limitation shall be adjusted upward by five percent (5%) annually from the effective date of this franchise.

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

SECTION 13. MISCELLANEOUS

(a) **Non-Liability of City Officers and Employees.** No officer or employee of the City shall be personally liable to the Grantee, or any successor in interest, for any loss, cost, damage, claim, or liability or for any action, in any manner, whether negligent or willful, arising out of this franchise or any act or omission on the part of the City or such officer or employee with respect to the Grantee.

(b) **Conflict of Interest.** No officer or employee of the City shall have any personal financial interest, direct or indirect, in this franchise nor shall any such officer or employee participate in any decision relating to the franchise which affects his or her personal financial interest or the financial interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested, in violation of any State

statute or regulation. The Grantee warrants that it has not paid or given and shall not pay or give any third party any money or other consideration for obtaining this franchise.

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

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

To City: City Manager
 CITY OF SIGNAL HILL
 2175 Cherry Avenue
 Signal Hill, California 90755
 Fax No. (562) 989-7393

To Grantee: Pacific Terminals LLC
 Cliff MacNiven, Rights of Way and Claims
 5900 Cherry Avenue
 Long Beach, CA 90805
 Telephone No. (562) 728-2885
 Fax No. (562) 728-2866

(e) **Waiver.** No delay or omission in the exercise of any right or remedy by the City shall impair such a right or remedy or be construed as a waiver. City's consent or approval of any act by Grantee requiring City's consent or approval shall not be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Grantee. Any waiver of any default must be in writing and shall not be waiver of any other default concerning the same or any other provision of this franchise.

(f) **Rights and Remedies are Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this franchise, the rights and remedies are cumulative and the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same default or any other default.

(g) Choice of Law and Venue. In the event that any litigation arises out of this franchise, it is specifically stipulated that this franchise shall be interpreted and construed according to the laws of the State of California and shall be performable in Los Angeles or Orange County, California.

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

(i) Amendment. This franchise may not be modified or amended except by ordinance of the City Council adopted in the same manner as required to grant the franchise.

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

SECTION 14. PUBLICATION AND ACCEPTANCE

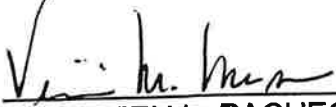
(a) Publication. The Grantee of this franchise shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of this franchise including, but not limited to; the costs of advertising for bids and publication of this ordinance as the same may be required by law, such payment to be made within thirty (30) days after the City shall furnish such Grantee with a written statement of such expenses.

(b) Acceptance. The franchise granted herein shall not become effective until written acceptance thereof shall have been filed by the Grantee with the Director of Finance of the City. Not later than ten (10) days after the publication of this ordinance, the Grantee shall file with the City Clerk of the City said acceptance of the franchise hereby granted and its agreement to comply with the terms and conditions hereof.

PASSED, APPROVED, AND ADOPTED this 9th day of March 2004.


MICHAEL J. NOLL
MAYOR

ATTEST:

Deputy

KATHLEEN L. PACHECO
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF SIGNAL HILL)


I, KATHLEEN L. PACHECO, City Clerk of the City of Signal Hill, do hereby certify that the foregoing Ordinance No. 2004-02-1326, was duly introduced at a regular meeting, on the 24th of February 2004, and adopted by the City Council of the City of Signal Hill, California, at a regular meeting held on the 9th day of March 2004, and was adopted by the following roll call vote:

AYES: Mayor Michael J. Noll, Vice Mayor Ellen Ward,
Council Members Tina L. Hansen & Edward H. J. Wilson

NOES None

ABSENT: Council Member Larry Forester

ABSTAIN None

Deputy

KATHLEEN L. PACHECO
CITY CLERK

SCANNED